

Chapter 142

STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL

GENERAL REFERENCES

Flood damage prevention — See Ch. 91.

Zoning — See Ch. 161.

Waterfront revitalization — See Ch. 159.

§ 142-1. Findings of fact.

It is hereby determined that:

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

particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 142-2. Purpose.

The purpose of this chapter and Chapter 161, Zoning, Article XI, is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 142-1 hereof. This chapter and Chapter 161, Zoning, Article XI, seek to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02 or as amended or revised;
- B. Require land development 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 activities in order to reduce flooding, siltation, increases in stream temperature, and stream-bank erosion and maintain the integrity of stream channels;
- D. Minimize increases in pollution caused by stormwater runoff from land development 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 to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and non-point source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 142-3. Statutory authority.

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

§ 142-4. Applicability.

- A. This chapter and Chapter 161, Zoning, Article XI, shall be applicable to all land development activities as defined in Chapter 161, Zoning, § 161-71.
- B. The municipality shall designate a stormwater management officer, who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may:
 - (1) Review the plans;
 - (2) Upon approval by the Town Board of the Town of Waterford, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or
 - (3) Accept the certification of a licensed professional that the plans conform to the requirements of this chapter and Chapter 161, Zoning, Article XI.
- C. All land development activities subject to review and approval by the Planning Board or Zoning Board of Appeals or Town Board under subdivision, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in this chapter and Chapter 161, Zoning, Article XI.
- D. All land development activities not subject to review as stated in Subsection C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the stormwater management officer, who shall approve the SWPPP if it complies with the requirements of this chapter and Chapter 161, Zoning, Article XI.

§ 142-5. Exemptions.

The following activities may be exempt from review under this chapter and Chapter 161, Zoning, Article XI:

- A. Agricultural activity as defined in this chapter and Chapter 161, Zoning, Article XI.
- B. Silvicultural activity, except that landing areas and log haul roads are subject to this chapter and Chapter 161, Zoning, Article XI.
- 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 deemed necessary by the stormwater management officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town of Waterford on or before the effective date of this chapter and Chapter 161, Zoning, Article XI.

- F. Land development activities for which a building permit has been approved on or before the effective date of this chapter and Chapter 161, Zoning, Article XI.
- 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, vegetable and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.

§ 142-6. Construction inspections.

- A. Erosion and sediment control inspection.
 - (1) The Town of Waterford stormwater management officer may require such inspections as necessary to determine compliance with this chapter and Chapter 161, Zoning, Article XI 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 chapter and Chapter 161, Zoning, Article XI and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Waterford enforcement official at least 48 hours before any of the following as required by the stormwater management officer:
 - (a) Start of construction.
 - (b) Installation of sediment and erosion control measures.
 - (c) Completion of site clearing.
 - (d) Completion of rough grading.
 - (e) Completion of final grading.
 - (f) Close of the construction season.
 - (g) Completion of final landscaping.
 - (h) Successful establishment of landscaping in public areas.
 - (2) If any violations 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 stormwater management officer.

- B. Stormwater management practice inspections. The Town of Waterford stormwater management officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.
- 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 SPDES stormwater permit; 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 drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices. Inspections may be performed by Town of Waterford staff or a designated inspector who possesses a professional engineer's (PE) license or certified professional in erosion and sediment control (CPESC) certificate.
- D. Submission of reports. The Town of Waterford stormwater management officer may require monitoring and reporting from entities subject to this chapter and Chapter 161, Zoning, Article XI, as are necessary to determine compliance with this chapter and Chapter 161, Zoning, Article XI.
- E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Waterford the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

§ 142-7. Performance guarantees.

- 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 of Waterford in its approval of the stormwater pollution prevention plan, the Town of

Waterford may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Waterford as the beneficiary. The security shall be in an amount to be determined by the Town of Waterford 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 of Waterford, 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) has(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 of Waterford. 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 of Waterford 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 of Waterford may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- C. Recordkeeping. The Town of Waterford may require entities subject to this chapter and Chapter 161, Zoning, Article XI, to maintain records demonstrating compliance with this chapter and Chapter 161, Zoning, Article XI.

§ 142-8. Enforcement; penalties for offenses.

- A. Notice of violation. When the Town of Waterford determines that a land development activity is not being carried out in accordance with the requirements of this chapter and Chapter 161, Zoning, Article XI, 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 activity into compliance with this chapter and Chapter 161, Zoning, Article XI, 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 municipality by filing a written notice of appeal within 15 days of service of the notice of violation.
- B. Stop-work orders. The Town of Waterford may issue a stop-work order for violations of this chapter and Chapter 161, Zoning, Article XI. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Waterford confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter and Chapter 161, Zoning, Article XI.
- C. Violations. Any land development activity that is commenced or is conducted contrary to this chapter and Chapter 161, Zoning, Article XI, may be restrained by injunction or otherwise abated in a manner provided by law.
- D. Penalties.
- (1) In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter and Chapter 161, Zoning, Article XI, shall be guilty of a violation punishable by 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.
 - (2) However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter and Chapter 161, Zoning, Article XI, shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

- E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter and Chapter 161, Zoning, Article XI, the stormwater management officer may prevent the occupancy of said building or land.
- F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Waterford may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 142-9. Fees for services.

The Town of Waterford may require any person undertaking land development activities regulated by this chapter and Chapter 161, Zoning, Article XI, to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Waterford or performed by a third party for the Town of Waterford.