

TOWN OF CHESTER
1786 KINGS HIGHWAY
CHESTER, NEW YORK
STORMWATER MANAGEMENT
233 East Main Street
Middletown, New York 10940

Officers:

Alfred A. Fusco, Jr., P.E., Town Engineer
Anthony LaSpina, Highway Superintendent

Phone: 845-344-5863

Phone: 845-469-4101

NOTICE OF VIOLATION

March 5, 2019

Greens at Chester, LLC
65 Steuben Street
Brooklyn, New York 11205

RE: Greens at Chester (437 lots)
Town of Chester
SBL: 38-1-1 to 90
SBL: 38-2-1 to 84
SBL: 38-3-1 to 67
SBL: 39-1-1 to 105
SBL: 39-2-1 to 91

Gentlemen,

We have re-inspected your above noted site on 2-25-19 for compliance with the Town of Chester Stormwater Management Code, Chapter 78A, and whereas we have seen improvements to the stabilization and water quality leaving the site.

We have continued violations regarding the poor condition of the silt fencing around the wetlands which has needed improvement for some time. We want the silt fence repaired or replaced around the wetlands or other protected approved methods to reduce the runoff into the wetlands to begin immediately and be completed within the next 30 days.

Penalties may be assessed against the person(s) to whom this notice of violation is directed.

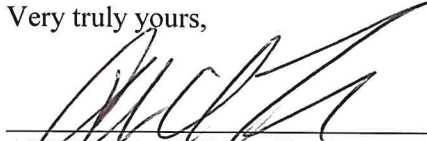
The determination of violation may be appealed to the Town of Chester by filing a written notice of appeal within 15 days of service of this notice of violation.

A stop work order is given to not disturb any new areas until the violation is corrected. Failure to address this in a timely manner may result in penalties in accordance with the enforcement measures in this article.

A copy of the code with penalties and your allowed relief are enclosed for your review.


We trust you will comply with the suggested remedial measures so you can continue on your project schedule.

Very truly yours,



ALFRED A. FUSCO, JR., P.E.
FUSCO ENGINEERING &
LAND SURVEYING. P.,C.

Cc: Honorable Robert Valentine, Supervisor
Honorable Linda Zappala, Town Clerk
John Petroccione, P.E.
Natalie Brown, NYSDEC
Mervin Ayers
David Flannery



ANTHONY LASPINA, HIGHWAY SUPERINTENDENT
TOWN OF CHESTER

Town of Chester, NY
Wednesday, March 6, 2019

Chapter 78A. Stormwater Management

[HISTORY: Adopted by the Town Board of the Town of Chester 7-13-2011 by L.L. No. 3-2011.^[1]
Amendments noted where applicable.]

GENERAL REFERENCES

Environmental quality review — See Ch. 47.

Flood damage control — See Ch. 52.

Freshwater wetlands — See Ch. 54.

Public improvements — See Ch. 59.

Subdivision of land — See Ch. 83.

Zoning — See Ch. 98.

[1] *Editor's Note: This local law was adopted as Ch. 97, but was renumbered to fit into the organizational structure of the Code.*

Article I. General Provisions

§ 78A-1. Purpose.

- A. The New York State Department of Environmental Conservation has promulgated regulations requiring municipal separate storm sewer systems (MS4) to obtain coverage under NYSDEC General Permit 02-02. The Town of Chester has implemented a stormwater management plan which requires an enactment of a local law requiring stormwater management for various activities within the Town. It is the purpose of this chapter to adopt minimal acceptable standards which must be met for subdivisions, site plans and construction projects which impact more than one acre of property within the municipal boundaries. The Town has noted that changes in watershed hydrology can occur due to land development, site grading, roadway construction and other construction activities. The Town wishes to protect the general public from impacts associated with increased runoff from developed properties as well as protecting the water quality of receiving stream waters within the Town. The purpose of this chapter is to set forth standards for development of property within the Town in order to obtain compliance with regulatory stormwater management requirements and sound engineering practices.
- B. It is also the purpose of this chapter to provide for the health, safety and general welfare of the citizens of the Town of Chester through the regulation of nonstormwater discharges to the municipal separate storm sewer systems (MS4) to the maximum extent practicable as required by federal and state law.

§ 78A-2. Objectives.

The Town has in the past experienced problems regarding stormwater management in that uncontrolled runoff can increase the amount of flooding and sediment pollution, which in turn adversely affect water quality that can impact human life, water quality, receiving stream biodiversity, and the general health and safety of the public. Therefore, the Town of Chester has the following objectives:

- A. Set forth standards which comply with the requirements of the NYSDEC General Permit for Stormwater Discharges, Permit No. GP-02-01, or as amended or revised;
- B. Establish methods for controlling the introduction of pollutants into the MS4, in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems (MS4), Permit No. GP-02-02, or as amended or revised;
- C. Protect the public and prevent damage from flooding;
- D. Encourage the protection of natural drainage systems, such as streams, lakes, and state and federal wetlands, in order to preserve the beneficial functions and values of those resources;
- E. Require the implementation of sound stormwater management and soil erosion and sediment control practices to be implemented on subdivisions, site plans and construction sites;
- F. Provide for the intro-fitting of current engineering practices on redeveloped sites;
- G. Implement a program to detect, enforce and eliminate illicit discharges to the Town stormwater collection system;
- H. Prohibit illicit connections, activities and discharges to the MS4;
- I. Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter and impose penalties and remedies for noncompliance; and
- J. 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.

§ 78A-3. Definitions.

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

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 Department as required by Section 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.

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 amendments thereto.

CONSTRUCTION ACTIVITY

Activities requiring authorization under the SPDES Permit for Stormwater Discharges from Construction Activity, GP-02-01, as amended or revised. These activities include construction

projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL

New York State licensed professional engineer or licensed architect.

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 present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

ILLICIT CONNECTIONS

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; and/or
- 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.

ILLICIT DISCHARGE

Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 78A-21 of this chapter.

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 authorization under the SPDES Permit for Discharges from Industrial Activities Except Construction, GP-0-06-002, as amended or revised.

MUNICIPALITY

The Town of Chester.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Town of Chester;
- B. Designed or used for collecting or conveying 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.

NONSTORMWATER DISCHARGE

Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON

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

POLLUTANT

Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive 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.

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 a municipality has been notified that the discharge of stormwater authorized under its MS4 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 municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the 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 the municipality's MS4 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 municipality 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 the municipality's 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 municipality 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 municipality 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.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT ADMINISTRATOR (SMA)

The Building Inspector, engineer or other person designated by the Board of Trustees to enforce this chapter. The SMA may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

TOTAL MAXIMUM DAILY LOAD (TMDL)

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

WASTEWATER

Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

Article II. Stormwater Runoff

§ 78A-4. Applicability.

This article shall be applicable to all land development activities within the Town of Chester outside the incorporated village unless specifically exempted.

- A. The Town Highway Superintendent and the Town Engineer shall be the Stormwater Management Officers for the Town and shall accept and review all stormwater pollution prevention plans and submissions.
- B. Each application for land development shall be accompanied by a stormwater management plan or statement of exemption which shall be certified as conforming to the requirements of this section by a licensed professional engineer.
- C. Applicants for any land development activities not subject to review as provided for herein or in the subdivision regulations, Chapter **83**, of the Town of Chester shall be required to submit a stormwater pollution prevention plan (SWPPP) or statement of exemption to the Stormwater Management Officer, who shall approve the SWPPP if it complies with the requirements of this section.
- D. Applicants for any land development activity subject to Planning Board review in accordance with the subdivision regulations, Chapter **83**, of the Town of Chester or the zoning law, Chapter **98**, of the Town of Chester shall be required to submit a stormwater pollution prevention plan to the Planning Board, which shall direct it to the Stormwater Management Officer through the Town Planning Board Engineer for review, who shall approve the stormwater pollution prevention plan if it complies.

§ 78A-5. Exemptions.

The following activities shall be exempt from review under this article:

- A. Agricultural activity as defined in this section.
- 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 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 Chester Planning Board on or before the effective date of this article.
- F. Land development activities and site plans which have been approved by the Town of Chester Planning Board or 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.
- L. Disturbance of less than one acre which is not part of a larger project.

§ 78A-6. Stormwater pollution prevention plan.

No application for approval of a land development activity shall be subject to public review until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article.

§ 78A-7. Contents of stormwater pollution prevention plans.

- A. All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (1) Background information about the scope of the project, including location, type and size of project;
 - (2) Site map/construction drawing(s) for the project, including a general location map, should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges;
 - (3) Description of the soil(s) present at the site;
 - (4) A 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 pursuant to an approved SWPPP;
 - (5) Description 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;
 - (6) 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;
 - (7) 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;
 - (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

- (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (10) Temporary practices that will be converted to permanent control measures;
 - (11) An 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;
 - (12) A maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (13) Name(s) of the receiving water(s);
 - (14) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (15) Description of structural practices designed to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from overexposed areas of the site to the degree attainable; and
 - (16) Any existing data that describes the stormwater runoff of the site.
- B. Land development activities as defined herein and meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in Subsection **C** below, as applicable:
- (1) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 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.
 - (2) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (3) Condition C: stormwater runoff from land development activity disturbing between one acre 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.
- C. SWPPP requirements for Conditions A, B and C:
- (1) All information in Subsection **A** above.
 - (2) Description of each postconstruction stormwater management practice.
 - (3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.
 - (4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
 - (5) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.
 - (6) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.
 - (7) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.
 - (8) 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.

- (9) An inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 78A-12 of this article.

§ 78A-8. Plan certification.

The SWPPP shall be prepared by a landscape architect or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this article.

§ 78A-9. Other environmental permits.

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 78A-10. Contractor certification.

- A. 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 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."
- B. 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.
- C. The certification statement(s) shall become part of the SWPPP for the development activity.
- D. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 78A-11. Performance and design criteria for stormwater management and erosion and sediment control.

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

- A. Technical standards. For the purpose of this section, 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 section.
 - (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 Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").
- B. Water quality standards. Any land development activity shall not cause turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 78A-12. Maintenance and repair of stormwater facilities.

A. Maintenance during construction.

- (1) The applicant or developer of the land development activity 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 section. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) The applicant or developer or his or her representative shall be on site at all times when construction or grading activity is taking place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and copied to the site logbook.

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 of Chester to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by the section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Town Attorney for the Town of Chester.

C. Maintenance after construction. The owner or operator of permanent stormwater management facilities installed in accordance with this article shall insure such facilities 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 of this article.

D. Maintenance agreements. The Town of Chester shall provide a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the 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."^[1] The Town of Chester, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided that such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

[1] *Editor's Note: Schedule B is on file in the Town offices.*

§ 78A-13. Administration and enforcement.

A. Erosion and sediment control inspection.

- (1) The Town of Chester Stormwater Management Officer may require such inspections as 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 stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Chester enforcement official at least 48 hours before any of the following activities:
 - (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 Chester 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.
- D. Submission of reports. The Town of Chester Stormwater Management Officer may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
- 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 Chester the right to enter the property at reasonable times and for a reasonable time and in a reasonable manner for the purpose of inspection as specified in Subsection C above.

§ 78A-14. Performance guarantee.

- 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 in the form of a 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 the 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.

§ 78A-15. Enforcement; penalties for offenses.

- A. Notice of violation. When the Town determines that a land development 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 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 municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- B. Stop-work orders. The Town 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 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 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 article.

- C. Violations. Any land development 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 \$250 or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense. Conviction of a second offense shall be considered an aggravated violation of this article if such violation shall occur within five years of the conviction of the initial offense. An aggravated violation of this article shall be an unclassified misdemeanor and shall be punishable in accordance with the Penal Law of the State of New York 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 committed within the same five-year period, shall be punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for 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.
- E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, 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 period of time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- G. Fees for services. The Town may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections or SMP maintenance performed by the Town or performed by a third party for the Town.

§ 78A-16. (Reserved)

§ 78A-17. (Reserved)

Article III. Prohibition of Illicit Discharges, Activities and Connection to Separate Storm Sewer System

§ 78A-18. Applicability.

This article shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 78A-19. Responsibility for administration.

The stormwater management administrator(s) (SMAs) shall administer, implement and enforce the provisions of this chapter. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMA as may be authorized by the Board of Trustees.

§ 78A-20. Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

§ 78A-21. Discharge prohibitions.

- A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Subsections **A(1)** through **(4)** below. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:
- (1) The following discharges are exempt from discharge prohibitions established by this chapter, unless the Department or the Town has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, 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 fire-fighting 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 SMA to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMA may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.
 - (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMA prior to the time of the test.
 - (4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- B. Prohibition of illicit connections.
- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
 - (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

§ 78A-22. Prohibition against failing individual sewage treatment systems.

No person shall operate a failing individual sewage treatment system in areas tributary to the municipality'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 a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Structural failure of any component 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.

§ 78A-23. Prohibition against activities contaminating stormwater; discharge prohibitions.

- A. Activities that are subject to the requirements of this section are those types of activities that:
 - (1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.
 - (2) Cause or contribute to the municipality being subject to the special conditions as defined in § 78A-3, Definitions, of this chapter.
- B. Such activities include prohibited discharges or connections and failing individual sewage treatment systems as defined in § 78A-22, improper management of animal waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.
- C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions (as determined or approved by the SMA) to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§ 78A-24. Requirement to prevent, control and reduce stormwater pollutants by use of best management practices.

- A. Best management practices. Where the SMA has identified illicit discharges as defined in § 97-3 or activities contaminating stormwater as defined in § 97-23, the Town 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 or other wastes into the MS4 through the use of structural and nonstructural BMPs.
 - (2) Any person responsible for a property or premises that is, or may be, the source of an illicit discharge as defined in § 78A-3 or an activity contaminating stormwater as defined in § 78A-23 may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutants 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 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 municipality's being subject to the special conditions as defined in § 78A-3 of this chapter, 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) Inspect the septic tank annually to determine scum and sludge accumulation. 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; inspection of the tank for cracks, leaks and blockages shall be done by the septage hauler at the time of pumping of the tank contents;
- (b) Avoid the use of septic tank additives;
- (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes and household chemicals; and
- (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items.

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

- (a) In accordance with 10 NYCRR Appendix 75A to the maximum extent practicable.
- (b) A design professional licensed 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 a new or 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 municipality at the completion of construction of the repair or replacement system.

§ 78A-25. Suspension of access to MS4.

- A. The SMA 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 SMA 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 SMA may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this chapter may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMA will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMA for a reconsideration and hearing. Access may be granted by the SMA if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMA determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the SMA.

§ 78A-26. Industrial or construction activity discharges; suspension of access to MS4.

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 municipality prior to the allowing or continuance of discharges to the MS4.

§ 78A-27. Access to facilities; monitoring of discharges.

- A. Applicability. This section applies to all facilities that the SMA determines necessary to inspect to enforce any provision of this chapter, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter.
- B. Access to facilities.
- (1) The SMA shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMA.
 - (2) Facility operators shall allow the SMA 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 chapter.
 - (3) The municipality shall have the right to set up on any facility subject to this chapter such devices as are necessary in the opinion of the SMA to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The municipality has the right to require the facilities subject to this chapter to install monitoring equipment as is reasonably necessary (and subject to approval by the SMA) to determine compliance with this chapter. 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 flow and quality shall be calibrated to ensure their accuracy.
 - (5) Unreasonable delays in allowing the municipality access to a facility subject to this chapter is a violation of this chapter. A person who is the operator of a facility subject to this chapter commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this chapter.
 - (6) If the SMA has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, then the SMA may seek issuance of a search warrant from any court of competent jurisdiction.

§ 78A-28. 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 illegal discharges or pollutants

discharging into the MS4, said person shall take all necessary steps to ensure the discovery, 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 Town 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 Town 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 for at least three years.

§ 78A-29. Enforcement; penalties for offenses.

A. Notice of violation. When the Town's SMA finds that a person has violated a prohibition or failed to meet a requirement of this chapter or failed to comply with a permit or approval condition related to the subject matter of this chapter (all deemed a "violation" of this chapter), he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The elimination of illicit connections or discharges;
- (2) That violating discharges, practices or operations shall cease and desist;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property and the environment;
- (4) The performance of monitoring, analyses and reporting;
- (5) Payment of a fine and/or civil monetary penalty; and
- (6) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property or the environment 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, and, if unpaid, said amount may be assessed and levied as a lien against the violator's premises and collected in the same manner as a real property tax.

B. Penalties.

- (1) In addition to or as an alternative to any penalty provided herein or by law, any person who violates this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed 15 days, 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 15 days, 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. Each day's continued violation shall constitute a separate additional violation.
- (2) Civil penalties.
 - (a) In addition to and not in lieu of the above, any person who violates this chapter shall be liable to the Town for a civil penalty in an amount not to exceed \$350 for a first violation; in an amount not less than \$350 nor more than \$700 for a second violation committed within a period of five years of the first violation; and in an amount of not less than \$700 nor

more than \$1,000 for a third and each subsequent violation committed within a period of five years of the first violation. Each day's continued violation shall constitute a separate additional violation.

- (b) Civil penalties may be ordered in any action or proceeding by any court of competent jurisdiction, including but not limited to state and federal courts. All penalties shall be paid to the Town.
 - (c) The judgment amount of any civil penalty ordered pursuant to this section, if not paid, may be assessed and levied against the real property which is the subject of the penalty and collected in the same manner as a real property tax.
- (3) In addition to and not in lieu of the remedies authorized above, the SMA or the Board of Trustees may institute any appropriate action or proceeding to prevent, restrain, enjoin, correct or abate any violation or threatened violation or to enforce any provision of this chapter.

§ 78A-30. Appeal of notice of violation.

- A. Any person receiving a notice of violation may appeal the determination of the SMA to the Board of Trustees within 15 days its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the Town Clerk and mail a copy of its decision by certified mail to the appellant. Any person aggrieved by the decision of the Board of Trustees may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules. Such proceeding must be commenced within 30 days after the decision is filed in the Town Clerk's office or shall be time-barred.
- B. The appeal of a notice of violation shall stay an order contained in the notice of violation issued by the SMA, unless the SMA determines in writing that a stay of the order, or portion thereof, would cause undue harm to a person, property, equipment, the environment or the Town's storm sewer system. In such case, an appeal shall not stay the SMA's order.

§ 78A-31. 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 municipal authority upholding the decision of the SMA, then the SMA shall have authority to 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 SMA 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 SMA may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- C. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger and may be collected in the same manner as set forth in § 78A-29A(6).

§ 78A-32. Injunctive relief.

It shall be a violation of this chapter for any person to violate any provision or fail to comply with any of the requirements of this chapter or fail to comply with a permit or approval condition related to the subject matter of this chapter. If a person has violated or continues to violate the provisions of this chapter, the SMA 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.

§ 78A-33. Alternative remedies.

- A. Where a person has violated a provision of this chapter, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Town Attorney and concurrence of the SMA, where:
- (1) The violation was unintentional.
 - (2) The violator has no history of previous violations of this chapter.
 - (3) Environmental damage was minimal.
 - (4) The violator acted quickly to remedy the 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.

§ 78A-34. Violations deemed a 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 chapter 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.

§ 78A-35. Remedies not exclusive.

The remedies listed in this chapter 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.