

Chapter 207
STORMWATER POLLUTION PREVENTION

GENERAL REFERENCES

Earth removal — See Ch. 85.

Flood hazard areas — See Ch. 113.

Plan and inspection fees — See Ch. 93, Art. I.

STATE LAW REFERENCES

Fresh Water Wetlands Act — See R.I.G.L. § 2-1-18 et seq.

Department of Environmental Management — See R.I.G.L. § 42-17.1-1 et seq.

Soil erosion and sediment control — See R.I.G.L. § 45-46-1 et seq.

ARTICLE I

Stormwater Pollution Prevention Plan**§ 207-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

APPLICANT — Any person, corporation or public or private organization proposing or engaged in a development which would involve disturbance of natural terrain. "Applicant" shall also mean an authorized agent acting on the applicant's behalf.

COASTAL FEATURES — Coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs, bluffs and banks, rocky shores, and man-made shorelines, as defined in the State Coastal Resources Management Program, as amended.

CUT — An excavation; the difference between a point on the original ground and a designated point of lower elevation on the final grade; and the material removed in excavation.

DEVELOPMENT PROJECT — Any construction, reconstruction, demolition or removal of structures, roadways, parking or other paved areas, utilities or other similar facilities, including any action requiring a building permit by the Town with the exception of signage and fencing, unless otherwise required by the Building Official and/or his designee.

EROSION — The removal of mineral and/or organic matter by the action of wind, water and/or gravity.

EXCAVATE — Any act by which earth, sand, gravel, rock or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed, and shall include the conditions resulting therefrom.

FILL — Any act in which earth, sand or other material is placed or moved to a new location aboveground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

GABION — A rectangular or cylindrical wire mesh cage (wire basket) filled with rock and used as a protecting agent, revetment, etc., against erosion.

LAND-DISTURBING ACTIVITY — Any physical land development activity which includes such actions as clearance of vegetation, moving or filling of land, removal or excavation of soil or mineral resources, or similar activities.

MULTIFAMILY — Any site, property, building, structure intended for use by more than one family, including but not limited to apartments, condominiums, duplexes and townhouses.

REINSPECTION FEE — The fee charged to the applicant or owner for repeated inspections necessitated by any oversight in the compliance with

the approved soil erosion sediment control plan. The Building Official or his designee has the right to waive this fee.

RUNOFF — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow, including seepage flows, that do not enter the soil but run off the surface of the land; also, that portion of water that is not absorbed by the soil, but runs off the land surface.

SEDIMENT — Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water and/or gravity as a product of erosion.

SILVICULTURE — A forestry operation or timber production that is approved by the State Department of Environmental Management.

SITE PLANS — Plans for commerce, industry, parking lots, pipelines, utilities, roads, public facilities, land grading, quarrying, mining, landfills and/or demolitions.

STORMWATER POLLUTION PREVENTION PLAN — The approved document which is required before any person may cause a disturbance to the natural terrain within the town as regulated by this article. The document may also be referred to as "SWPPP."**[Amended 11-6-2006 by Ord. No. 781]**

WATERCOURSE — Any tidewater or coastal wetland at its mean high-water level and any freshwater wetland at its seasonal high-water level, including but not limited to any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow, or any other standing or flowing body of water. The edge of the watercourse, as defined under the provisions of this chapter, shall be used for delineation purposes.

§ 207-2. Findings.

- A. The Town Council finds that excessive quantities of soil are eroding from certain areas of the Town which are undergoing development for certain nonagricultural uses, such as housing developments, industrial areas, recreational facilities, commercial facilities, and roads.
- B. Soil erosion occurring in areas undergoing nonagricultural development makes costly repairs necessary to gullies, washed-out fills, roads and embankments. The resulting sediment clogs storm sewers and road ditches and deposits silt into ponds, rivers, streams and brooks.
- C. Silt resulting from erosion threatens the water supply, as well as the recreational, aesthetic and wildlife habitat values associated with these waters.
- D. Other construction wastes, including construction debris and chemicals, concrete truck washout, oil and grease, litter and sanitary waste may cause adverse impacts to water quality when discharged from a construction site. **[Added 11-6-2006 by Ord. No. 781]**

§ 207-3. Purpose. [Amended 11-6-2006 by Ord. No. 781]

The purpose of this article is to control the discharge of construction waste and to prevent soil erosion and sedimentation from occurring as a result of nonagricultural development within the Town by requiring the use of appropriate best management practices (BMPs) to reduce or eliminate the pollutants in stormwater discharges during and after construction so as to promote the safety, public health and general welfare of the citizens of the Town.

§ 207-4. Authority.

- A. The Town Council shall grant the Building Official and/or his designee the authority necessary to administer this chapter under the provisions of R.I.G.L. § 45-46-1 et seq., Soil Erosion and Sediment Control.
- B. Application for determination of applicability required. It shall be unlawful for any person to disturb any existing vegetation, grades and contours of land in a manner that may affect the quality of stormwater discharges associated with the construction activity without first applying for a determination of applicability from the Building Official or his designee. **[Amended 11-6-2006 by Ord. No. 781]**

§ 207-5. Applicability.

- A. Generally. This chapter shall be applicable to any situation involving any disturbance to the terrain, topsoil or vegetative ground cover upon any property within the Town after a determination of applicability by the Building Official or his designee based upon criteria outlined in this chapter.
- B. Application for determination of applicability required. It shall be unlawful for any person to disturb any existing vegetation, grades and contours of land in a manner that may affect the quality of stormwater discharges associated with the construction activity without first applying for a determination of applicability from the Building Official or his designee. **[Amended 11-6-2006 by Ord. No. 781]**
- C. Contents of application for determination of applicability. The application for determination of applicability shall describe the location, nature, character and time schedule of the proposed land-disturbing activity in sufficient detail so as to allow the Building Official or his designee to determine the potential for soil erosion and sedimentation resulting from the proposed development project.
- D. Criteria for determination of applicability.
 - (1) In determining the applicability of this chapter to a particular land-disturbing activity, the Building Official or his designee shall consider site topography, drainage patterns, soils, proximity to watercourses, and other such information as deemed appropriate by the Building Official or his designee.

- (2) A particular land-disturbing activity shall not be subject to the requirements of this chapter if the Building Official or his designee finds that erosion resulting from the land-disturbing activity is insignificant and represents no threat to adjacent properties or to the quality of any coastal feature or watercourse.
 - (3) The most current version of the Rhode Island Soil Erosion and Sediment Control Handbook; the United States Department of Agriculture Natural Resources Conservation Service; Rhode Island Department of Environmental Management; and the Rhode Island State Conservation Committee may be consulted in making this determination.
- E. Exemptions. No determination of applicability shall be required for the following activities:
- (1) Construction, alteration or use of any additions to existing single-family or duplex homes or related structures, provided the grounds coverage of such addition is less than 1,000 square feet; such construction, alteration and use does not occur within 100 feet of any watercourse or coastal feature; and the slopes at the site of land disturbance do not exceed 10%.
 - (2) Use of a home garden in association with on-site residential use.
 - (3) Accepted agricultural management practices, such as seasonal tilling and harvest activities associated with property utilized for private and/or commercial agricultural or silvicultural purpose.
 - (4) Excavations for improvements other than those described in Subsection E(1) of this section which exhibit all of the following characteristics:
 - (a) Do not result in a total displacement of more than 50 cubic yards of material.
 - (b) Have no slopes greater than 10%.
 - (c) Have all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation.
 - (5) Grading, as a maintenance measure or for landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosion actions and all of the following conditions are met:
 - (a) The aggregate areas of such activity do not exceed 2,000 square feet.
 - (b) The change of elevation does not exceed two feet at any point.
 - (c) The grading does not involve a quantity of fill greater than 18 cubic yards except where excavated from another portion of

the same parcel, and the quantity does not exceed 50 cubic yards.

- (6) Grading, filling, removal or excavation activities and operations undertaken by the Town under the direction of the Director of Public Works for work on streets, roads or rights-of-way dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls and controls for other construction wastes are incorporated in engineering plans and specifications and are followed and employed. Appropriate controls shall apply during construction as well as after the completion of these activities. All such work shall be undertaken in accordance with the performance principles provided for in § 207-15 and such standards and definitions as may be adopted to implement such performance principles. **[Amended 11-6-2006 by Ord. No. 781]**
- F. Effect of determination of applicability on need for other permits. Compliance with the requirements as described in this section shall not be construed to relieve the applicant of any obligation to obtain necessary state or federal permits.
- G. Submission of stormwater pollution prevention plan. Upon determination of applicability, the applicant shall submit a stormwater pollution prevention plan (SWPPP) for approval by the Building Official or his or her designee as provided in § 207-16. **[Amended 11-6-2006 by Ord. No. 781]**

§ 207-6. Liability of applicant. [Amended 11-6-2006 by Ord. No. 781]

Neither approval of a stormwater pollution prevention plan (SWPPP) nor compliance with any condition of this article shall relieve the applicant from any responsibility for damage to persons or property, nor impose any liability upon the Town for damages to persons or property.

§ 207-7. Surety.

A. Required.

- (1) Before approving a SWPPP for any residential subdivision, commercial or industrial site, the Building Official or his designee shall require the applicant to file a performance surety in the form of a letter of credit with the Town. Before approving a SWPPP for any individual residential lot, a performance surety in the form of a letter of credit with the Town may be required by the Building Official or his designee based on the consideration of topography, drainage patterns, soils and proximity to watercourses as described in § 207-5D. **[Amended 11-6-2006 by Ord. No. 781]**
- (2) When any land-disturbing activity is to take place within 100 feet of any watercourse or coastal feature or within an identified flood

hazard district or on slopes in excess of 10%, the filing of a performance surety shall be required.

- (3) The amount of the bond, as determined by the Director of the Department of Public Works, shall be sufficient to cover the cost of implementing all control measures shown on the approved plan. **[Amended 11-6-2006 by Ord. No. 781]**
- (4) The performance surety filed by the applicant shall be subject to the approval, with regards to the form, content, amount and manner of execution of the Director of Public Works.
- (5) A performance surety for an approved SWPPP for a subdivision may be included within the performance bond for that subdivision. The posting of the surety as part of the subdivision performance bond does not, however, relieve the applicant of any requirements of this article. **[Amended 11-6-2006 by Ord. No. 781]**

B. Default.

- (1) Should the Building Official or his designee find that a default has occurred in the performance of any terms and/or conditions of the bond or in the implementation of measures secured by the bond, written notice thereof shall be made to the applicant and to the surety of the bond by the Town Solicitor.
- (2) The notice shall state the nature of the default, work to be done, the estimated cost thereof, and the period of time deemed by the Building Official or his designee to be necessary for the completion of the work.
- (3) Failure of the applicant to acknowledge and comply with the provisions and deadlines outlined in such notice of default shall mean that the Town Solicitor shall take appropriate measures to utilize the performance bond to cause the required work to be completed. Work may be completed by the Town by contract or by other means, as determined by the Town Council. Such measures may be taken without further notice of proceedings whatsoever.

C. Release.

- (1) The performance surety requirements shall remain in full force and effect for a minimum of 12 months following completion of the project per the requirements of the Building Official or his designee.
- (2) The applicant may request the release of his performance surety from the Building Official or his designee 12 months after the final site inspection has been completed and approved.
- (3) In the instance where the performance surety has been posted with the recording of a final subdivision, the performance surety shall be released a minimum of 12 months after the Building Official or his

designee has been notified by the Director of Public Works of successful completion of all plat improvements by the applicant.

§ 207-8. Expiration and renewal of approvals.

- A. Expiration. Every approval granted pursuant to this chapter shall expire at the end of the time period set forth in the conditions. The developer shall fully perform and complete all of the work required within the specified time period.
- B. Renewal. If the developer is unable to complete the work within the designated time period, he shall, a minimum of 30 days prior to the expiration date, submit a written request for an extension of time to the Building Official or his designee, setting forth the reasons underlying the requested time extension. If the extension is found to be warranted, the Building Official or his designee may grant an extension of time up to a maximum of one year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the Building Official or his designee.

§ 207-9. Maintenance of control devices and watercourses.

- A. Maintenance of all erosion sediment control devices and other controls under this article shall be the responsibility of the property owner of record. The erosion and sediment control measures and controls for other wastes shall be maintained in good condition and working order on a continuing basis. **[Amended 11-6-2006 by Ord. No. 781]**
- B. Watercourses originating and located completely on private property shall be the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

§ 207-10. Inspections.

- A. Periodic inspections.
 - (1) The provisions of this chapter shall be administered and enforced by the Building Official or his designee.
 - (2) All work shall be performed in accordance with an inspection and construction control schedule approved by the Building Official or his designee, who shall maintain a permanent file of all his inspections.
 - (3) The Building Official or his designee shall perform an inspection of the site following the installation of control measures prior to ground work and construction.
- B. Final inspection.
 - (1) Upon completion of the work, the developer shall notify the Building Official or his designee that all grading, drainage, erosion

and sediment control measures and devices, vegetation and ground cover plantings, and controls for other wastes have been completed in conformity with the approval; all attached plans, specifications and conditions; and other applicable provisions of this article. **[Amended 11-6-2006 by Ord. No. 781]**

- (2) Upon notification of completion by the owner, the Building Official or his designee shall make a final inspection of the site in question and shall prepare a final summary inspection report of his findings, which shall be retained in the office of the Building Official or his designee.

§ 207-11. Notification of violation of article.

- A. If at any stage the work in progress and/or completed work does not conform to the approved SWPPP, a written notice from the Building Official or his designee to comply shall be transmitted by certified mail to the applicant and the owner. **[Amended 11-6-2006 by Ord. No. 781]**
- B. The notice of noncompliance shall set forth the nature of the temporary and permanent corrections required and the time limit within which corrections shall be completed as set forth in § 207-12.
- C. Failure to comply with the required corrections within the specified time limit shall be considered a violation of this chapter, in which case the performance surety shall be subject to the notice of default in accordance with § 207-7.

§ 207-12. Revocation or suspension of approval; other penalties.

- A. Revocation or suspension of approval. The approval of a SWPPP may be revoked or suspended by the Building Official and all work on the project halted by the Building Official for an indefinite time period after written notification is transmitted by the Building Official to the developer for one or more of the reasons noted in this section. **[Amended 11-6-2006 by Ord. No. 781]**
 - (1) Violation of any condition of the approved plan or specifications pertaining thereto.
 - (2) Violation of any provision of this chapter or any other applicable law, ordinance, article, rule or regulation related to the work or site of work.
 - (3) The existence of any condition or the performance of any act constituting or creating a nuisance, hazard or endangerment to human life or the property of others or contrary to the spirit or intent of this chapter.
- B. Other penalties.

- (1) In addition thereto, whenever there is a failure to comply with the provisions of this chapter, the Town shall have the right to notify the applicant that he has five days from receipt of notice to temporarily correct the violations and 30 days from receipt of notice to permanently correct the violations.
- (2) Should the applicant fail to take the temporary corrective measures within the five-day period and/or the permanent corrective measures within the thirty-day period, the Town shall then have the right to take whatever actions it deems necessary to correct the violations and to impose a lien on the subject property in an amount equal to the costs of remedial actions.
- (3) The lien shall be enforced in the manner provided or authorized by law for the enforcement of common law liens on personal property. The lien shall be recorded with the records of land evidence of the Town, and the lien shall incur legal interest from the date of recording. The imposition of any penalty shall not exempt the offender from compliance with the provisions of this chapter, nor shall it preclude any revocation of the performance bond on the property by the Town.

§ 207-13. Preparation. [Amended 11-6-2006 by Ord. No. 781]

The stormwater pollution prevention plan (SWPPP) shall be prepared by a registered engineer, registered landscape architect, or erosion and sediment control specialist certified by the Soil and Water Conservation Society. Seven copies of the plan shall be submitted to the Building Official or his designee. SWPPPs requiring the practice of engineering shall be stamped and signed by a registered professional engineer.

§ 207-14. Contents.

- A. The SWPPP shall include sufficient information about the proposed activities and land parcels to form a clear basis for discussion and review and to ensure compliance with all applicable requirements of this article. **[Amended 11-6-2006 by Ord. No. 781]**
- B. The plan shall be consistent with the data collection, data analysis, and plan preparation guidelines in the current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the United States Department of Agriculture, Natural Resources Conservation Service; Rhode Island Department of Environment Management; and Rhode Island State Conservation Committee, as may be amended.
- C. Withholding or delay of this information in whole or in part may be reason for the Building Official or his designee to judge the application as deficient and shall serve as grounds for disapproval. See also § 207-19A.

- D. If the application is deemed to be incomplete by the Building Official or his designee, he shall send a letter of deficiency to the applicant within seven days from the date of submission, citing those sections of the application which are incomplete.
- E. The required plan contents shall at a minimum contain the following: **[Amended 11-6-2006 by Ord. No. 781]**
- (1) Narrative. The narrative should include the following: a description of the proposed land-disturbing activity, estimates of the total area of the site, estimates of the total area of the site expected to be disturbed, and any proposed sequencing of the project; a description of soil erosion and sediment control measures, stormwater management measures, and measures to other wastes to be installed; and a description of any potential sources of pollution that may be expected to affect the quality of stormwater discharges from the site.
 - (2) Supporting documentation. Supporting documentation, such as complete maps including scale and depicting the drainage areas; the existing site; the floodplain, if applicable; and the soils, shall be provided as required by the Building Official or his designee.
 - (3) Construction drawings. Construction drawings illustrating in detail existing and proposed contours, drainage features, limits of vegetation, limits of clearing and grading, the location of soil erosion and sediment control, stormwater management measures and controls for other wastes; detail drawings of the controls and measures; the location of stockpiles and borrow areas; the sequence and staging of land-disturbing activities; and other such information needed for construction as required by the Building Official or his designee.
 - (4) Erosion and sediment controls. A description, including construction details appropriate to the site, for both vegetative and structural practices. Vegetative BMPs are designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grading or construction. Structural BMPs divert flows from exposed soils, filter runoff, store flows or otherwise limit runoff from coming into contact with exposed, unvegetated areas of the site and to prevent sediments and/or other pollutants from leaving the site.
 - (5) Post-construction stormwater management. A description of measures that will be installed during the construction project to control pollutants in stormwater discharges that will occur at the site after the construction operations have been completed. These measures shall be consistent with the requirements of the Stormwater Management Ordinance. Maintenance activities for these measures shall be described in accordance with Subsection E(6) below.

- (6) Other controls.
 - (a) Waste disposal. A description of the other controls, including construction details appropriate for the site, to eliminate the discharge of other construction wastes found on the construction site. All types of waste generated at the site shall be disposed of in a manner consistent with state law and/or regulations.
 - (b) Good housekeeping. Good housekeeping measures to provide for the minimization of exposure of construction debris to precipitation and for the proper disposal of such debris shall be specified.
 - (c) Spill prevention. Areas where potential spills can occur shall be identified. The potential for spills to enter the stormwater drainage system shall be eliminated wherever feasible.
- (7) Maintenance. A description of procedures to maintain, in good and effective operating condition, vegetation, stormwater control measures, and other protective measures identified in the site plan.
- (8) Other information. Other information or construction plans and details as deemed necessary by the Building Official or his designee for thorough review of the plan prior to action being taken as prescribed in this article.

§ 207-15. Performance principles.

- A. The contents of the SWPPP shall clearly demonstrate how the principles set forth in this article have been met in the design and how they are to be accomplished by the proposed development. **[Amended 11-6-2006 by Ord. No. 781]**
- B. All proposed work shall reflect the site's natural drainage characteristics and topography.
- C. The disturbance of existing slopes greater than 33% shall be avoided.
- D. The grade of slopes proposed shall be minimized.
- E. Post-development runoff rates shall not exceed predevelopment runoff rates for a twenty-five-year frequency storm and shall be consistent with other stormwater requirements which may be in effect. The Director of Public Works shall have the right to require other frequency storm (fifty-year, seventy-five-year and/or one-hundred-year) rates controlled as deemed necessary by the Director of Public Works. Any increase in storm runoff shall be retained and recharged close to its place of origin by means of detention ponds or basins, seepage areas, subsurface drains or similar techniques. **[Amended 11-6-2006 by Ord. No. 781]**

- F. Original boundaries, alignment and slope of watercourses within the project locus shall be preserved to the greatest extent feasible and shall at a minimum comply with the requirements and determination of the Rhode Island Department of Environmental Management (R.I.G.L. § 42-17.1-1 et seq.).
- G. Drainage shall be directed away from structures intended for human occupancy or utility use or similar structures or structures for municipal use which are not designed to handle increased runoff.
- H. All drainage provisions shall be of such a design and capacity so as to adequately handle stormwater runoff, including runoff from tributary upstream areas which may be outside the locus of the project.
- I. Drainage facilities shall be installed as early as feasible during construction and prior to site clearance where possible to the satisfaction of the Building Official or his designee.
- J. Fill located adjacent to watercourses shall be suitably protected from erosion by means of riprap, gabions, retaining walls, vegetative stabilization, or similar measures.
- K. Temporary vegetation and/or mulching shall be used to protect bare areas and stockpiles from erosion during construction. The smallest areas feasible, as approved by the Building Official or his designee, shall be exposed at any one time. Disturbed areas shall be protected during the nongrowing months of November through March.
- L. Permanent vegetation shall be placed immediately following final grading.
- M. Trees and other existing vegetation shall be retained whenever feasible as per the determination of the Building Official or his designee. The area within the dripline shall be fenced or roped off to protect trees from construction equipment and foot traffic.
- N. All areas damaged during construction shall be resodded, reseeded or otherwise restored.
- O. Monitoring and maintenance schedules, where required by the Building Official or his designee, shall be predetermined.
- P. All controls installed or used to achieve compliance with this SWPPP must be properly operated and maintained at all times. **[Added 11-6-2006 by Ord. No. 781]**
- Q. Sediment controls, stormwater measures, and other controls shall protect downstream water bodies from adverse water quality impacts resulting from the construction activities. **[Added 11-6-2006 by Ord. No. 781]**

§ 207-16. Filing. [Amended 11-6-2006 by Ord. No. 781]

To obtain approval for a land-disturbing activity, as found applicable by the Building Official or his designee under § 207-5, an applicant shall first file a stormwater pollution prevention plan (SWPPP) that is signed and stamped by the individual or agency responsible for the preparation of the plan. The SWPPP, as described in § 207-14, shall describe and ensure the implementation of best management practices (BMPs) to be employed by the applicant to reduce or eliminate the pollutants in stormwater discharges at the site.

§ 207-17. Approval under state Fresh Water Wetlands Act. [Amended 11-6-2006 by Ord. No. 781]

Where any portion of a proposed development requires approval under the state Fresh Water Wetlands Act¹ and where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall SWPPP required by this article for the development.

§ 207-18. Fees. [Amended 11-6-2006 by Ord. No. 781]

The Town shall collect fees from each applicant requesting approval of a stormwater pollution prevention plan for the purposes of administering this article. The Town Council shall retain the right to review and amend this schedule on a periodic basis. The nonrefundable filing fee shall be paid to the Town according to the construction site runoff control fee schedule in Chapter 93, Fees.

§ 207-19. Review.

- A. Within seven working days of the receipt of a plan, the Building Official or his designee shall review the plan for completeness. If the Building Official or his designee finds that the plan is incomplete, he shall forward a letter of deficiency within that period to the applicant, listing the missing elements of the plan. If a deficiency exists, the review period for that plan will not begin until all the deficiencies have been addressed to the satisfaction of the Building Official or his designee.
- B. If no deficiency is found, the Building Official or his designee shall send a copy of the completed plan within five working days of the receipt of the completed plan to the reviewing authorities, which shall include the Planning Department, the Department of Public Works, and the Conservation Commission, for the purpose of review and comment.
- C. The Building Official or his designee may also submit copies of the plan to other local departments or agencies, including the Southern Rhode Island Conservation District, in order to better achieve the purposes of this chapter.

1. Editor's Note: See R.I.G.L. § 2-1-18 et seq.

- D. Failure of the aforementioned reviewing authorities, with the exception of the Building Official or his designee, to respond within 30 days of their receipt of the plan shall be deemed no objection to the plan as submitted unless the applicant agrees to an extension to be mutually determined between the applicant and the reviewing authorities.
- E. The time allowed for plan review shall be commensurate within the proposed development project and shall be done simultaneously with other reviews.

§ 207-20. Decision of Building Official.

- A. The Building Official or his designee shall take action in writing either approving, approving with conditions, or disapproving the plan with reasons stated within 10 days after the Building Official or his designee has received all of the written opinions of the reviewing authorities identified in § 207-19.
- B. In approving a plan, the Building Official or his designee may attach such conditions deemed necessary by the aforementioned reviewing authorities in addition to any further conditions consistent with the purpose of this chapter.
- C. The conditions pertaining to construction site runoff control measures and/or devices may include but are not limited to the erection of walls, drains, dams and structures; the planting of suitable vegetation, trees and shrubs; any necessary easements; good housekeeping and spill prevention measures for construction waste; and the specification of the methods for the performance and timing of various kinds of work. **[Amended 11-6-2006 by Ord. No. 781]**
- D. Following receipt of a permit, the applicant/owner shall notify the Building Official or his designee at least 72 hours in advance of his intent to begin clearing and construction work on the site as described within the approved stormwater pollution prevention plan. **[Amended 11-6-2006 by Ord. No. 781]**
- E. The applicant shall have an approved copy of the stormwater pollution prevention plan on site for the duration of the project and shall be made available upon request. **[Amended 11-6-2006 by Ord. No. 781]**

§ 207-21. Appeals.

- A. If the ruling made by the Building Official or his designee is unsatisfactory to the applicant, the applicant may file a written appeal to the Zoning Board of Review or other appropriate board of review, as determined by the Town Council.
- B. Appeal procedures shall follow current requirements of the Zoning Board of Review or other appropriate board of review as determined by the Town Council.

- C. During the period in which the request for appeal is filed and until such time as a final decision is rendered on the appeal, the decision of the Building Official or his designee shall remain in effect.
- D. The Building Official or his designee and/or the Zoning Board of Review or other appropriate board, as determined by the Town Council, may seek technical assistance on any stormwater pollution prevention plan. The expert opinion must be made available in the office of the Building Official or his appointed designee as a public record to the appeals hearing. **[Amended 11-6-2006 by Ord. No. 781]**

ARTICLE II
Illicit Discharges
[Added 11-6-2006 by Ord. No. 781]

§ 207-22. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALLOWABLE NONSTORMWATER DISCHARGES — Discharges not comprised of stormwater, which are allowed under the MS4 general permit, limited to the following, provided these are not significant contributors of pollutants to the municipal separate storm sewer system (MS4): discharges which result from the wash down of vehicles at retail dealers selling new and used automobiles where no detergents are used and individual residential car washing; external building wash down where no detergents are used; the use of water to control dust; firefighting activities; fire hydrant flushings; natural springs; uncontaminated groundwater; dechlorinated pool discharges; air-conditioning condensate; lawn watering; potable water sources, including waterline flushings; irrigation drainage; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled materials have been removed) and where detergents are not used; discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents, or contaminated by contact with soils where spills or leaks of toxic or hazardous materials have occurred; uncontaminated utility vault dewatering; dechlorinated waterline testing water; hydrostatic test water that does not contain any treatment chemicals and is not contaminated with process chemicals.²

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 (CWA) — The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY — Activities subject to RIPDES construction permits. As of March 2003, RIPDES Storm Water Phase II permits are required for construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

2. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).**

DISCHARGER — Any person who causes, allows, permits or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site or industrial facility.

HAZARDOUS MATERIAL — 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.

ILLCIT CONNECTION — Either of the following: any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances which allow any nonstormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system; 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 the Town of East Greenwich or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by the Town of East Greenwich.

ILLCIT DISCHARGE — Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.

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 a city or town or the state district association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the state;
- 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 in Rule 3 of the RIPDES Regulations.

NONSTORMWATER DISCHARGE — Any discharge that is not composed entirely of stormwater.

OPERATOR — The party or parties that either individually or taken together have the day-to-day operational control over the facility's activities and the ability to make modifications to such activities.

OWNER — The party or parties that either individually or taken together have legal title to any premises.

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.

POLLUTANTS — Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordnances and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

STORMWATER — Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

UNAUTHORIZED DISCHARGE — A discharge of stormwater not authorized by a RIPDES permit or an allowable stormwater discharge found to be a significant contributor of pollutants to the MS4.

WATERCOURSE — A natural or man-made surface drainage channel or body of water (including a lake or pond) through which a water flow occurs, either continuously or intermittently.

WATERS OF THE STATE — Surface and ground waters within the boundaries of the State of Rhode Island and subject to its jurisdiction.

§ 207-23. Purpose; objectives.

- A. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of East Greenwich's water bodies and groundwater and to safeguard the public health, safety, welfare and the environment.
- B. The objectives of this article are:
 - (1) To prevent (or reduce to the maximum extent practicable) pollutants entering the municipally owned separate storm sewer system;

- (2) To prohibit illicit connections and unauthorized discharges to the MS4;
- (3) To require the removal of all such illicit connections and discharges;
- (4) To comply with state law and federal statutes and regulations relating to stormwater discharges; and
- (5) To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this article.

§ 207-24. Statutory authority.

This article is promulgated pursuant to the Rhode Island Department of Environmental Management's ("DEM") General Permit Rhode Island Pollutant Discharge Elimination System Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s and in accordance with the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq.

§ 207-25. Discharge prohibitions.

- A. Prohibition of unauthorized discharges. No person shall discharge or cause to be discharged into the municipal separate storm sewer system or watercourses any pollutant or nonstormwater discharge unless such a nonstormwater discharge is outlined in Part I.B.3 of the MS4 general permit. The allowable nonstormwater discharges (described below) are permitted if deemed not to be a significant contributor of pollutants to the municipal separate storm sewer system.
- B. Allowable nonstormwater discharges:
 - (1) Discharges which result from the wash down of vehicles at retail dealers selling new and used automobiles where no detergents are used and individual residential car washing;
 - (2) External building wash down where no detergents are used;
 - (3) The use of water to control dust;
 - (4) Firefighting activities;
 - (5) Fire hydrant flushings;
 - (6) Natural springs;
 - (7) Uncontaminated groundwater; dechlorinated pool discharges;
 - (8) Air-conditioning condensate;
 - (9) Lawn watering; potable water sources including waterline flushings;

- (10) Irrigation drainage;
 - (11) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled materials have been removed) and where detergents are not used;
 - (12) Discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated by contact with soils where spills or leaks of toxic or hazardous materials have occurred;
 - (13) Uncontaminated utility vault dewatering; dechlorinated waterline testing water; and
 - (14) Hydrostatic test water that does not contain any treatment chemicals and is not contaminated with process chemicals.
- C. Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the municipal separate storm sewer system is prohibited. 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. A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue and must provide corrective action.

§ 207-26. Suspension of MS4 access.

- A. Suspension due to illicit discharges in emergency situations. The Building Official may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened nonstormwater discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the Building Official may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The Building Official will notify a violator of the proposed termination of its MS4 access. The violator may petition the Building Official for reconsideration and a hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the Building Official.
- C. Entry to perform duties under this article. To the extent permitted by state law, or if authorized by the owner or other party in control of the

property, the Building Official, his or her agents, officers and employees, may enter upon privately owned property for the purpose of performing their duties under this article and may make or cause to be made such examinations, surveys or sampling as the Building Official deems reasonably necessary.

§ 207-27. Industrial and construction activity discharge.

Any person subject to an industrial or construction activity RIPDES 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 Building Official prior to the allowing of discharges to the MS4.

§ 207-28. Inspections and monitoring.

The Building Official shall be permitted, upon the presentation of credentials and other documents as may be required by law, to:

- A. Enter the discharger's premises where a regulated activity is conducted or where records must be kept as required under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept as required under the conditions of the permit;
- C. Inspect at reasonable times any equipment, practices or operations regulated or required under this permit; and
- D. Sample or monitor any substances or parameters at any location, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA or Rhode Island law.

§ 207-29. Requirement to prevent, control and reduce stormwater pollutants.

In an attempt to prevent, control and reduce stormwater pollutants, any person engaged in activities or operations or owning facilities or property which will or may result in pollutants entering stormwater, the storm sewer system or waters of the state shall implement best management practices to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner's or operator's expense.

§ 207-30. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within

the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner or lessee shall be responsible for maintaining and stabilizing that portion of the watercourse that is within his or her property lines in order to protect against erosion and degradation of the watercourse originating or contributed from his or her property. Nothing in this section shall preclude any owner/lessee from compliance with relevant provisions of the Rhode Island Fresh Water Wetlands Act, R.I.G.L. § 2-1-18 et seq., or other applicable laws or regulations.

§ 207-31. 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 unauthorized discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state from said facility, 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 a hazardous material, said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of nonhazardous materials, said person shall notify the Building Official no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Building Official within three business days of the phone 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. Nothing in this section shall preclude any owner/lessee from compliance with relevant provisions of the Rhode Island Clean Water Act, R.I.G.L. § 46-12-1 et seq., or other applicable laws or regulations.

§ 207-32. Notice of violation.

A. Whenever the Building Official finds that any person has violated a prohibition or failed to meet a requirement of this article, the Building Official may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- (1) The performance of monitoring, analyses and reporting;

- (2) The elimination of illicit connections or discharges;
 - (3) That violating discharges, practices or operations shall cease and desist;
 - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (5) Payment of a fine to cover administrative and remediation costs; and
 - (6) The implementation of source control or treatment BMPs.
- B. 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.

§ 207-33. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the Building Official. The notice of appeal must be received within 30 days from the date of the receipt of the notice of violation. The notice of appeal shall be in writing and contain a detailed basis upon which the appeal was taken. The procedure for said appeal shall be in conformity with the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq.

§ 207-34. Settlement of appeal of notice of violation.

In lieu of enforcement proceedings, penalties and remedies authorized by this article, the Building Official may enter into a negotiated settlement to resolve the appeal of the notice of violation. Such settlement may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

§ 207-35. Enforcement measures after appeal.

If no timely appeal of a notice of violation has been taken and 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 30 days of the decision of the Building Official upholding the decision of the Building Official, then representatives of the Town of East Greenwich shall undertake all necessary actions, including requesting injunctive relief through the Superior Court, to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property.

§ 207-36. Administrative orders.

The Building Official is authorized to issue the following administrative orders at any time he or she deems such action appropriate to secure timely and effective compliance with this article or a discharge permit or order issued pursuant to this article, whether or not any previous notifications of violation have been provided to the user.

- A. Cease and desist order. The authorized enforcement agency may issue an order to cease and desist a violation or an action or inaction which threatens a violation and to direct the user to comply forthwith or to take such appropriate remedial or preventive action as may be needed to properly address the violation or threatened violation, including halting operations and terminating the discharge.
- B. Compliance order. The Building Official may issue an order requiring a user to provide within a specified period of time such treatment, pretreatment or discharge control facilities or related appurtenances as are necessary to correct a violation or to prevent a threatened violation. A compliance order may also direct that a user provide improved operation and maintenance of existing discharge facilities, conduct additional self-monitoring or submit appropriate reports or management plans.
- C. Show cause order. The Building Official may issue an order to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for a meeting, the proposed enforcement action and the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. Whether or not a duly notified user appears as noticed, additional enforcement action may be initiated.
- D. Consent order. The Building Official may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with a user. Such orders shall include specific actions to be taken by the user and specific time frames to correct a violation or to remove the threat of a violation.

§ 207-37. Cost of abatement of violation.

Within 14 days after abatement of the violation, by or under the direction of the Building Official, the owner of the property will be notified by the Town of East Greenwich of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the Town of East Greenwich, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this section shall become liable to the Town of East Greenwich by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 12% per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

§ 207-38. 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 Building Official may petition for a temporary, 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.

§ 207-39. 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.

§ 207-40. Criminal prosecution; recovery of costs.

- A. Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$250 per violation per day.
- B. The Town of East Greenwich may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

§ 207-41. 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 Town of East Greenwich to seek cumulative remedies.