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Municipality:	Town of Eden
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Title:	Town of Eden Stormwater Management & Erosion Control Ordinance
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Abstract

Chapter 177 of the Town Code for the Town of Eden serves to decrease stormwater and erosion problems, associated with increased development in Eden, NY. Article II. Stormwater Management and Erosion and Sediment Control Within the Regulated MS4 Overlay District was added in 2007 and describes regulations to manage stormwater, and erosion and control sediment within the RMS4 overlay district, which is a district which has been determined by federal and state agencies to be a regulated municipal separate storm sewer system (RMS4) under the Phase II Stormwater Permit Program.

Resource

Town of Eden NY Stormwater
Code of the Town of Eden NY
Chapter 177: Stormwater Management and Erosion Control
General Code

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

[Adopted 11-28-2001 by L.L. No. 9-2001]

§ 177-1. Title.

This article shall known as the "Stormwater Management and Erosion Control Law" of the Town of Eden.

§ 177-2. Findings of fact.

The Town of Eden (herein after referred to as the "the Town") finds that uncontrolled drainage and runoff associated with land development has a significant impact upon the health, safety and welfare of the community. Specifically:

- A. Stormwater runoff can carry pollutants into receiving water bodies, degrading water quality;
- B. The increase of nutrients in stormwater runoff such as phosphorus and nitrogen accelerates eutrophication of receiving waters;
- C. Improper design and construction of drainage facilities can increase the velocity of runoff, thereby increasing stream bank erosion and sedimentation;
- D. Construction requiring land clearing and the alteration of natural topography tends to increase erosion;
- E. Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora and fauna;
- F. Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow;
- G. Improperly managed stormwater runoff can increase the incidence of flooding and the level of floods which occur, endangering property and human life;
- H. Substantial economic losses can result from these adverse impacts on community waters;
- I. Many future problems can be avoided if land is developed in accordance with sound stormwater runoff management practices.

§ 177-3. Purposes and objectives.

In order to protect, maintain and enhance both the immediate and the long-term health, safety and general welfare of the citizens of the Town, this article has the following objectives:

- A. Prevent increases in the magnitude and frequency of stormwater runoff so as to prevent an increase in flood flows and in the hazards and costs associated with the flooding;
- B. Prevent decreases in groundwater recharge and stream base flow so as to maintain aquatic life, assimilative capacity, and potential water supplies;
- C. Maintain the integrity of stream geometry so as to sustain the hydrologic functions of streams;

D. Control erosion and sedimentation so as to prevent its deposition in streams and other receiving water bodies;

E. Facilitate the removal of pollutants in stormwater runoff so as to perpetuate the natural biological functions of streams; and

F. To the extent practical, secure multiple community benefits such as groundwater replenishment, open space protection and increased recreational opportunity through integrated land use-stormwater management planning.

§ 177-4. Authority.

In accordance with Article 9 and/or Article 10 of the Municipal Home Rule Law of the Town Law of the State of New York, the Town has the authority to enact local laws for the purpose of promoting the health, safety or general welfare of the Town, including the protection of the property of its inhabitants. The Town may include in any such local law provisions for the appointment of any municipal officer or employees to effectuate and administer such local law.

§ 177-5. Applicability.

Upon approval of this article by the Town, all site preparation and construction activities requiring approval under this article shall be in conformance with the provisions set forth therein.

§ 177-6. Definitions.

Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this article its most effective application. Words used in the singular shall include the plural and the plural the singular; words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive.

CRITICAL ENVIRONMENTAL AREA

A specific geographic area designated by a state or local agency having exceptional or unique characteristics that make the area environmentally important.

DEVELOPMENT

To make a site area available for use by physical alteration. Development includes but is not limited to providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, and sewage disposal systems, altering landforms, or construction of a structure on the land.

DRY WELL

Similar to an infiltration trench but smaller with inflow from pipe; commonly covered with soil and used for drainage areas of less than one acre, such as roadside inlets and rooftop runoff.

EROSION

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

EXFILTRATION

The downward movement of runoff through the bottom of an infiltration system into the soil.

EXTENDED DETENTION

A practice to store stormwater runoff by collection as a temporary pool of water and provide for its gradual (attenuated) release over 24 hours or more. A practice used to control peak discharge rates, and which provides gravity settling of pollutants.

FIRST FLUSH

The delivery of a disproportionately large load of pollutants during the early part of storms due to the rapid runoff of accumulated pollutants. The first flush in these guidelines is defined as the runoff generated from a one-year twenty-four-hour storm event from land which has been made more impervious from predevelopment conditions through land grading and construction/development activities.

FLOODPLAIN

For a given flood event, that area of land temporarily covered by water which adjoins a watercourse.

FOREBAY

An extra large storage area or treatment area such as a sediment pond or created wetland, near an inlet of a stormwater management facility to trap incoming sediments or take up nutrients before they reach a retention or extended detention pond.

IMPERVIOUS AREA

Impermeable surfaces, such as pavement or rooftops, which prevent the percolation of water into the soil.

INFILTRATION

A practice designed to promote the recharge of groundwater by containment and concentration of stormwater in porous soils.

INFILTRATION BASIN

An impoundment made by excavation or embankment construction to contain and exfiltrate runoff into the soil layer.

OUTFALL

The terminus of a storm drain where the contents are released.

PEAK FLOW

The maximum rate of flow of water at a given point and time resulting from a storm event.

PEAK FLOW ATTENUATION

The reduction of the peak discharge of storm runoff by storage and the gradual release of that storage.

POND

Any man-made body of water (other than a store-bought, pre-fab type of decorated reservoir or basin) with a surface area greater than 100 square feet and/or a depth of more than 18 inches.

RETENTION

A practice designed to store stormwater runoff by collection as a permanent pool of water without release except by means of evaporation, infiltration, or attenuated release when runoff volume exceeds the permanent storage capacity of the permanent pool.

RIPRAP

A combination of large stone, cobbles and boulders used to line channels, stabilize stream banks or reduce runoff velocities.

RISER

A vertical pipe that is used to control the discharge rate from a pond for a specified design storm.

STREAM CORRIDOR

The landscape features on both sides of a stream, including soils, slope and vegetation, whose alteration can directly impact the streams physical characteristics and biological properties.

SUBDIVISION

The division of a lot of record into two or more parcels. When a parcel of land is being divided into two smaller parcels and one of the smaller parcels is to merge with another lot, it will not be considered subdivision for subdivision review. "Lots of record" shall mean a parcel of land, whether improved or unimproved, as shown on the land records as of the effective date of this article.

SWALE

A natural depression or wide shallow ditch used to temporarily route, or filter, runoff.

§ 177-7. Stormwater management and erosion control plans; exceptions.

A. Stormwater management and erosion control central plans should be prepared and reviewed for all land development projects and construction activities when it is determined that stormwater runoff and/or erosion will have a significant effect on the environment.

B. It has been established that land clearing, land grading, earth moving or development activities can have a significant effect on the environment; therefore, no person, corporation, organization, or public agency shall, on or after the effective date of the law:

(1) Initiate any land clearing, land grading, earth moving or development activities without first preparing a stormwater management and erosion control plan and obtaining approval of said plan from the Town; or

(2) Alter any drainage system without first preparing a stormwater management and erosion control plan and obtaining approval of said plan from the Town, or;

(3) Develop a parcel of land that was created by subdivision without first preparing a stormwater management and erosion control plan and obtaining approval of said plan from the Town.

C. Exemptions. The following activities are exempt from the stormwater management and erosion control plan requirements:

(1) Agricultural activities, including household gardening and timber harvesting that is not part of a development project;

(2) Development of single-family or duplex residential dwelling units and their accessory structures such as garages and storage sheds in an existing subdivision;

(3) Development of one single-family or duplex residential structure and its accessory structures such as garages and storage sheds on lots of record as of the effective date of this article;

(4) Industrial and/or commercial development projects which result in an impervious surface less than 5,000 square feet;

(5) Any maintenance, alteration, use or improvement to an existing structure, which will not significantly and adversely change the quality, rate, volume or location of surface water discharge or contribute to erosion and sedimentation.

(6) Excavation and construction of ponds, subject to Local Law No. 4-2001. Editor's Note: See Ch. 225, Zoning, § 225-32N.

§ 177-8. Contents of stormwater management and erosion control plan.

A. It is the responsibility of an applicant to prepare a stormwater management and erosion control plan so that the Town can evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on community waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing and mitigating adverse impacts.

B. The stormwater management and erosion control plan shall be prepared by a New York State licensed professional with expertise in the required discipline and shall contain the name, address, and telephone number of the owner and the developer. In addition, the legal description of the property shall be provided, and its location with reference to such landmarks as major water bodies, adjoining roads, railroads, subdivisions, or towns shall be clearly identified on a map.

C. The requirements for the contents of the stormwater management and erosion control plan will be broken into two categories. If the project exceeds the thresholds requiring a stormwater SPDES permit (per the State Pollution Discharge Elimination System General Permit for Stormwater Discharge From Construction Activities - requiring a notice of intent), it shall be deemed a Type A action. If the project (work) does not exceed the threshold requiring a state SPDES permit and is not an exempt activity per this article, it shall be deemed a Type B action. The Planning Board will review the contents of these plans during the site plan or subdivision review process. For projects requiring a stormwater management and erosion control plan but not requiring a site plan or subdivision approval, the Code Enforcement Officer shall refer the plan to the Planning Board for review and comment.

(1) For a Type A action, the stormwater management and erosion control plan shall follow the requirements set forth in the most current edition of the New York State Department of Environmental Conservation's publication, "Reducing the Impacts of Stormwater Runoff from New Development."

(2) For a Type B action, the content of the stormwater management and erosion control plan shall be determined by the Town Planning Board. The contents of this plan shall be based on the most current edition of the NYSDEC publication referred to for Type A action but will only include those items that the Town Planning Board believes are necessary for the type of project proposed.

(3) The Minor Subdivision Review Committee will have authority to review, determine and approve the stormwater management and erosion control plan on projects eligible for minor subdivision review.

D. The structure and content of the stormwater management and erosion control plan shall be as outlined in Chapter 4 of the most current edition of the NYSDEC manual, "Reducing the Impacts of Stormwater Runoff from New Development."

§ 177-9. Plan Review Process before Planning Board.

A. Provisions for stormwater management and erosion control should be considered in a three-stage process:

(1) Presubmission Phase, which provides an opportunity for the community to learn of the developer's intent and for the developer to learn of the community's requirements and standards for development.

(2) Preliminary Site Development Plan Phase, which includes the submission of an application for preliminary site development plan approved for a developer. The application shall be accompanied by information about the proposal as set forth in § 177-8 of this article. Because it is a preliminary action and not final, action on the proposal shall be given as tentative approval, tentative approval with modification, or disapproval.

(3) Final Site Development Plan Phase, if approval or approval with modification is tentatively given in the preliminary site development phase, the next step can be submission of a final application, including the necessary documentation for final approval. It is in this phase that any requested modifications be satisfied as part of final application submission.

B. The stormwater management and erosion control plan shall not be approved unless it is consistent with the purposes and objectives of this article in § 177-3 and the performance standards described in § 177-10.

C. Inspections. No stormwater management and erosion control plan will be approved without adequate provision for inspection of the property before development activity commences.

(1) The applicant shall arrange with the Town Code Enforcement Officer for scheduling the following inspections:

(a) Initial inspection: prior to approval of the stormwater management and erosion control plan;

(b) Erosion control inspection: to ensure erosion control practices are in accord with the plan;

(c) Bury inspection: prior to backfilling of any underground drainage or stormwater conveyance structures;

(d) Final inspection: when all work, including construction of stormwater management facilities, has been completed.

(2) The applicant's engineer shall certify to the Town that the completed work is in accordance with the approved plan.

(3) The Town shall inspect the work and either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved stormwater management and erosion control plan. The applicant shall promptly correct any portion of the work that does not comply or the applicant will be subject to the bonding provisions of § 177-13 and the penalty provisions of § 177-14. The Town may conduct random inspections to ensure effective control of erosion and sedimentation during all phases of construction.

§ 177-10. Performance standards.

Stormwater management and erosion control plans shall be prepared in accordance with performance standards that have been structured to achieve the purposes and objectives of this article as well as to ensure that the quality of runoff after development is not substantially altered from predevelopment conditions. The performance standards in Chapter V of the NYSDEC manual "Reducing the Impacts of Stormwater Runoff from New Development " will be used.

§ 177-11. Off-site stormwater management facilities.

The Town may allow stormwater runoff that is of unacceptable quality or which would be discharged in volumes or rates in excess of those otherwise allowed by this article to be discharged into stormwater management facilities off the site of development if all of the following conditions are met:

A. It is not practicable to completely manage runoff on-site in a manner that meets the performance standards in § 177-10.

B. The off site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with the requirements of this article.

C. Adverse environmental impacts on the site of the development will be minimized;

(1) Adequate provision is made for the sharing of construction and operating costs of the off-site facilities. The developer may be required to pay a portion of the cost of constructing the facilities as a condition to receiving approval of the drainage plan.

(2) Use of regional off-site stormwater management facilities does not eliminate the requirement that the first flush be captured and treated on-site pursuant to the § 177-10 performance standards.

(3) A request to use off-site stormwater management facilities and all information related to the proposed off-site facilities shall be made a part of the developer's stormwater management plan.

§ 177-12. Maintenance of stormwater management facilities.

A. The Town shall determine whether stormwater management facilities are to be maintained by the developer/owner, a homeowners' association, or by the Town.

(1) If maintenance is to be performed by a homeowners' association, the homeowners' association must be registered pursuant to § 352-E of the New York State General Business Law.

(2) If maintained by an owner or homeowners' association, the developer, owner and/or homeowners' association shall prepare a maintenance plan containing a maintenance schedule for approval by the Town (see § 177-8C).

(3) Stormwater management facilities maintained by an owner or homeowner's association shall have adequate easements to permit the Town to inspect and, if necessary, to take the corrective action; the Town shall give the owner or homeowners' association written notice of the nature of the existing defects. If the owner or homeowners' association fails within 30 days from the date of notice to commence corrective action or to appeal the matter to the Town, the Town may take necessary corrective action, the cost of which shall be borne by the owner or developer pursuant to § 177-13 of this article or by the homeowners' association. If the homeowners' association fails to pay for required corrective action, the Town shall have a lien placed on the real property of members of the homeowners' association until payment is made.

B. Stormwater management facilities may be dedicated to the Town for purposes of maintenance by mutual consent and agreement of the developer/owner and the Town.

§ 177-13. Performance bonds.

A. In order to ensure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town in its approval of the stormwater management and erosion control plan, the Town of Eden may require the developer to provide, prior to construction, a performance bond, escrow account certification, or irrevocable letter of credit from an appropriate financial or surety institution which

guarantees satisfactory completion of the project and names the Town as beneficiary. The security shall be in an amount to be determined by the Town Engineer based on submission of final design plans, with reference to actual construction costs.

B. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or owner of a development (and not a homeowners' association or the Town) or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town with an irrevocable letter of credit from an appropriate financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities for the life of the project.

(1) The letter of credit shall remain in force until the surety is released from liability by the Town.

(2) Per-annum interest on the letter of credit will be reinvested in the account until the surety is released from liability.

(3) The operation and maintenance letter of credit shall remain in force for the life of the project.

(4) If the developer or owner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Eden may draw upon the account to cover the costs of proper operation and maintenance.

§ 177-14. Enforcement; penalties for offenses.

A. Enforcement of this article shall be the responsibility of the Town Code Enforcement Officer.

B. Any development activity that is commenced without prior approval of a stormwater management and erosion control plan or is conducted contrary to an approved stormwater management and erosion control plan as required by this article may be restrained by injunction or must otherwise be abated in a manner provided by law.

C. Civil and criminal 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 punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.

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

E. Notice of violation. When the Town determines that development activity is not being carried out in accordance with the requirements of this article, it shall issue a written notice of violation to the owner of the property.

(1) The notice of violation shall contain:

(a) The name and address of the owner or applicant;

(b) The street address where available or a description of the building, structure, or land upon which the violation is occurring;

(c) A statement specifying the nature of the violation;

(d) A description of the remedial actions necessary to bring the development activity into compliance with this article and a time schedule for completion of such remedial action;

(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

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

(2) The notice of violation shall be served upon the person(s) to whom it is directed either personally, in a manner provided for personal services of notices by the court of local jurisdiction, or by mailing a copy of the notice of the violation by certified mail, postage prepaid, return receipt requested to such person at his or her last known address.

(3) A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Town Board.

§ 177-15. Appeals.

Any person aggrieved by the action of any official charged with the enforcement of this article, as the result of the disapproval of a stormwater management and erosion control plan, issuance of a written notice of violation, or an alleged failure to properly enforce the law in regard to a specific application, shall have the right to appeal the action to the Town Board. The appeal shall be filed in writing within 20 days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based, and shall include such other information as the Town Board may require. The Town Board shall hold a public hearing on the appeal within 30 days of the appeal and shall render its decision within 30 days after holding the public hearing.

§ 177-16. Variances.

The Town Planning Board may grant a written variance from any requirement of this article using the following criteria:

A. There are special circumstances applicable to the subject property or its intended use; and

B. The granting of the variance will not result in:

(1) An increase or decrease in the rate or volume of surface water runoff;

(2) An adverse impact on a wetland, watercourse or water body;

(3) Degradation of water quality; or

(4) Otherwise impair attainment of the objectives of this article.

Article II. Stormwater Management and Erosion and Sediment Control Within the Regulated MS4 Overlay District

[Adopted 12-12-2007 by L.L. No. 4-2007]

§ 177-17. Finding of fact.

It is hereby determined that:

A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitats for fish and other desirable species;

C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitats;

D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation;

E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;

G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil

erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;

I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 177-18. Purpose.

The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 177-17 hereof. This article seeks to meet those purposes by achieving the following objectives:

A. Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, as amended or revised;

B. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, GP-02-01, as amended or revised;

C. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;

D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 177-19. Statutory authority.

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Eden has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Town of Eden and for the protection and enhancement of its physical environment. In addition, § 10 of the

Municipal Home Rule Law of the State of New York grants the Town Board of the Town of Eden the authority to exercise any of the powers granted to it in the Statute of Local Governments, including the power to adopt, amend, or repeal zoning regulations, through the enactment of local laws. In any such local law, the Town Board may provide for the appointment of any municipal officer, employee, or independent contractor to effectuate, administer and enforce such local law.

§ 177-20. Applicability.

A. This article shall be applicable to all land development activities, as defined in this article, § 177-23, within the RMS4 Overlay District of the Town of Eden.

B. The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may review the plans; upon approval by the Town Board of the Town of Eden, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or accept the certification of a licensed professional that the plans conform to the requirements of this article.

C. All land development activities subject to review and approval by the Planning Board, Town Board or any other board or agency under any subdivision, site plan, and/or special permit regulations of the Town of Eden shall be reviewed subject to the standards contained in this article.

D. All land development activities not subject to review as stated in Subsection C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this article.

§ 177-21. Exemptions.

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

A. Agricultural activity as defined in this article.

B. Silvicultural activity, except that landing areas and log haul roads are subject to this article.

C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

D. Repairs to any stormwater management practice or facility 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 Eden on or before the effective date of this article.

F. Land development activities for which a building permit has been approved on or before the effective date of this article.

G. Cemetery graves.

H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

I. Emergency activity immediately necessary to protect life, property or natural resources.

J. Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.

K. Landscaping and horticultural activities in connection with an existing structure.

§ 177-22. Stormwater control in RMS4 Overlay District.

Land development activity, as defined herein, within the RMS4 Overlay District of the Town of Eden shall be subject to the following requirements.

§ 177-23. Definitions.

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

AGRICULTURAL ACTIVITY

The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT

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

BUILDING

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

CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING

Any activity that removes the vegetative surface cover.

DEDICATION

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

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN MANUAL

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

DEVELOPER

A person who undertakes land development activities.

EROSION CONTROL MANUAL

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

GRADING

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

IMPERVIOUS COVER

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

INDUSTRIAL STORMWATER PERMIT

A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION

The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND

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

LAND DEVELOPMENT ACTIVITY

Construction activity within the RMS4 Overlay District including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER

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

MAINTENANCE AGREEMENT

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

NONPOINT SOURCE POLLUTION

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

PHASING

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

POLLUTANT OF CONCERN

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

PROJECT

Land development activity.

RECHARGE

The replenishment of undergroundwater reserves.

SEDIMENT CONTROL

Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS

Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, and habitats for threatened, endangered or special-concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER

An order issued which requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

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

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER

A person 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.

STORMWATER MANAGEMENT PRACTICES (SMPs)

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

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK

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

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 177-24. Stormwater pollution prevention plans.

A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity within the RMS4 Overlay District shall be reviewed until the appropriate officer or board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article.

B. Contents of stormwater pollution prevention plans.

(1) All SWPPPs shall provide the following background information and erosion and sediment controls:

(a) Background information about the scope of the project, including location, type and size of project;

(b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should be at a scale no smaller than one inch equals 100 feet, 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(s);

(c) Description of the soil(s) present at the site;

(d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

(e) 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;

(f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these

materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;

(g) 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 close-out;

(h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

(i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

(j) Temporary practices that will be converted to permanent control measures;

(k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

(l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

(m) Name(s) of the receiving water(s);

(n) Delineation of SWPPP implementation responsibilities for each part of the site;

(o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

(p) Any existing data that describes the stormwater runoff at the site.

(2) Land development activities as defined in § 177-23 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 B(3) below as applicable:

(a) 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.

(b) Condition B: stormwater runoff from land development activities disturbing five or more acres.

(c) 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.

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

(a) All information in § 177-24B(1) of this article.

(b) Description of each postconstruction stormwater management practice.

(c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.

(d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.

(e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.

(f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.

(g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.

(h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.

(i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 177-26 of this article.

(j) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional 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.

C. 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.

D. Contractor certification.

(1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development

activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(2) The certification must include the name and title of the person providing the signature; address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

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

§ 177-25. Performance and design criteria for stormwater management and erosion and sediment control.

All land development activities within the RMS4 Overlay District shall be subject to the following performance and design criteria:

A. Technical standards. For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article:

(1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").

(2) New York 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. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Subsection A and the SWPPP shall be prepared by a licensed professional.

C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 177-26. Maintenance, inspection and repair of stormwater facilities.

A. Maintenance and inspection during construction.

(1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(2) For land development activities as defined in § 177-23 and meeting Condition A, B or C in § 177-24B(2), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

(3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

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

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

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 177-25C.

D. Maintenance agreements. The Town of Eden shall approve 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." Editor's Note: Schedule B is located at the end of this chapter. The Town of Eden, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided 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.

§ 177-27. Construction inspection; administration.

A. Erosion and sediment control inspection.

(1) The Town of Eden 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 Eden enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

- (a) Start of construction.
- (b) Installation of sediment and erosion control measures.
- (c) Completion of site clearing.
- (d) Completion of rough grading.
- (e) Completion of final grading.
- (f) Close of the construction season.
- (g) Completion of final landscaping.
- (h) Successful establishment of landscaping in public areas.

(2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

B. Stormwater management practice inspections. The Town of Eden 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 Eden 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 Eden the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

§ 177-28. 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 of Eden in its approval of the stormwater pollution prevention plan, the Town of Eden may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Eden as the beneficiary. The security shall be in an amount to be determined by the Town of Eden based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Eden, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facilities have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town of Eden. Per-annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

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

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

§ 177-29. Enforcement; penalties for offenses.

A. Notice of violation. When the Town of Eden determines that a land development activity within the RMS4 Overlay District 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 of Eden 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 of Eden 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 \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this 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 time after notice, the Town of Eden may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 177-30. Fees for services.

The Town of Eden 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 of Eden or performed by a third party for the Town of Eden.

Article III. Illicit Discharges, Activities and Connections Within the Regulated MS4 Overlay District

[Adopted 12-12-2007 by L.L. No. 5-2007]

§ 177-31. Purpose; intent.

The purpose of this article is to provide for the health, safety, and general welfare of the Icitizens of the Town of Eden through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as

required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this article are:

A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, as amended or revised;

B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;

C. To prohibit illicit connections, activities and discharges to the MS4;

D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article; and

E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 177-32. Definitions.

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

BEST MANAGEMENT PRACTICES (BMPs)

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

CLEAN WATER ACT

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

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 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.

ILLICIT CONNECTION

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

A. Any conveyances which allow any nonstormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; 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 § 177-36 of this article.

INDUSTRIAL ACTIVITY

Activities requiring the SPDES Permit for Discharges from Industrial Activities Except Construction, GP-98-03, as amended or revised.

MS4

Municipal separate storm sewer system, specifically referring to the area within the Regulated MS4 (RMS4) Overlay District of the Town of Eden.

MUNICIPALITY

The Town of Eden.

MUNICIPAL SEPARATE STORM SEWER SYSTEM

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 Eden;
- 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 as the owner'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 OFFICER (SMO)

An employee, the municipal engineer or other public official(s) designated by the Town of Eden to enforce this article. The SMO 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.

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.

TMDL

Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD

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.

§ 177-33. 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.

§ 177-34. Responsibility for administration.

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this article. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

§ 177-35. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article 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 article.

§ 177-36. Discharge and connection 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 Subsection A(1). 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 article, unless the Department or the municipality has determined them to be substantial contributors of pollutants: waterline 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 SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.

(3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO 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 article if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

§ 177-37. (Reserved)

§ 177-38. Activities contaminating stormwater.

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 § 177-32, Definitions, of this article.

B. (Reserved)

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 to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§ 177-39. Prevention, control and reduction of stormwater pollutants by use of best management practices.

Where the SMO has identified illicit discharges as defined in § 177-32 or activities contaminating stormwater as defined in § 177-38, the municipality may require implementation of best management practices (BMPs) to control those illicit discharges and activities.

A. 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.

B. Any person responsible for a property or premises which is, or may be, the source of an illicit discharge as defined in § 177-32 or an activity contaminating stormwater as defined in § 177-38, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

C. 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.

§ 177-40. Suspension of access to MS4.

A. Illicit discharges in emergency situations. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO 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 SMO.

§ 177-41. Industrial or construction activity discharges.

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

§ 177-42. Access to facilities; monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.

B. Access to facilities.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.

(3) The municipality shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the SMO 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 article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Unreasonable delays in allowing the municipality access to a facility subject to this article is a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.

(6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 177-43. 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 municipality 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 municipality 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.

§ 177-44. Enforcement; penalties for offenses.

A. Notice of violation. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this article, 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;
- (4) The performance of monitoring, analyses, and reporting; and

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

B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 177-45. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board within 15 days of 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 municipal clerk and mail a copy of its decision by certified mail to the discharger.

§ 177-46. 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 SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

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

§ 177-47. Injunctive relief.

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

§ 177-48. Alternative remedies.

A. Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Municipal Code Enforcement Officer, where:

- (1) The violation was unintentional.
- (2) The violator has no history of previous violations of this article.
- (3) Environmental damage was minimal.
- (4) The violator acted quickly to remedy 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.

§ 177-49. 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.

§ 177-50. Remedies not exclusive.

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

§ 177-51. Adoption of law.

This article shall take effect upon filing with the Secretary of State or on December 31, 2007, whichever is later.