



South Berwick Planning Board
180 Main Street
South Berwick, ME 03908

December 30, 2022

Subject: MS4 Stormwater Ordinance changes required to be implemented by 6/30/2023, and Low Impact Development Changes update – For Planning Board Consideration.

Dear Planning Board Members:

This letter provides materials for review by the Planning Board related to three ordinance changes required by the General Permit for Stormwater Discharges from the Municipal Separate Storm Sewer Systems (MS4s), as well as an update related to a fourth ordinance change for Low Impact Development.

Changes required by 6/30/2022: The changes listed below are required to be updated by June 30, 2023:

1. requiring timely removal of non-stormwater discharges from the Town's separated storm drain system,
2. requiring timely maintenance of private stormwater infrastructure after construction and updating schedules for enforcement, and
3. adoption of specific erosion and sedimentation control standards for proposed developments.

The changes will affect Chapter 96 Non-Stormwater Discharge, Chapter 108 Post Construction Stormwater Management, Chapter 121 Subdivision, and Chapter 140 Zoning.

We provided a brief overview of these requirements to the Town Council at their March 8, 2022 meeting, and a more detailed overview to the Planning Board at their April 20, 2022 meeting.

The attachment to this letter provides an introductory overview of each of the three requirements and as well as proposed redline/strike out changes to the Code.

Because these changes must be codified by 6/30/2023, we suggest the Planning Board review these in January to allow the Town Council to review the changes and hold public hearings before the June 2023 deadline.

LID Ordinance Change Updates: On 8/17/2022 we held a brief workshop with the Planning Board to review the MS4 requirements to adopt Low Impact Development Standards. We presented a draft set of standards that the Town intended to adopt, which the Planning Board sent to the Town Council. The Town Council gave preliminary approval of these, and they were subsequently sent to the Maine DEP for Clean Water Act-based Public Comment. Maine DEP sent these out for Public Comment in September. Though there were comments from Friends of Casco Bay on the standards, the Maine DEP approved the Town's submittal without change, and the Town is clear to commence adoption of these standards.

The approval letter provided to the Town stated:

The Department has no objection to the proposal as written. However, the Department would like the Town to be aware that the Department is in the process of commencing rulemaking to revise 06-096 Chapter 500, Stormwater Management. The rulemaking process will include stakeholder meetings to receive input from regulated entities, consulting firms, non-governmental organizations and other interested parties. Kerem Gungor in the Bureau of Land Resources will be the Department contact for this rulemaking and he will be reaching out to stakeholders for their participation in early to mid-March 2023.

The final rule is likely to contain clear, specific and measurable LID measures and techniques that the Town may want to incorporate into the final LID Ordinance to clarify expectations and the enforceability of the ordinance.

As such, the Town may want to wait to adopt the LID changes until the Chapter 500 Rulemaking process has progressed so they can ensure there are no conflicts between the LID standards proposed by the Town and the LID standards that may be adopted statewide.

Closing: I would be happy to attend any Planning Board or Town Council meeting to assist in the understanding of these changes. I anticipate attending the January 4, 2023 Planning Board meeting. If you have any questions about this information or need changes in advance of the meetings, please let me know. I can be reached at 207-415-5830 or via email krabasca@integratedenv.com.

Sincerely,

Integrated Environmental Engineering, Inc.



Kristie L. Rabasca, P.E.

Attachments: Redline Strikeout proposed changes to South Berwick Code to address MS4 General Permit requirements.

12/30/2022 PROPOSED CHANGES TO SOUTH BERWICK CODE TO ADDRESS MS4 REQUIREMENTS BY 6/30/2023

CHAPTER 96 NON-STORMWATER DISCHARGE CHANGES

Non-stormwater discharge prohibitions have been part of the Town's code since 2006 to ensure that pollutants are not discharged into the storm drain system (either by dumping or by direct connection).

The 2022 MS4 General Permit requires that an illicit discharge into the storm drain system is eliminated as expeditiously as possible, and that if elimination is not possible within 60 days of discovery that the discharge be eliminated in accordance with a schedule that is approved by the Code Enforcement Office.

We have updated § 96-8 Enforcement and some definitions in § 96-2, and the Statutory authority section in § 96-10.

Proposed new text is shown as italics and underlined. Proposed text for deletion is shown in strikethrough.

§ 96-2. Definitions.

REGULATED SMALL MS4 — Any small municipal separate storm sewer system (MS4) regulated by the State of Maine general permit for the discharge of stormwater from small municipal separate storm sewer systems, ~~dated June 3, 2003~~ renewed October 15, 2020, modified November 23, 2021 including any amendment or renewal thereof; ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

URBANIZED AREA (UA) — The areas of the State of Maine so defined by the ~~latest~~ inclusive sum of the 2000 decennial census and the 2010 decennial census by the U.S. Bureau of the Census.

§ 96-8. Enforcement.

A. Notice of violation.

- (1) Whenever the enforcement authority believes that a person has violated this chapter, the enforcement authority may order compliance with this chapter by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - (a) The elimination of non-stormwater discharges to the storm drainage system as expeditiously as possible, including, but not limited to, disconnection of the premises from the MS4;
 - (b) The cessation of discharge practices or operations in violation of this section;

- (c) At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - (d) The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs.
- (2) If abatement of a violation and/or restoration of affected property is required, or if elimination of the Non-Stormwater Discharge is not possible within 60 days of identification of the source, the notice shall set forth a deadline within which such elimination, abatement, or restoration must be completed.

§ 96-10. Statutory authority.

The Town of South Berwick enacts this chapter pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 [U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")]. The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems dated ~~June 3, 2003~~, has listed the Town of South Berwick as having a regulated small municipal separate storm sewer system ("small MS4"); under this General Permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the municipality's stormwater management program.

POST-CONSTRUCTION STORMWATER MANAGEMENT CHANGES

Chapter 108 Post-Construction Stormwater Management requirements have been part of the Town's code since 2009 to ensure that stormwater infrastructure that is owned by private developments is inspected and maintained. This portion of the Town's code requires maintenance in accordance with a Post-Construction Stormwater Plan, annual inspections on the infrastructure and certification annually to the Town that the system has been maintained, inspected and is functioning as intended.

The 2022 MS4 General Permit requires that we update this ordinance to ensure any corrective measures identified by the owner or inspector are implemented within 60 days of identification or if that is not possible, in accordance with a schedule that is approved by the Code Enforcement Office.

The 2022 MS4 General Permit also requires that any inspector (whether the Owner/Operator or a third-party) be a Qualified Inspector and that a copy of the inspection report be provided to the Town.

Finally, we are updating several definitions, we are removing the requirement for the annual certification to be notarized, and we are updating the Statutory authority section.

The proposed changes to the affected sections of the Chapter 108 are presented below:

§ 108-3. Terms defined.

REGULATED SMALL MS4 — Any small municipal separate storm sewer system (MS4) regulated by the State of Maine general permit for the discharge of stormwater from small municipal separate storm sewer systems, ~~dated June 3, 2003~~ renewed October 15, 2020, modified November 23, 2021 including any amendment or renewal thereof; ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR — A person who conducts post-construction stormwater management facilities inspections for compensation and who has received a Certification in Inspection and Maintenance of Stormwater BMPs from the Maine Department of Environmental Protection or is a Professional Engineer in the State of Maine with an understanding of stormwater infrastructure and its required maintenance.

§ 108-6. Compliance with plan.

- A. Any person owning, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's Subdivision, Site Plan or other Zoning Ordinances shall comply with that plan and shall demonstrate compliance with that plan as follows:

- (1) At least annually, hire or use a ~~person who is certified in sediment and erosion control practices through MEDEP or hire or use a licensed civil engineer~~ Qualified Post Construction Stormwater Inspector to inspect and oversee cleaning and maintenance of the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (2) Repair any deficiencies found during inspection of the stormwater management facilities within 60 days of identification of the deficiency. . If 60 days is not possible, then the person shall propose an alternate expeditious schedule to complete the maintenance, which if approved by the Code Enforcement Officer must be met;
- (3) On or by July 1 of each year, provide a copy of the annual inspection and a completed and signed certification to the Code Enforcement Officer in a form identical to that attached as Appendix 2 to this chapter,³ certifying that the person has inspected, cleaned and maintained the stormwater management facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted during the annual inspection. If any deficiencies are still outstanding when the certification is submitted in accordance with paragraph [b] of this section, that person or a qualified post construction stormwater inspector shall provide documentation of completion of the maintenance within 30 days of completion.

§ 108-9. Statutory authority.

The Town of South Berwick enacts this Post-Construction Stormwater Management Control Ordinance (the chapter) pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the Wastewater Discharge Law), 33 U.S.C. § 1251 et seq. (the Clean Water Act), and 40 CFR Part 122 [U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System (NPDES)]. The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of South Berwick as having a regulated small municipal separate storm sewer system (small MS4); under this general permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the Town's stormwater management program in order to satisfy the post construction minimum control measures required by the General Permit, Part IV-D-5 (Post-construction stormwater management in new development and redevelopment).

EROSION AND SEDIMENTATION CONTROL CHANGES

The 2022 MS4 General Permit requires that Erosion and Sedimentation Control (ESC) standards be incorporated into the Town's ordinances for any proposed development that disturbs one or more acres of land. The standards are listed in the MS4 General Permit, and are the same as the Maine DEP Chapter 500 standards for erosion and sedimentation control. Staff recommends incorporating the standards by reference to facilitate design and understanding by developers and reviewers.

One change we have made to the standards that is different than the State Chapter 500 regulations is to require that a Qualified Erosion and Sedimentation Control Professional prepare any Erosion and Sedimentation Control Plan.

Chapter 121 Subdivision of Land already requires an erosion and sedimentation control plan with the written endorsement of the Public Works Director during preliminary plan submission. The performance standards contain references to a 2003 Maine DEP ESC guidance document.

Chapter 140 Zoning requires erosion and sedimentation control for minor and major site plan review. Minor site plan review is also explicitly required for any new development or redevelopment that disturbs one acre or more of land (see 140-77. B Applicability). The Minor Site Plan Review Process includes submittal of a formal application to the Planning Board which includes submittal of "all erosion and sediment control measures". These projects are required to meet Performance Standards specified in Chapter 140-77.E.(18) which states: *Erosion of soil and sedimentation of watercourses and water bodies shall be minimized by employing the best management practices specified in the Maine Erosion and Sediment Control BMP Manual, March 2003. The Board may require the review and approval of the Public Works Director for any erosion control plan.*

Several other sections of the Town's ordinances reference the Maine Erosion and Sediment Control BMP Manual dated March 2003 for sediment and erosion control also including: Article V Performance Standard Applicable to all Uses (140.36), and 140.42 Campgrounds.

We are proposing updated language to be more reflective of the MS4 permit requirements for all of these sections. The proposed changes are presented below:

CHAPTER 121 SUBDIVISION OF LAND

§ 121-11. Definitions and word usage.

QUALIFIED EROSION AND SEDIMENTATION CONTROL PROFESSIONAL – A person who is certified by Enviro-Cert International in erosion and sedimentation control practices or is certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.

§ 121-32. Preliminary Plan.

I. A soil erosion and sediment control plan *prepared by a Qualified Erosion and Sedimentation Control Professional with the written endorsement of the Public Works Director. (see § 121-44 and 121-47).*

§ 121-44. Street Specifications.

U. Erosion control.

(1) For sites that disturb one or more acres of land including sites that disturb less than one acre of land if the site is part of a larger subdivision that would disturb one or more acres of land, the soil erosion and sediment control plan will be in conformance with Maine DEP Chapter 500 Appendices A, B, and C.

(2) For all other sites, procedures shall be undertaken, both during preparatory, construction and cleanup stages, to prevent soil erosion and water pollution Maine Erosion and Sediment Control BMP Manual, March 2003~~2016~~, or latest revision thereof.

§ 121-47. Surface drainage, topsoil and erosion control.

B. Subdivisions shall be designed, constructed, and maintained in accordance with *the following*:

(1) For sites that disturb one or more acres of land including sites that disturb less than one acre of land if the site is part of a larger subdivision that would disturb one or more acres of land, the soil erosion and sediment control plan will be in conformance with Maine DEP Chapter 500 Appendices A, B, and C.

(2) For all other sites, procedures shall be undertaken, both during preparatory construction and clean up stages, for erosion and sediment control measures as specified in the Maine Erosion and Sediment Control BMP Manual, ~~October 2016~~ March 2003, or latest revision thereof.

CHAPTER 140 ZONING

§ 140-9. Definitions.

QUALIFIED EROSION AND SEDIMENTATION CONTROL PROFESSIONAL – A person who is certified by Enviro-Cert International in erosion and sedimentation control practices or is certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.

C. Preliminary plan review.

(4) Plan requirements.

~~(o) Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant~~
prepared by a Qualified Erosion and Sedimentation Control Professional in accordance with the requirements of § 16.7.11.C;

§ 140-77. Site Plan Review.

D. Site plan review application and submission requirements.

(1) Applications for site plan review shall be submitted on application forms provided by the Town. The complete application form, required fees per § 60-3, and the required plans and related information shall be submitted to the Planning Board. Nine copies of written materials plus nine sets of plans or drawings are required. The submission shall contain at least the following exhibits and information:

~~(j) The location of all erosion and sediment control measures.~~ An erosion and sedimentation control plan.

(2) For major site plan review, the following information is also required:

(c) An erosion and sedimentation control plan.

E. Criteria and standards. The following criteria and standards shall be utilized by the Planning Board in reviewing applications for site plan approval and shall serve as minimum requirements for approval of the site plan. Upon consideration of the factors listed below, the Planning Board may attach such conditions, in addition to those required elsewhere in this chapter, that it finds legally necessary to further the purposes of this chapter and section and to protect the long-range health, safety and welfare of the Town. The standards are not

intended to discourage creativity, invention and innovation. The Planning Board may waive the criteria presented in this section upon a determination by the Planning Board that the application of these criteria is not necessary to carry out the intent of this section. The Planning Board shall approve the site plan unless the plan does not meet the intent of one or more of the following criteria, provided that the criteria were not first waived by the Planning Board.

- (18) Erosion control. Control of eErosion of soil and sedimentation *shall conform to MDEP Chapters 500 and 502 or the Maine Construction General Permit, the Erosion and Sediment Control Standards of Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance and Appendix C Housekeeping, which are adopted by reference.* of watercourses and water bodies shall be minimized by employing the best management practices specified in the Maine Erosion and Sediment Control BMP Manual, March 2003. The Board may require the review and approval of the Public Works Director for any erosion control plan

Article V Performance Standards Applicable to all Uses

§ 140-36. Soil erosion control.

All development shall be designed, constructed, and maintained in accordance with the erosion and sediment control measures specified in the Maine Erosion and Sediment Control BMP Manual, October 2016~~March 2003~~, or latest revision thereof.

§ 140-42. Campgrounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

- E. A soil erosion and sedimentation control plan meeting the standards of the ~~York County Soil and Water Conservation District~~ and the Maine Erosion and Sediment Control BMP Manual, October 2016~~March 2003~~, or latest revision thereof shall be submitted. In addition to data on soils, slopes and drainage, a vegetation map showing the following items may be required: **[Amended 6-15-2009]**
- (1) The major types of vegetation should be identified and described (as to age, height, openness or density and pattern, either natural or reforested).
 - (2) New planting should be selected to provide screening and shelter, to tolerate existing and proposed site conditions and to blend compatibly with existing natural vegetation.
 - (3) All vegetative clearing should avoid creating straight-line edges between open lands and surviving stands.
 - (4) Areas of activity and/or traffic should be sited so as to avoid wildlife areas, such as thickets for birds and small mammals or deer yards and trails.