CHAPTER 330

POST-CONSTRUCTION STORMWATER MANAGEMENT ORDINANCE

Town of Yarmouth, Maine
Adopted: 5/21/2009
Amended: 6/18/15
Amended: 7/25/19
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ARTICLE I
General

A. PURPOSE
The purpose of this "Post-Construction Stormwater Management Ordinance" (the "Ordinance") is to provide for the health, safety, and general welfare of the citizens of the Town of Yarmouth through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and State law.

This Ordinance establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.

B. OBJECTIVES
The objectives of this Ordinance are:

1. To reduce the impact of post-construction discharge of stormwater on receiving waters; and

2. To reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

C. APPLICABILITY

1. This Ordinance applies to all New Development and Redevelopment within the Town that Discharges Stormwater to the Town’s Municipal Separate Storm Sewer System (MS-4) and to associated Stormwater Management Facilities.

2. Exception: This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance. Said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

D. DEFINITIONS
For the purposes of this Ordinance, the terms listed below are defined as follows:
Applicant means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Best Management Practices ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Construction Activity means Construction Activity including one acre or more of Disturbed Area. Construction Activity also included activity with less than one acre of total land Disturbed Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater than one acre.

Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

Disturbed Area means clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered “Disturbed Area.” “Disturbed area” does not include routine maintenance but does include Redevelopment. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Enforcement Authority means the Town Manager or his/her designee who is the person(s) or department authorized by the Town to administer and enforce this Ordinance.

Town means the Town of Yarmouth.

Municipal Permitting Authority means the municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4 means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any
municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

**National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit** means a permit issued by the U.S. Environmental Protection Agency ("EPA") or by the Maine Department of Environmental Protection ("DEP") that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**New Development** means any Construction Activity on unimproved Premises and for purposes of this ordinance includes “Redevelopment” defined below.

**Person** means any individual, firm, corporation, municipality, town, Quasi-municipal Corporation, State agency or Federal agency or other legal entity.

**Pollutant** means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**Post-Construction Stormwater Management Plan** means BMPs and associated inspection and maintenance procedures for the Stormwater Management Facilities employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

**Premises** means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Town from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

**Qualified Post-Construction Stormwater Inspector** means a person who conducts post-construction inspections of Stormwater Management Facilities and meets the following qualifications:

1. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and

2. The Inspector shall also meet the following or similar criteria as approved by the Town Engineer, who shall maintain a list of approved Qualified Post-Construction Stormwater Inspectors:

   a. Have a working knowledge of Chapter 500, Stormwater Management Rules and Maine’s Stormwater BMP Manual,
b. Have a college degree in environmental science, civil engineering, or comparable expertise,

c. Have a demonstrated practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and

d. Have the ability to determine if stormwater facilities are performing as intended.

**Redevelopment** means Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling of structures.

**Regulated Small MS4** means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

**Small Municipal Separate Storm Sewer System, or Small MS4** means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

**Storm Drainage System** means the Town’s Municipal Separate Storm Sewer System including the Town’s Regulated Small MS4 and areas outside the Town’s Urbanized Area that drain into the Regulated Small MS4.

**Stormwater** means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

**Stormwater Management Facilities** means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.

**Urbanized Area (“UA”)** means the areas of the State of Maine so defined by any decennial census including or after the 2000 Census by the US Bureau of the Census.
ARTICLE II
MANAGEMENT PLAN

A. GENERAL REQUIREMENT

1. Except as provided in Section I.C.2 above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development to which this Ordinance is applicable shall receive such permit or approval for that New Development unless the Municipal Permitting Authority for that New Development also determines that the Applicant’s Post-Construction Stormwater Management Plan for that New Development meets the requirements of this Ordinance.

2. At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Town’s MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

B. PERFORMANCE STANDARDS

1. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by a New Development through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection’s Chapters 500 and 502 Rules and shall comply with the practices described in the manual Stormwater Management for Maine, published by the Maine Department of Environmental Protection, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

2. The Applicant shall meet the quantity and quality standards above either on-site or off-site. Where off-site facilities are used, the applicant must submit to the Town documentation, approved as to legal sufficiency by the Town’s attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located -- by easement, covenant or other appropriate legal instrument -- to ensure that the facilities will be able to provide post-construction stormwater management for the New Development and that the property will not be altered in a way that interferes with the off-site facilities.

3. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Town documentation, approved as to legal sufficiency by the Town’s attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for New Development or Redevelopment requiring Stormwater Management Facilities that will not be dedicated to the...
Town shall enter into a Maintenance Agreement with the Town. A sample of this Maintenance Agreement is attached as Appendix 1 to this Ordinance.

4. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage, and in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Stormwater Management Facilities under this Ordinance until such time (if ever) as they are accepted by the Town.

5. In addition to any other applicable requirements of this Ordinance and the Town’s Municipal Code, any New Development which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

ARTICLE III
Post-Construction Stormwater Management Plan Compliance

A. GENERAL REQUIREMENTS
Any Person owning, operating, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows.

1. That Person or a Qualified Post-Construction Stormwater Inspector hired by that Person, shall, at least annually, inspect 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. If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
3. That Person shall employ a Qualified Post-Construction Stormwater Inspector to provide, on or by March 1 of each year, a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 1 to this Ordinance or in a similar form approved by the Town Engineer, certifying that the Stormwater Management Facilities have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities. And, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

B. RIGHT OF ENTRY
In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities.

C. ANNUAL REPORT
Beginning July 1, 2009 and each year thereafter, the Town shall include the following in its Annual Report to the Maine Department of Environmental Protection:

1. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;

2. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Town;

3. The number of sites with documented functioning Stormwater Management Facilities; and

4. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

ARTICLE IV

A. ENFORCEMENT
It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.
B. NOTICE OF VIOLATION
Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan 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:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;

2. At the Person’s expense, compliance with BMPs required as a condition of approval of the New Development, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or

3. The payment of fines, of the Town’s remediation costs and of the Town’s reasonable administrative costs and attorneys’ fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

C. PENALTIES/FINES/INJUNCTIVE RELIEF
Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town’s attorney’s fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys’ fees and costs, incurred by the Town for violation of federal and State environmental laws and regulations caused by or related to that Person’s violation of this Ordinance or of the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Chapter.

D. CONSENT AGREEMENT
The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.
E. APPEAL OF NOTICE OF VIOLATION
Any Person receiving a Notice of Violation or suspension notice may appeal the
determination of the Enforcement Authority to Superior Court. Enforcement decisions
are not appealable to the General Board of Appeals.

F. ENFORCEMENT MEASURES
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 to the Board of Appeals, within 45 days
of a decision of the Board of Appeals affirming or modifying the Enforcement Authority’s
decision, then the Enforcement Authority may recommend to the municipal officers that
the Town’s attorney file an enforcement action in a Maine court of competent jurisdiction
under Rule 80K of the Maine Rules of Civil Procedure.

ARTICLE V

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

B. BASIS
The Town of Yarmouth enacts this Post-Construction Stormwater Management Control
Ordinance (the “Ordinance”) 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 Yarmouth 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
Ordinance as part of the Town’s Stormwater Management Program in order to satisfy
the minimum control measures required by Part IV D 5 ("Post-construction stormwater
management in new development and redevelopment").
APPENDIX 1

Maintenance Agreement for
Stormwater Management Facilities

This Maintenance Agreement is made this_______ day of ______________________ 20___ by and between _________________________ and the Town of Yarmouth, Maine.

The project name is ______________________________________________________.

The location is: ____________________________________________________________, Yarmouth, Maine.

The project’s Tax Map and Lot Numbers are Tax Map Lot______________

The project is shown on a plan entitled "__________________________” dated_____________ and most recently revised on ___________, approved by the _________ [Municipal Permitting Board] on _______________ and recorded in the ___________ County Registry of Deeds in Plan Book _____________ Page ____________ (the “Project”).

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town of Yarmouth requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town and the agreement of ____________________________ to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. ___________________________, for itself, and its successors and assigns, agrees to the following:

   (a) To inspect, clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system;

   (b) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection;

   (c) To provide a summary report on the inspection, maintenance, and repair activities performed annually on the Stormwater Management Facilities to the Town Enforcement Authority;

   (d) To allow access by Town personnel or the Town’s designee for inspecting the Stormwater Management Facilities for conformance with these requirements.
(e) To create a homeowners' association for the purpose of maintaining the Stormwater Management Facilities.

2. Upon creation of the homeowners’ association, the homeowners’ association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and ____________________________________ shall reference this Agreement in all deeds to lots and/or units within the Project.

____________________________________

By: ____________________________

Witness

____________________________________

By: ____________________________

Witness

TOWN OF YARMOUTH

________________________

By: ____________________________

Its:

STATE OF MAINE

________________________

By: ____________________________

Its:

________________________

, ss.

, 20__

Personally appeared the above-named __________________________, the ___________________________________________, and acknowledged the foregoing Agreement to be said person’s free act and deed in said capacity.

Before me,

________________________

Notary Public / Attorney at Law

Print Name: ____________________________

STATE OF MAINE

________________________

, ss.

, 20__
Personally appeared the above-named ___________________________, the ___________________________ of the Town of Yarmouth, and acknowledged the foregoing Agreement to be said his/her free act and deed in said capacity.

Before me,

__________________________
Notary Public / Attorney at Law

Print Name: ____________________________
APPENDIX 2

Annual Stormwater Management Facilities Certification
(to be sent to Town’s Enforcement Authority)

I, ________________________________ (print or type name), certify the following:

1. I am making this Annual Stormwater Management Facilities Certification for the following property: __________________________________________________________ (print or type name of subdivision, condominium or other development) located at __________________________________________________________ (print or type address), (the “Property”);

2. The owner, operator, tenant, lessee or homeowners’ association of the Property is: __________________________________________________________ (name(s) of owner, operator, tenant, lessee, homeowners’ association or other party having control over the Property);

3. I am the owner, operator, tenant, lessee or president of the homeowners’ association, or am a Qualified Post-Construction Stormwater Inspector hired by the same (circle one);

4. I have knowledge of erosion and stormwater control and have reviewed the approved Post-Construction Stormwater Management Plan for the Property;

5. On __________, 20__, I inspected or had inspected by __________________________________________, a Qualified Post-Construction Stormwater Inspector, the Stormwater Management Facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Post-Construction Stormwater Management Plan for the Property;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, I or the Qualified Post-Construction Stormwater Inspector identified the following need(s) for routine maintenance or deficiencies in the Stormwater Management Facilities:

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. On __________, 20__, I took or had taken the following routine maintenance or the following corrective action(s) to address the deficiencies in the Stormwater Management Facilities stated in 6. above:

______________________________________________________________________________
______________________________________________________________________________
8. As of the date of this certification, the Stormwater Management Facilities are functioning as intended by the approved Post-Construction Stormwater Management Plan for the Property.

Date:____________________, 20__.  
By:____________________________________
Signature

____________________________________
Print Name

STATE OF MAINE
_______________________, ss.  
_______________________, 20__

Personally appeared the above-named ____________________________, the ________________ of ____________________________, and acknowledged the foregoing Annual Certification to be said person’s free act and deed in said capacity.

Before me,

___________________________________
Notary Public/Attorney at Law

Print Name:  

Mail this certification to the Town’s Enforcement Authority at the following address [to be completed by the municipality]:

____________________________________
____________________________________
____________________________________