

## **Post-Construction Stormwater Management Ordinance**

### **Chapter 53**

#### **Section 1. 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 Freeport through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations, and of Maine’s General Permit for Small Municipal Separate Storm Sewer Systems.

#### **Section 2. Objectives**

This Ordinance seeks to ensure that post-construction stormwater management plans are followed, and stormwater management facilities are properly maintained and pose no threat to public safety.

#### **Section 3. Definitions.**

For the purposes of this Ordinance, the terms listed below are defined as follows:

**A. Applicant.** "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.

**B. Best Management Practices (“BMP”).** “Best Management Practices” or “BMPs” 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.

**C. Clean Water Act.** “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.

**D. Construction Activity.** “Construction Activity” means construction with one acre or more of Disturbed Area; or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately have Disturbed Area equal to or greater than one acre; or 20,000 square feet or more of Impervious Area in the watershed of an urban impaired stream as listed in Chapter 502, Appendix B in the Rules of the Maine Department of Environmental Protection, as amended from time to time.

**E. Discharge.** “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.

**F. Disturbed Area.** “Disturbed Area” is surface area proposed for 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.

**G. Enforcement Authority.** “Enforcement Authority” means the Codes Enforcement Officer, with the support of the Town Engineer, who are both authorized by the Municipality to administer and enforce this Ordinance.

**H. Impervious Area.** “Impervious Area” means the total area of the Premises that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved areas that will be compacted through design or use to reduce their permeability.

**I. Municipality.** “Municipality” means the Town of Freeport.

**J. Municipal Permitting Authority.** “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, now the Project Review Board.

**K. Municipal Separate Storm Sewer System, or MS4.** “Municipal Separate Storm Sewer System” or “MS4,” means conveyances for storm water, 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) 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.

**L. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit.** “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.

**M. New Development.** “New Development” means any Construction Activity on unimproved Premises.

**M. Person.** “Person” means any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.

**O. Pollutant.** “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.

**P. Post-Construction Stormwater Management Plan.** “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 stormwater standards of the Municipality’s subdivision, site plan, or other zoning, planning or other land use ordinances, and approved by the Municipal Permitting Authority.

**Q. Premises.** “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 Urbanized Area in Freeport

**R. Qualified Post-Construction Stormwater Inspector.** “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 must 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 must be on the list of approved post-construction stormwater inspectors maintained by the Town Engineer, who shall approve such inspectors only if they meet the following criteria:
  - a. Have a college degree in an environmental science or civil engineering, or comparable expertise, or has received a Certification in Inspection and Maintenance of Stormwater BMPs from the Maine DEP,
  - b. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and
  - c. Have the ability to determine if stormwater facilities are performing as intended.

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

**T. Regulated Small MS4.** “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” effective July 1, 2008 (“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.

**U. Small Municipal Separate Storm Sewer System, or Small MS4.** “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.

**V. Storm Drainage System.** “Storm Drainage System” means the Municipality’s Regulated Small MS4.

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

**X. Stormwater Management Facilities.** “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.

**Y. Urbanized Area (“UA”).** “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

#### **Section 4. Applicability.**

**A. In General.** This Ordinance applies to all New Development and Redevelopment within the Urbanized Area and to associated Stormwater Management Facilities.

**B. 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 has received approval of its Post-Construction Stormwater Management Plan and Stormwater Management Facilities under the Municipality’s subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel shall not require additional review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

#### **Section 5. Post-Construction Stormwater Management Plan Approval**

**A. General Requirement.** Notwithstanding any ordinance provision to the contrary, and except as provided in Section 4.B. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant also receives approval under the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances for its Post-Construction Stormwater Management Plan and Stormwater Management Facilities for that New Development or Redevelopment, even if the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply.

**B. Notice of BMP Discharge to Municipality’s MS4.** At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use

approval for New Development or Redevelopment to which this Ordinance is applicable, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

## **Section 6. 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 the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances shall comply with that plan and demonstrate compliance with that Plan as follows.

1. That Person shall employ a Qualified Post-Construction Stormwater Inspector to, 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 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 Enforcement Authority must be met.

3. That Person shall employ a Qualified Post-Construction Stormwater Inspector to provide, on or by May 31 of each year, a copy of the annual inspection and completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 1 to this Ordinance, 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. If any deficiencies are still outstanding when the certification is submitted in accordance with paragraph 2 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.

**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 Municipality 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 Municipality;
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.

## **Section 7. 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.

**A. 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 or Redevelopment, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, of the Municipality's remediation costs and of the Municipality'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.

**B. 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 Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day 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 Municipality 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 Section.

**C. 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.

**D. Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Board of Appeals in accordance with the applicable provisions of the Freeport Zoning Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

**E. 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 the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

## **Section 8. 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.

## **Section 9. Basis.**

The Town of Freeport enacts this "Post-Construction Stormwater Management 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 Freeport 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 Municipality's Storm Water Management Program in order to satisfy

the minimum control measures for “Post-construction stormwater management in new development and redevelopment”.

Enacted this 2nd day of June, 2009.

Effective Date: June 2, 2009.



## APPENDIX 1

### **Annual Stormwater Management Facilities Certification (to be sent to Municipal 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 a Qualified Post-Construction Stormwater Inspector (as defined by the Freeport Post-Construction Stormwater Management Ordinance, and) hired by the owner, operator, tenant, lessee or homeowners' association of the Property (circle one);

5. On \_\_\_\_\_, 20\_\_, I inspected 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 and I have attached a copy of my inspection report;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, (check one and complete any required information):

- a. The Stormwater Management Facilities were adequately maintained and functioning as intended, or
- b. The Stormwater Management Facilities required maintenance, which was completed within the required 60-day time period, and were functioning as intended after maintenance was completed, or
- c. The Stormwater Management Facilities required maintenance which was not completed within the required 60-day time period. (Attach additional sheets as necessary to describe the maintenance required, proposed schedule for completion, and an appropriate contact person. The Town will contact them to confirm or adjust the schedule to complete the maintenance and any needed further course of action. You will be required to show proof of final maintenance.)

Date: \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Signature of Qualified Post Construction Inspector

\_\_\_\_\_  
Print Name

**Mail this certification to the Municipal Enforcement Authority at the following address:**

Town Engineer  
Freeport Municipal Building  
30 Main Street  
Freeport, ME 04032