

## **ARTICLE 926**

### **Control of Post Construction Stormwater Runoff**

**926.01 General provisions.**

**926.02 Definitions.**

**926.03 Permit procedures and requirements.**

**926.04 Waivers to stormwater management requirements.**

**926.05 General performance criteria for stormwater management.**

**926.06 Basic stormwater management design criteria.**

**926.07 Requirements for stormwater management plan approval.**

**926.08 Construction inspection.**

**926.09 Maintenance and repair of stormwater facilities.**

**926.10 Enforcement and penalties.**

#### **CROSS REFERENCES**

Stormwater Management - see S.U. & P.S. Art. 927

#### **926.01 GENERAL PROVISIONS.**

(a) Findings of Fact. It is hereby determined that land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition; this storm water runoff contributes to increased quantities of water-borne pollutants, and; stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development sites. Therefore, the City of Dunbar establishes this set of water quality and quantity policies applicable to all surface waters to provide reasonable guidance for the regulation of storm water runoff for the purpose of protecting local water resources from degradation. It is determined that the regulation of storm water runoff discharges from land development projects and other construction activities in order to control and minimize increases in storm water runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will prevent threats to public health and safety.

(b) 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 in watersheds within this jurisdiction. This article seeks to meet that purpose through the following objectives:

(1) Minimize increases in stormwater runoff from any development in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels.

(2) Minimize increases in nonpoint source pollution caused by storm water runoff from development which would otherwise degrade local water quality.

(3) Minimize the total annual volume of surface water runoff which flows from any specific site during and following development to not exceed the pre-development hydrologic regime to the maximum extent practicable. (4) Reduce stormwater runoff rates and volumes, soil erosion and

nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

(c) Applicability. This article shall be applicable to all subdivision or site plan applications, unless eligible for an exemption or granted a waiver by the City of Dunbar under the specifications of Section 926.04. The article also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules. In addition, all plans must also be reviewed by local environmental protection officials to ensure that established water quality standards will be maintained during and after development of the site and that post construction runoff levels are consistent with any local and regional watershed plans. To prevent the adverse impacts of stormwater runoff, the City of Dunbar has developed a set of performance standards that must be met at new development sites. These standards apply to any construction activity disturbing 2500 or more square feet of land. The following activities may be exempt from these stormwater performance criteria:

(1) Any logging and agricultural activity which is consistent with an approved soil conservation plan or a timber management plan prepared or approved by the WVDEP as applicable.

(2) Additions or modifications to existing single family structures.

(3) Developments that do not disturb more than 2500 square feet of land, provided they are not part of a larger common development plan; and do not create more than 1000 square feet of impervious cover.

(4) Repairs to any stormwater treatment practice deemed necessary by the City of Dunbar. When a site development plan is submitted that qualifies as a redevelopment project as defined in Section 926.02, decisions on permitting and on-site storm water requirements shall be governed by special stormwater sizing criteria found in the current storm water design manual. This criteria is dependent on the amount of impervious area created by the redevelopment and its impact on water quality. Final authorization of all redevelopment projects will be determined after a review by the City of Dunbar. Construction activities that disturb less than 2500 square feet of land do not have to file a stormwater management plan, but must comply with established erosion and sediment control measures. Such standards will be issued with a City of Dunbar building permit.

(d) Compatibility with Other Permit and Ordinance Requirements. This article is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(e) Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this article.

(f) Development of a Storm water Design Manual.

(1) The City of Dunbar may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this article and may provide such information in the form of a Stormwater Design Manual.

(2) This manual will include a list of acceptable stormwater treatment practices, including the specific design criteria and operation and maintenance requirements for each stormwater practice. The manual may be updated and expanded from time to time, at the discretion of the local review authority, based on improvements in engineering, science, monitoring and local maintenance experience. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards. (Ord. 654. Passed 7-6-10.)

## **962.02 DEFINITIONS.**

(a) "Accelerated Erosion" means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

(b) "Applicant" means a property owner or agent of a property owner who has filed an application for a stormwater management permit.

(c) "Building" means 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.

(d) "Channel" means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

(e) "Dedication" means the deliberate appropriation of property by its owner for general public use.

(f) "Detention" means the temporary storage of storm runoff in a storm water management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

(g) "Detention Facility" means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

(h) "Developer" means a person who undertakes land disturbance activities

(i) "Drainage Easement" means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

(j) "Erosion and Sediment Control Plan" means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

(k) "Fee in Lieu" means a payment of money in place of meeting all or part of the storm water performance standards required by this article.

(l) "Hotspot" means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

(m) "Hydrologic Soil Group (HSG)" means a Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

(n) "Impervious Cover" means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc).

(o) "Industrial Storm water Permit" means and National 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.

(p) "Infiltration" means the process of percolating stormwater into the subsoil.

(q) "Infiltration Facility" means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

(r) "Jurisdictional Wetland" means 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 hydrophilic vegetation.

(s) "Land Disturbance Activity" means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

(t) "Landowner" means 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.

(u) "Maintenance Agreement" means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

(v) "Nonpoint Source Pollution" means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, civil cultural, mining, construction, subsurface disposal and urban runoff sources.

(w) "Offset Fee" means a monetary compensation paid to a local government for failure to meet pollutant load reduction targets.

(x) "Off-Site Facility" means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

(y) "On-Site Facility" means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

(z) "Recharge" means the replenishment of underground water reserves.

(aa) "Redevelopment" means any construction, alteration or improvement exceeding square feet in areas where existing land use is high density commercial, industrial, institutional or multi-family residential.

(bb) "Stop Work Order" means an order issued which requires that all construction activity on a site be stopped.

(cc) "Storm Water Management" means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

(dd) "Storm Water Retrofit" means a stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the storm water management requirements of the site.

(ee) "Storm water Runoff" means flow on the surface of the ground, resulting from precipitation.

(ff) "Stormwater Treatment Practices (STPs)" means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or

reducing point source or nonpoint source pollution inputs to storm water runoff and water bodies.

(gg) "Water Quality Volume (WQv)" means the storage needed to capture and treat 90% of the average annual stormwater runoff volume. Numerically (WQv) will vary as a function of long term rainfall statistical data.

(hh) "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(ii) "WVDEP" means the West Virginia Department of Environmental Protection.

(Ord. 654. Passed 7-6-10.)

### **926.03 PERMIT PROCEDURES AND REQUIREMENTS.**

(a) Permit Required. No land owner or land operator shall receive any of the building, grading or other land development permits required for land disturbance activities without first meeting the requirements of this article prior to commencing the proposed activity.

(b) Application Requirements.

(1) Unless specifically excluded by this article, any land owner or operator desiring a permit for a land disturbance activity shall submit to the City of Dunbar a permit application on a form provided for that purpose.

(2) Unless otherwise excepted by this article, a permit application must be accompanied by the following in order that the permit application be considered: a storm water management concept plan; a maintenance agreement; and a non-refundable permit review fee.

(3) The storm water management plan shall be prepared to meet the requirements of Section 926.05, the maintenance agreement shall be prepared to meet the requirements of Section 926.06, and fees shall be those established by the City of Dunbar.

(c) Application Review Fees. The fee for review of any land development application shall be based on the amount of land to be disturbed at the site, and the fee structure shall be established by the City of Dunbar. All of the monetary contributions shall be credited to a local budgetary category to support local plan review, inspection and program administration, and shall be made prior to the issuance of any building permit for the development.

(d) Application Procedure.

(1) Applications for land disturbance activity permits must be filed with the City Building Inspector on any regular business day.

(2) A copy of this permit application shall be forwarded to the City of Dunbar for review. Permit applications shall include the following: two copies of the storm water management concept plan, two copies of the maintenance agreement, and any required review fees.

(3) Within business days of the receipt of a complete permit application, including all documents as required by this article, the City of Dunbar shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.

(4) If the permit application, storm water management plan or maintenance agreement are disapproved, the applicant may revise the storm water management plan or agreement. If additional information is submitted, the City of Dunbar shall have business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(5) If the permit application, final storm water management plan and maintenance agreement are approved by the City of Dunbar, all appropriate land disturbance activity permits shall be issued.

(e) Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the City of Dunbar notifies the permit holder that all storm water management

practices have passed the final inspection required under permit condition. (Ord. 654. Passed 7-6-10.)

#### **926.04 WAIVERS TO STORMWATER MANAGEMENT REQUIREMENTS.**

(a) Waivers for Providing Stormwater Management. Every applicant shall provide for storm water management as required by this article, unless a written request is filed to waive this requirement. Requests to waive the storm water management plan requirements shall be submitted to the City of Dunbar for approval. The minimum requirements for storm water management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

(1) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this article.

(2) Alternative minimum requirements for on-site management of storm water discharges have been established in a stormwater management plan that has been approved by the City of Dunbar and the implementation of the plan is required by local ordinance.

(3) Provisions are made to manage stormwater by an off-site facility. The off-site facility is required to be in place, to be designed and adequately sized to provide a level of stormwater control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for long-term operation and maintenance of the storm water practice.

(4) The City of Dunbar finds that meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.

(5) Non-structural practices will be used on the site that reduce the generation of storm water from the site, the size and cost of storm water storage and the pollutants generated at the site. These non-structural practices are explained in detail in the current design manual and the amount of credit available for using such practices shall be determined by the City of Dunbar.

A. In instances where one of the conditions above applies, the City of Dunbar may grant a waiver from strict compliance with these storm water management provisions, as long as acceptable mitigation measures are provided.

B. However, to be eligible for a variance, the applicant must demonstrate to the satisfaction of the City of Dunbar that the variance will not result in the following impacts to downstream waterways:

1. Deterioration of existing culverts, bridges, dams, and other structures;
2. Degradation of biological functions or habitat;
3. Accelerated streambank or streambed erosion or siltation;
4. Increased threat of flood damage to public health, life, property.

C. Furthermore, where compliance with minimum requirements for storm water management is waived, the applicant will satisfy the minimum requirements by meeting one of the mitigation measures selected by the jurisdictional stormwater authority. Mitigation measures may include, but are not limited to, the following:

1. The purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or reforestation. These lands should be located adjacent to the stream corridor in order to provide permanent buffer areas to protect water quality and aquatic habitat.
2. The creation of a storm water management facility or other drainage improvements on previously developed properties, public or private, that currently lack storm water management facilities designed and constructed in accordance with the purposes and standards of this article.

3. Monetary contributions (Fee-in-Lieu) to fund storm water management activities such as research and studies (e.g., regional wetland delineation studies, stream monitoring studies for water quality and macro invertebrates, stream flow monitoring, threatened and endangered species studies, hydrologic studies, and monitoring of storm water management practices.

(b) Fee in Lieu of Stormwater Management Practices.

(1) Where the City of Dunbar waives all or part of the minimum storm water management requirements, or where the waiver is based on the provision of adequate storm water facilities provided downstream of the proposed development, the applicant shall be required to pay a fee in an amount as determined by the City of Dunbar.

(2) When an applicant obtains a waiver of the required storm water management, the monetary contribution required shall be in accordance with a fee schedule (unless the developer and the storm water authority agree on a greater alternate contribution) established by the City of Dunbar and based on the cubic feet of storage required for storm water management of the development in question. All of the monetary contributions shall be credited to an appropriate capital improvements program project, and shall be made by the developer prior to the issuance of any building permit for the development.

(c) Dedication of Land. In lieu of a monetary contribution, an applicant may obtain a waiver of the required stormwater management by entering into an agreement with the City of Dunbar for the granting of an easement or the dedication of land by the applicant, to be used for the construction of an off-site stormwater management facility. The agreement shall be entered into by the applicant and the City of Dunbar prior to the recording of plats or, if no record plat is required, prior to the issuance of the building permit.

(Ord. 654. Passed 7-6-10.)

### **926.05 GENERAL PERFORMANCE CRITERIA FOR STORMWATER MANAGEMENT.**

Unless judged by the City of Dunbar to be exempt or granted a waiver, the following performance criteria shall be addressed for stormwater management at all sites:

(a) All site designs shall establish stormwater management practices to control the peak flow rates of storm water discharge associated with specified design storms and reduce the generation of storm water. These practices should seek to utilize pervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.

(b) All stormwater runoff generated from new development shall not discharge untreated storm water directly into a jurisdictional wetland or local water body without adequate treatment. Where such discharges are proposed, the impact of the proposal on wetland functional values shall be assessed using a method acceptable to the City of Dunbar. In no case shall the impact on functional values be any less than allowed by the Army Corp of Engineers (ACE) or the WVDEP responsible for natural resources.

(c) Annual groundwater recharge rates shall be maintained, by promoting infiltration through the use of structural and non-structural methods. At a minimum, annual recharge from the post development site shall mimic the annual recharge from pre-development site conditions.

(d) For new development, structural stormwater treatment practices shall be designed to remove 80 % of the average annual post development total suspended solids load (TSS). It is presumed that a STP complies with this performance standard if it is:

(1) Sized to capture the prescribed water quality volume (WQv).

- (2) Designed according to the specific performance criteria outlined in the local stormwater design manual, constructed properly, and maintained regularly.
- (e) To protect stream channels from degradation, a specific channel protection criteria shall be provided as prescribed in the current stormwater manual.
- (f) Stormwater discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) maybe subject to additional performance criteria, or may need to utilize or restrict certain storm water management practices.
- (g) Certain industrial sites are required to prepare and implement a storm water pollution prevention plan, and shall file a notice of intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES) general permit. The stormwater pollution prevention plan requirement applies to both existing and new industrial sites. (h) Storm water discharges from land uses or activities with higher potential pollutant loadings, known as "hotspots", may require the use of specific structural STPs and pollution prevention practices.
- (i) Prior to design, applicants are required to consult with the City of Dunbar to determine if they are subject to additional stormwater design requirements.
- (j) The calculations for determining peak flows as found in the Storm water Design Manual shall be used for sizing all stormwater management practices.
- (Ord. 654. Passed 7-6-10.)

#### **926.06 BASIC STORMWATER MANAGEMENT DESIGN CRITERIA.**

##### **(a) Minimum Control Requirements.**

(1) All stormwater management practices will be designed so that the specific storm frequency storage volumes (e.g., recharge, water quality, channel protection, 10 year, 100 year) as identified in the current storm water design manual are met, unless the City of Dunbar grants the applicant a waiver or the applicant is exempt from such requirements.

(2) In addition, if hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the City of Dunbar reserves the right to impose any and all additional requirements deemed necessary to control the volume, timing, and rate of runoff.

##### **(b) Site Design Feasibility.**

(1) Stormwater management practices for a site shall be chosen based on the physical conditions of the site. Among the factors that should be considered:

Topography  
 Maximum Drainage Area  
 Depth to Water Table  
 Soils  
 Slopes  
 Terrain  
 Head

(2) Location in relation to environmentally sensitive features or ultra-urban areas. Applicants shall consult the Stormwater Design Manual for guidance on the factors that determine site design feasibility when selecting a storm water management practice.

(c) Conveyance Issues. All stormwater management practices shall be designed to convey stormwater to allow for the maximum removal of pollutants and reduction in flow velocities. This shall include, but not be limited to:



- (1) Maximizing of flow paths from inflow points to outflow points.
- (2) Protection of inlet and outfall structures.
- (3) Elimination of erosive flow velocities.
- (4) Providing of underdrain systems, where applicable.
- (5) The Stormwater Design Manual shall provide detailed guidance on the requirements for conveyance for each of the approved storm water management practices.
- (d) Pretreatment Requirements. Every stormwater treatment practice shall have an acceptable form of water quality pretreatment, in accordance with the pretreatment requirements found in the current stormwater design manual. Certain storm water treatment practices, as specified in the Storm water Design Manual, are prohibited even with pretreatment in the following circumstances:
  - (1) Stormwater is generated from highly contaminated source areas known as "hotspots".
  - (2) Stormwater is carried in a conveyance system that also carries contaminated, non storm water discharges.
  - (3) Storm water is being managed in a designated groundwater recharge area.
  - (4) Certain geologic conditions exist (e.g., karst) that prohibit the proper pretreatment of storm water.
- (e) Treatment/Geometry Conditions. All stormwater management practices shall be designed to capture and treat stormwater runoff according to the specifications outlined in the Storm Water Design Manual. These specifications will designate the water quantity and quality treatment criteria that apply to an approved stormwater management practice.
- (f) Landscaping Plans Required. All stormwater management practices must have a landscaping plan detailing both the vegetation to be in the practice and how and who will manage and maintain this vegetation. This plan must be prepared by a registered landscape architect or soil conservation district.
- (g) Maintenance Agreements. All storm water treatment practices shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the storm water treatment practices, and to perform routine maintenance as necessary to ensure proper functioning of the storm water treatment practice. In addition, a legally binding covenant specifying the parties responsible for the proper maintenance of all storm water treatment practices shall be secured prior to issuance of any permits for land disturbance activities.
- (h) Non-Structural Stormwater Practices. The use of non-structural storm water treatment practices is encouraged in order to minimize the reliance on structural practices. Credit in the form of reductions in the amount of storm water that must be managed can be earned through the use of nonstructural practices that reduce the generation of storm water from the site. These nonstructural practices are explained in detail in the current design manual and applicants wishing to obtain credit for use of non-structural practices must ensure that these practices are documented and remain unaltered by subsequent property owners.

(Ord. 654. Passed 7-6-10.)

#### **926.07 REQUIREMENTS FOR STORMWATER MANAGEMENT PLAN APPROVAL.**

- (a) Stormwater Management Plan Required for All Developments.
  - (1) No application for development will be approved unless it includes a storm water management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by an

individual approved by the City of Dunbar and must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of practices.

(2) The storm water management plan(s) shall be referred for comment to all other interested agencies, and any comments must be addressed in a final storm water management plan. This final plan must be signed by a licensed professional engineer (PE), who will verify that the design of all storm water management practices meet the submittal requirements outlined in the Submittal Checklist found in the stormwater design manual. No building, grading, or sediment control permit shall be issued until a satisfactory final storm water management plan, or a waiver thereof, shall have undergone a review and been approved by the City of Dunbar after determining that the plan or waiver is consistent with the requirements of this article.

(b) Storm water Management Concept Plan Requirements.

(1) A stormwater management concept plan shall be required with all permit applications and will include sufficient information (e.g., maps, hydrologic calculations, etc) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. The intent of this conceptual planning process is to determine the type of storm water management measures necessary for the proposed project, and ensure adequate planning for management of storm water runoff from future development. To accomplish this goal the following information shall be included in the concept plan:

A. A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural storm water management and sediment control facilities. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading. A written description of the site plan and justification of proposed changes in natural conditions may also be required.

B. Sufficient engineering analysis to show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this article and the specifications of the Storm water Design Manual.

C. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

D. A written description of the required maintenance burden for any proposed storm water management facility.

(2) The City of Dunbar may also require a concept plan to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.

(3) For development or redevelopment occurring on a previously developed site, an applicant shall be required to include within the storm water concept plan measures for controlling existing storm water runoff discharges from the site in accordance with the standards of this article to the maximum extent practicable.

(c) Final Stormwater Management Plan Requirements. After review of the storm water management concept plan, and modifications to that plan as deemed necessary by the City of

Dunbar, a final storm water management plan must be submitted for approval. The final storm water management plan, in addition to the information from the concept plan, shall include all of the information required in the Final Stormwater Management Plan checklist found in the Stormwater Design Manual. This includes:

(1) Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

(2) Topographic Base Map. A 1" = 200' topographic base map of the site which extends a minimum of feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

(3) Calculations. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in this article. Such calculations shall include:

A. Description of the design storm frequency, intensity and duration,

B. Time of concentration,

C. Soil Curve Numbers or runoff coefficients,

D. Peak runoff rates and total runoff volumes for each watershed area,

E. Infiltration rates, where applicable,

F. Culvert capacities,

G. Flow velocities,

H. Data on the increase in rate and volume of runoff for the design storms referenced in the Storm water Design Manual, and I. Documentation of sources for all computation methods and field test results.

(4) Soils Information. If a storm water management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

(5) Maintenance and Repair Plan. The design and planning of all storm water management facilities shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

(6) Landscaping Plan. The applicant must present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape architect or by the soil conservation district.

(7) Maintenance Easements. The applicant must ensure access to all storm water treatment practices at the site for the purpose of inspection and repair by securing all the maintenance easements needed on a permanent basis. These easements will be recorded with the plan and will remain in effect even with transfer of title to the property.

(8) Maintenance Agreement. The applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site storm water management measure in accordance with the specifications of this article.

(9) Erosion and Sediment Control Plans for Construction of Storm Water Management Measures. The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site storm water management practices.

(10) Other Environmental Permits. The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final storm water design plan.

(d) Performance Bond/Security.

(1) The City of Dunbar may, at its discretion, require the submittal of a performance security or bond prior to issuance of a permit in order to insure that the storm water practices are installed by the permit holder as required by the approved stormwater management plan.

(2) The amount of the installation performance security shall be the total estimated construction cost of the storm water management practices approved under the permit, plus 25%. The performance security shall contain forfeiture provisions for failure to complete work specified in the storm water management plan.

(3) The installation performance security shall be released in full only upon submission of "as built plans" and written certification by a registered professional engineer that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this article. The City of Dunbar will make a final inspection of the storm water practice to ensure that it is in compliance with the approved plan and the provisions of this article.

Provisions for a partial pro-rata release of the performance security based on the completion of various development stages can be done at the discretion of the City of Dunbar.

(Ord. 654. Passed 7-6-10.)

#### **926.08 CONSTRUCTION INSPECTION.**

(a) Notice of Construction Commencement. The applicant must notify the City of Dunbar in advance before the commencement of construction. Regular inspections of the storm water management system construction shall be conducted by the staff of the City of Dunbar or certified by a professional engineer or their designee who has been approved by the jurisdictional storm water authority. All inspections shall be documented and written reports prepared that contain the following information:

(1) The date and location of the inspection;

(2) Whether construction is in compliance with the approved storm water management plan.

(3) Variations from the approved construction specifications.

(4) Any violations that exist.

(5) If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. No added work shall proceed until any violations are corrected and all work previously completed has received approval by the City of Dunbar.

(b) As Built Plans. All applicants are required to submit actual "as built" plans for any storm water 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. A final inspection by the City of Dunbar is required before the release of any performance securities can occur.

(c) Landscaping and Stabilization Requirements. Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development

activities shall be revegetated within ten (10) days from the substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts:

(1) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area. Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.

(2) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.

In addition to the above requirements, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape architect or by the soil conservation district, and must be approved prior to receiving a permit.

(Ord. 654. Passed 7-6-10.)

#### **926.09 MAINTENANCE AND REPAIR OF STORMWATER FACILITIES.**

(a) Maintenance Easement. Prior to the issuance of any permit that has a storm water management facility as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City of Dunbar, or their contractor or agent, and for regular or special assessments of property owners 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 agreement shall be recorded by the City of Dunbar in the land records.

(b) Maintenance Covenants.

(1) Maintenance of all storm water management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the City of Dunbar and recorded into the land record prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

(2) The City of Dunbar, in lieu of a maintenance covenant, may accept dedication of any existing or future storm water management facility for maintenance, 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.

(c) Requirements for Maintenance Covenants. All storm water management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this article and accomplishment of its purposes. These needs may include: removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape

vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City of Dunbar, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the storm water management facility.

(d) Inspection of Stormwater Facilities. Inspection programs may 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 NPDES storm water 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 storm water treatment practices.

(e) Right-of-Entry for Inspection. When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the City of Dunbar the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this article is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.

(f) Records of Installation and Maintenance Activities. Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least 10 years. These records shall be made available to the (jurisdictional storm water authority) during inspection of the facility and at other reasonable times upon request.

(g) Failure to Maintain Practices. If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the City of Dunbar, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the City of Dunbar shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have days to effect maintenance and repair of the facility in an approved manner. After proper notice, the City of Dunbar may assess the owner(s) of the facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the County.

(Ord. 654. Passed 7-6-10.)

## **926.10 ENFORCEMENT AND PENALTIES.**

(a) Violations. Any 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.

(b) Notice of Violation. When the City of Dunbar determines that an 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. The notice of violation shall contain:

(l) The name and address of the owner 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 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 fifteen (15) days of service of notice of violation.
  - (c) Stop Work Orders. Persons receiving a notice of violation will be required to halt all construction activities. This "stop work order" will be in effect until the City of Dunbar confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
  - (d) 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 three hundred dollars (\$300.00) or by imprisonment for a period not to exceed thirty (30) days, or both such fine and imprisonment. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.
  - (e) 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 City of Dunbar may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
  - (f) Holds on Occupation Permits. Occupation permits will not be granted until corrective actions, to any and all violations of this article, have been made and accepted by the City of Dunbar.
- (Ord. 654. Passed 7-6-10.)

## **ARTICLE 927**

### **Stormwater Management and Surface Water Discharge Control**

#### **927.01 Definitions.**

#### **927.02 General.**

#### **927.03 Stormwater service charges.**

#### **927.04 Properties affected by article.**

#### **927.05 Flat rate charges.**

#### **927.06 Land based rate charges.**

#### **927.07 Billing.**

#### **927.08 Collection.**

#### **927.09 Use of funds.**

#### **927.10 General requirements and prohibitions.**

#### **927.11 Illicit connections.**

#### **927.12 Outdoor storage areas.**

**927.13 Construction sites.**  
**927.14 Discharge in violation of permit.**  
**927.15 Notification of spills.**  
**927.16 Construction.**  
**927.17 Stormwater taps.**  
**927.18 Enforcement.**  
**927.19 Stormwater management and comprehensive drainage plans.**  
**927.20 Drainage system standards.**  
**927.21 Plan submission and review process.**  
**927.22 Maintenance of stormwater facilities.**  
**927.23 Inspection.**  
**927.24 Sampling.**  
**927.25 Testing and monitoring.**  
**927.26 Concealment.**  
**927.27 Violations deemed a public nuisance.**  
**927.28 Administrative enforcement powers.**  
**927.29 Non-exclusivity of remedies.**  
**927.30 Appeal.**  
**927.31 Disclaimer of liability.**  
**927.32 Severability.**  
**927.33 Industrial or construction activity discharges.**  
**927.34 Notification of spills.**  
**927.35 Adoption of article.**

**CROSS REFERENCES**

Post Construction Runoff - see S.U. & P.S. Art. 926

**927.01 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

(a) "Best Management Practices (BMPs)" are physical, structural, and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State. BMPs may include schedules of activities, prohibition of practices, general good housekeeping practices, maintenance procedures, design standards, educational activities and treatment requirements.

(b) "City watershed" is that area within the corporate limits of the City and designated areas outside of those limits, over which surface water naturally drains into the City. Designation of areas outside of the corporate limits of the City shall be made by the (Executive Officer).



- (c) "City Code Enforcement Officer (CCEO)" is another term for City Building Inspector.
- (d) "Construction work or activity" is those activities requiring an NPDES permit.
- (e) "Director" is the General Manager of the Sanitary Board.
- (f) "Facility" for purposes of this Article is a building, structure, installation or construction site in which pollutants are produced and/or generated and/or discharged as a result of a process or processes, conducted within the building, structure or installation.
- (g) "Flat rate charge" is the charge applicable to a single-family dwelling per dwelling unit.
- (h) "Footer drain" is a pipe or conduit that is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.
- (i) "Illicit connection" means any direct or indirect non-stormwater discharge to a publicly maintained storm drain system, which has not been permitted, allowed by the Sanitary Board from the date of enactment of this article.
- (j) "Illicit discharge" means any discharge, surface or subsurface, to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and other discharges exempted in this Article.
- (k) "Impervious area" is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.
- (l) "Industrial sites" are those sites that contain industrial activities that require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6) or (b)(14).
- (m) "Multi-unit property" is a residential, non-residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.
- (n) "Non-stormwater" is all flows to the stormwater system not defined as stormwater by this Article or as determined by the Municipality. This includes, but is not limited to, cooling water, process water, ground water from a purge well, and swimming pool discharge.
- (o) "Pervious area" is all land area that is not impervious.
- (p) "Pollutant" means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.
- (q) "Pollution" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the State and/or the discharge of any pollutant to the waters of the State, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(r) "Stormwater" is natural precipitation, surface runoff water, ground water discharge, water from operation of the water distribution system, water used in fire fighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City's storm water NPDES permit, except as may be defined as non-storm water by this Article.

(s) "Stormwater management" is the process of collection, conveyance, storage, treatment and disposal of storm water to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with flooding.

(t) "Stormwater service charge" is a flat rate charge, a charge based on land area, and/or a non-storm water user charge.

(u) "Stormwater system" is public and private storm water sewers, drains, ditches, streets, retention/detention ponds, dams, river impoundments and flood control facilities used for collecting and transporting stormwater and non-stormwater.

(v) "User" is a firm, person or property, which is the legal owner or occupant of a property that directly or indirectly contributes storm water or non-storm water flows to the stormwater system, whether within or outside the corporate limits of the City of Dunbar.

(Ord. 626. Passed 3-17-08.)

#### **927.02 GENERAL.**

(a) This article has been enacted to protect and enhance the water quality of our water courses, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act and associated Federal and State storm water regulations.

(b) The intent of this article is:

(1) To control non-stormwater discharges to storm drain systems.

(2) To reduce pollutants in stormwater discharges.

(3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.

(4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams and to reduce or eliminate local flooding resulting from stormwater accumulation.

(5) To fully comply with Federal and State statutory and regulatory requirements and schedules regarding storm water management and the water quality of the receiving streams.

(c) This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted.

(d) The City shall administer, implement and enforce the duties imposed by this Article. Said duties may further be delegated to other entities acting in compliance with applicable ordinances. (Ord. 626. Passed 3-17-08.)

#### **927.03 STORMWATER SERVICE CHARGES.**

(a) Users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the storm water system. Therefore, all owners or tenants of real property in the City and the City watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow for storm water that is ejected to discharge into the storm water system from the property.

(b) The City Council shall, by separate ordinance, set fees that will recover from users their fair share of costs for use of the storm water system by property within and outside the corporate limits of the City and within the City watershed. Such fees will be for the operation and maintenance of, improvements to, and necessary additions to, the storm water system.

(Ord. 626. Passed 3-17-08.)

**927.04 PROPERTIES AFFECTED BY ARTICLE.**

Except as provided in this Article, all real property shall be subject to the storm water service charges regardless of whether privately or publicly owned.

(Ord. 626. Passed 3-17-08.)

**927.05 FLAT RATE CHARGES.**

The monthly service charge for users occupying a residential dwelling, as defined by this article may, from time to time, by ordinance, set and change these service charges.

(Ord. 626. Passed 3-17-08.)

**927.06 LAND BASED RATE CHARGES.**

(a) The monthly service charge for properties other than described in the previous section shall be set per building. After specified date, the monthly charges for properties other than described in the previous section shall be computed in the following manner: On a per 1,000 square feet of impervious area upon the property basis.

(b) Service charges for a multi-unit property shall be billed to each individual tenant upon the property in a fair and proportionate share of the total property service charge, if said tenant has an individual drinking water service meter. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, service charges for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the CCEO.

(c) The CCEO shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The CCEO may further assign discount credits to those existing properties employing rate of flow reduction practices.

(d) The City Council may, from time to time, by ordinance, change these rate changes.

(Ord. 626. Passed 3-17-08.)

**927.07 BILLING.**

The billing for stormwater service may be combined with municipal service fees.

(Ord. 626. Passed 3-17-08.)

**927.08 COLLECTION.**

Unpaid stormwater service charges shall constitute authority to initiate the appropriate legal action necessary to collect unpaid charges, as established under code for delinquent municipal fees.

(Ord. 626. Passed 3-17-08.)

**927.09 USE OF FUNDS.**

All funds collected for stormwater service shall be accounted for separately and shall be used solely for the construction, operation and maintenance of the stormwater system, the financing of storm water related projects, and administration of the utility.

(Ord. 626. Passed 3-17-08.)

**927.10 GENERAL REQUIREMENTS AND PROHIBITIONS.**

(a) The use of the stormwater collection system shall be the collection and transportation of storm water.

(b) No person shall place or cause to be placed any pollutant into the storm water system other than storm water, unless written approval has been granted by the Director. The Director may refuse to grant approval to discharge non-storm water into the storm water system for any reason or combination of reasons.

(c) The Sanitary Board, in conjunction with the CCEO, shall administer use of the storm water system to all users within the City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollution into the storm water system, whether solid, liquid or gaseous, that will cause:

(1) Chemical reaction, either directly or indirectly with the materials of construction used in the stormwater system or that will impair the strength or durability of sewers or structures;

(2) Mechanical action that will destroy or damage sewers or structures;

(3) Restriction of the normal maintenance and inspection of sewers;

(4) Danger to public health and safety or to the environment;

(5) Conditions that create a public nuisance;

(6) An oil sheen or unusual color;

(7) Abnormal demand on the stormwater system capacity; or,

(8) The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal State, and local regulations.

(e) Any person or entity engaged in activities that will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, ownership and/or operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under Federal or State law unless approved by the Director and CCEO.

Approval by the Director and CCEO must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

(Ord. 626. Passed 3-17-08.)

### **927.11 ILLICIT CONNECTIONS.**

It is prohibited to establish, use, maintain or continue illicit connections to the municipal Storm water system, or to commence or continue any illicit discharges to the municipal storm water system.

(Ord. 626. Passed 3-17-08.)

### **927.12 OUTDOOR STORAGE AREAS.**

In outdoor areas, no person shall store grease, oil, or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the CCEO may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

(Ord. 626. Passed 3-17-08.)

### **927.13 CONSTRUCTION SITES.**

(a) Any person performing construction work in the City watershed of the City shall comply with the provisions of this article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to a storm drain system. The City Council may establish by ordinance standards and guidelines implementing BMPs designed to provide erosion and sediment control from construction sites. If such ordinances do not exist or fully cover the scope, then applicable West Virginia codes, as administered by the WV Department of Environmental Protection, shall be applicable. If local codes conflict with State and/or Federal codes, then the State and Federal codes shall take precedence.

(b) Discharges from the following activities will not be considered a source of pollutants to waters of the State when properly managed: waterline flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, ground water infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential and non-profit car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting activities and training.

(Ord. 626. Passed 3-17-08.)

### **927.14 DISCHARGE IN VIOLATION OF PERMIT.**

Any discharge that would cause a violation of Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City and/or the Sanitary Board relating to such discharge as provided by applicable rules of law.

(Ord. 626. Passed 3-17-08.)

### **927.15 NOTIFICATION OF SPILLS.**

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training, and maintain notification procedures to assure that immediate notification is provided to the Director and CCEO upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal storm water system or into a receiving stream.

(Ord. 626. Passed 3-17-08.)

**927.16 CONSTRUCTION.**

(a) Only designated Sanitary Board employees or parties authorized by the Director may perform construction upon the public facilities of the storm water system. Public facilities of the system shall include:

(1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit storm water from and/or across two or more properties; and,

(2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private storm water facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Director.

(c) Parties authorized by the Director to perform construction of or upon the public facilities of the stormwater system shall comply with the design and construction standards promulgated by the Director. These parties shall allow for inspection of the construction standards promulgated by the Director. These parties shall allow for inspection of the construction by the Director at all times, and construction shall only occur during normal working hours of the Sanitary Board. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Director. This authority shall be granted by the Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion, be property of the Municipality.

(e) A party authorized by the Director to perform construction upon the public facilities of the stormwater system shall meet the following requirements prior to and throughout construction:

(1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,

(2) Compliance with all relevant and applicable State laws regarding government construction contracts, including, but not limited to, WV Code §§ 5-22-1, et seq., and 21-5A-1, et seq.; and,

(3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers Compensation Division; and,

(4) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City and the Sanitary Board as additional insured. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Director; and,

(5) A construction bond, issued by an insurance company with a Best's rating

of no less than "A" and certified to the satisfaction of the Director, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

(6) A repair bond, issued by an insurance company with a Best's rating of no less than "A: and certified to the satisfaction of the Director, in an amount no more than the reasonable estimate of repair costs, as determined by the Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

(7) Certification of full compliance with all relevant State and Local permitting and tax rules and regulations, certification of appropriate property rights to perform the construction, and conveyance to the City of appropriate property rights for the completed public facilities.

(8) Nothing in sub-paragraphs (2), (3), (4), (5) and (6) shall apply to any situation where the Director shall come to an agreement with volunteers or a volunteer group doing the work for a qualified not-for-profit entity, whereby the Director will provide engineering, technical or other services and the volunteers will provide the necessary labor without charge to, or liability upon, the City or the Sanitary Board. The not-for-profit entity shall be responsible for all costs to the utility associated with such a project.

(Ord. 626. Passed 3-17-08.)

#### **927.17 STORMWATER TAPS.**

(a) The Director or a party authorized by the Director will furnish and install storm water system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Director. The applicant shall pay the full cost of the tap installation.

(b) The Director may deny a tap application when the requested tap is proposed to an inadequate public facility.

(Ord. 626. Passed 3-17-08.)

63 Stormwater Management and Surface Water Discharge Control 927.19

#### **927.18 ENFORCEMENT.**

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

(b) The Director, CCEO, and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this article.

(d) The Director and CCEO are authorized to take appropriate legal action to require compliance with this Article.

(e) The Director and CCEO are authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described herein.

(f) If, after reasonable notice, a person fails to comply with this Article, the Director and CCEO may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Director and CCEO, for full payment of the invoiced amount.

(g) In addition to any other remedy, the Director and CCEO, after thirty (30) calendar days written notice and five (5) calendar days notice posted on the affected property, is authorized to disconnect water service if it is determined the sanitary sewer is connected to a separate storm water sewer of any property in violation of this Article. The notice shall state that persons affected may within five (5) calendar days provide the Director and CCEO with any information or reasons as to why services should not be disconnected.

(h) The Director and CCEP are authorized to take all steps necessary to immediately halt any discharge of pollutants that reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(i) Persons aggrieved by any determination of the Director and CCEO in enforcing this Article may appeal that determination to the Sanitary Board or a court of proper jurisdiction. Prosecution shall be stayed pending such an appeal.

(Ord. 626. Passed 3-17-08.)

#### **927.19 STORMWATER MANAGEMENT AND COMPREHENSIVE DRAINAGE PLANS.**

(a) Within twelve (12) months of the effective date of this Article, the Director and CCEO shall propose and there shall be enacted by ordinance regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects. These regulations shall be written to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality. Until such time that the Plan is approved, the City will adopt all applicable State and Federal codes for erosion and sediment control. At a minimum, these regulations shall address:

(1) Prevention of any direct discharge of untreated storm water, either on or off-site.

(2) Prevention of increased post-development discharge rates.

(3) Removal of a designated amount, determined by the percentage of impervious parcel area, of annual total suspended solids generated from development or redevelopment runoff prior to any off-site discharge.

(4) Description and implementation of best management practices, and the continuation of those BMPs for appropriate periods of time.

(5) Protection of ground water from instance of polluted runoff infiltration.

(Ord. 626. Passed 3-17-08.)

#### **927.20 DRAINAGE SYSTEM STANDARDS.**

Drainage systems shall comply with the standards established by ordinance.

(Ord. 626. Passed 3-17-08.)

#### **927.21 PLAN SUBMISSION AND REVIEW PROCESS.**

(a) Within eighteen (18) months of the effective date of this Article, and no sooner than six (6) months following the enactment of regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects, stormwater management plans and comprehensive drainage plans for any new construction or reconstruction within the City watershed shall be



submitted to the Director and CCEO. The Director and CCEO shall review the plans for compliance with the applicable rules and standards. Plans developed to meet Federal or State requirements may be submitted, and will be approved if they conform to the requirements of this article.

(b) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. Following the effective date of this section, no building permit shall be issued without an approved stormwater management plan if required under this article.

(Ord. 626. Passed 3-17-08.)

#### **927.22 MAINTENANCE OF STORMWATER FACILITIES.**

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable Federal, State and Local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Director and CCEO upon request.

(d) The Director may perform corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Director or CCEO.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this article and guidance of the Director.

(Ord. 626. Passed 3-17-08.)

#### **927.23 INSPECTION.**

(a) Stormwater systems within the City watershed shall be inspected by the Director and CCEO during and after construction to assure consistency with the approved storm water management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Director and CCEO to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The Owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Director or CCEO has reasonable cause to believe that there exists in any building or upon any premises any condition, that may constitute a violation of the provisions of this Article, the Director or CCEO may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this Article; provided that:

(1) If such building or premises is occupied, he or she shall first present proper credentials and request entry; and

(2) If such building or premises is unoccupied, he or she shall first make a reasonable effort to relocate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Director and CCEO is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based on such reasonable selection processes as may be deemed necessary to carry out the objectives of this Article, including but not limited to, random sampling and/or sampling in areas with evidence of storm water pollution, illicit discharges, or similar factors.

(Ord. 626. Passed 3-17-08.)

#### **927.24 SAMPLING.**

With the consent of the owner or occupant or with Court order, the Director or CCEO may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Director or CCEO may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

(Ord. 626. Passed 3-17-08)

#### **927.25 TESTING AND MONITORING.**

(a) Whenever the Director or CCEO determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Director or CCEO may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Director or CCEO may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports shall bear a reasonable relationship to the need for monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the Director or CCEO of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Director or CCEO to review the Order's requirements and revise the Order as the Director or CCEO may deem necessary. Within ten (10) days of such meeting, the Director or CCEO shall issue a final written order. Final orders issued pursuant to this Section may be appealed to the Sanitary Board by the filing of a written appeal with the Board within ten (10) days of receipt of the final Order. The appeal notice shall set forth the particular Order

requirements or issues being appealed. The Sanitary Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Sanitary Board shall be final, but may be subject to review by a Court of competent Jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the

monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the Director may cause such monitoring and/or analyses to occur. If a violation is found, the Director or CCEO may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Director or CCEO may pursue judicial action to enforce the Order and recover all costs incurred. (Ord. 626. Passed 3-17-08.)

#### **927.26 CONCEALMENT.**

Any person who violates any provision of this article, or who discharges waste or wastewater that causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

(Ord. 626. Passed 3-17-08.)

#### **927.27 VIOLATIONS DEEMED A PUBLIC NUISANCE.**

(a) In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Director or CCEO and may be summarily abated and/or restored by the Director or CCEO and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance.

(b) The cost of such abatement and/or restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

(c) If any violation of this article constitutes a seasonal and recurrent nuisance, the Director or CCEO shall so declare. Thereafter, such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

(d) In any administrative or civil proceeding under this Article in which the City or its agent prevails, the City or its agent may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorney's fees. (Ord. 626. Passed 3-17-08.)

#### **927.28 ADMINISTRATIVE ENFORCEMENT POWERS.**

(a) In addition to the other enforcement powers and remedies established by this article, the Director or CCEO has the authority to utilize the following administrative remedies:

(1) Cease and Desist Orders. When the Director or CCEO finds that a discharge has taken place or is likely to take place in violation of this Article, the Director or CCEO may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:

A. Comply with the requirement;

B. Comply with a time schedule for compliance, and/or

C. Take appropriate remedial or preventive action to prevent the violation from recurring.

(2) Notice to Clean. Whenever the Director or CCEO finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or non-stormwater discharge to the storm drain system, he or she may give notice to the property owner to remove and lawfully dispose of such material in any manner that he or she reasonably may provide.

The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.

(3) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Director or CCEO may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty ( 6) days, a lien shall be placed upon and against the property.

(Ord. 626. Passed 3-17-08.)

#### **927.29 NONEXCLUSIVITY OF REMEDIES.**

Remedies under this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. 626. Passed 3-17-08.)

#### **927.30 APPEAL.**

Any person, firm, or organization notified of non-compliance with this Article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Director or CCEO may appeal such decision in writing to the Sanitary Board within ten (10) days following the effective date of the decision. Upon receipt of such request, the Board shall request a report and recommendation from the Director or CCEO and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the Sanitary Board may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to a Court of competent jurisdiction. (Ord. 626. Passed 3-17-08.)

#### **927.31 DISCLAIMER OF LIABILITY.**

The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this Article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. The Article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Article or any administrative decision lawfully made there under.

( Ord. 626. Passed 3-17-08.)

#### **927.32 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 invalidate the other provisions or application of this article. (Ord. 626. Passed 3-17-08.)

#### **927.33 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with this permit may be required in a form acceptable to the City prior to allowing discharges to the storm water system. (Ord. 626. Passed 3-17-08.)

#### **927.34 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 any information of any known or suspected release of materials, which are or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the State of West Virginia, said person shall take all necessary steps to ensure the

discovery, containment, and cleanup of release. In the case of a release of hazardous material, such person shall immediately notify emergency response agencies of the spill. (Ord. 626. Passed 3-17-08.)

**927.35 ADOPTION OF ARTICLE.**

This article shall be in full force and effect ten (10) days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this article are hereby repealed. (Ord. 626. Passed 3-17-08.)