

ARTICLE V. STORMWATER MANAGEMENT

Sec. 14-150. Purposes.

- (a) To establish and implement a program which will protect and enhance the quality of surface waters by controlling the amount of new and existing stormwater runoff within the unincorporated areas of Durham County.
- (b) To improve the water quality of the surface waters by identifying and eliminating illegal discharges to the basin through stormwater collection systems.
- (c) To maintain and protect the riparian areas.

(Ord. of 2-26-01, § 1)

Sec. 14-151. Definitions.

[Unless the context requires otherwise, the following words as used in this article have the indicated meanings:]

Act means G.S. ch. 143, pt. 1, art. 21, as they concern stormwater management and the implementing rules for same in the North Carolina Administrative Code.

Approved Accounting Tool means the accounting tool for nutrient loading approved by the EMC for the relevant geography and development type under review.

Built-Up Area means that portion of a development that is covered by impervious, or partially impervious, cover, including buildings, pavement, gravel areas, recreational facilities, etc. such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slated deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material. The project site or area must exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, state or local stormwater regulation.

Developer means:

- (1) The person who has, or holds himself out as having, financial or operational control over the land-disturbing activity;
- (2) The landowner or person in possession or control of the land when he directly or indirectly allowed the land-disturbing activity, has benefitted from it, or has failed to comply with any provision of this article or the act;
- (3) The person listed on the stormwater permit as having financial or operational control for a development; and/or
- (4) The person owning property containing permitted stormwater control measures.

Development means any human-caused change to improved or unimproved real estate that requires a permit or approval from any agency of the City or County of Durham, including, but not limited to, constructing or changing buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations and storage of equipment or materials.

Discharge means the addition of any man-induced waste effluent, either directly or indirectly, to state surface waters.

Existing Development means development not otherwise exempted by this ordinance that meets one of the following criteria:

- (1) It either is built or has established a statutory or common-law vested right as of effective date of this ordinance: or
- (2) It occurs after the effective date of this ordinance, but does not result in a net increase in built-upon area and does not decrease the infiltration of precipitation into the soil.

Falls Lake Drainage Basin means land which drains only to Falls Lake within the Neuse River Basin, as determined by the Durham Planning Department and as shown on a map which is maintained by the Durham Planning Department.

Inspect means inspection, observation, monitoring, testing, sampling, surveying, and otherwise measuring compliance with the provisions of this ordinance, the Act, and implementing rules.

Large common plan of development or sale means any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Neuse River Basin means land which drains to the Neuse River, as determined by the Durham Planning Department and as shown on a map which is maintained by the Durham Planning Department.

One-year 24-hour storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, once a year, and of a duration which will produce the maximum peak runoff flow from the watershed of interest under average antecedent wetness conditions. Acceptable methodologies for computing these flow rates include:

- (1) The rational method, which may be used for drainage areas of 200 acres or less;
- (2) The peak discharge method as described in the USDA Soil Conservation Service's Technical Release Number 55, which may be used for drainage areas of 2,000 acres or less; and
- (3) The Putnam Method, which may be used for drainage areas greater than 2,000 acres.

Outside Neuse River Basin means land which does not drain to either the Falls Lake Drainage Basin or to the Neuse River Basin, as determined by the Durham Planning Department and as shown on a map which is maintained by the Durham Planning Department.

Redevelopment means any development on previously-developed land. Redevelopment of structures or improvements that (i) existed prior to December 2006 and (ii) would not result in an increase in built-upon area and (iii) provides stormwater control at least equal to the previous development is not required to meet the nutrient loading targets of this ordinance.

Stormwater means the flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

Stormwater collection system means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A N.C.A.C. 2H.1003(c)(1).

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-152. Enforcement and administration.

- (a) The County Engineer, or designee, is hereby authorized to enforce and administer the provisions of this article, and associated ordinances of the County of Durham concerning stormwater management within the unincorporated areas of the County unless a contrary intention is expressed in such other ordinances.
- (b) The County Engineer, or designee shall be responsible for complying with the mandates of Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21, as they detail standards for local stormwater programs, including annual reporting requirements.
- (c) Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.
- (d) All fees for permits and plans shall be established by the board of county commissioners.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-153. Design and performance standards.

Durham County has been included in the Falls Lake Nutrient Management Strategy, Neuse River Sensitive Waters Management Strategy, and the Jordan Lake Nutrient Management Strategy. Accordingly, all developments and redevelopment to which this ordinance applies shall comply with the standards of this section and of the official North Carolina Division of Water Quality Best Management Practice Manuals. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans:

- (a) The following requirements shall apply to developments within the Neuse River Basin and within Falls Lake Drainage Basin (Subject to the Falls Lake Nutrient Strategy):
 - (1) Developments shall plan for, and implement, stormwater management controls which will limit the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent Best Management Practice Manual approved by the North Carolina Department of Environment and Natural Resources/Division of Water Quality. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event.

(2) Developments shall plan for and implement stormwater management controls which will limit the unit-area mass nitrogen load of runoff to 2.2 pounds/acre/year and limit the unit-area mass phosphorus load of runoff to 0.33 pounds/acre.year.

(3) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the most recent Nutrient Accounting Tool approved by the North Carolina Environmental Management Commission.

(4) Notwithstanding 15A NCAC 2B.104(q), redevelopment subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting a loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the existing development : 40 percent and 77 percent reduction for nitrogen and phosphorous, respectively.

(5) Developers who desire to pursue offsite reduction measures for developments subject to this ordinance shall attain nitrogen and phosphorus loading rate reductions on-site that meet the following criteria prior to using an offset measure:

(a) 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing one half acre but less than one acre.

(b) 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing more than one acre.

(c) 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing 12,000 square feet but less than one acre.

(d) 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing more than one acre.

(e) 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for proposed redevelopment activities in a designated downtown area that would replace or expand structures or improvements that existed as of December 2006.

A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may propose other offset measures to Durham County, including providing his or her own offsite or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15 A NAC 02B.0282 and 15A NCAC 02B. 0240.

(6) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A N.C.A.C 2B.02333, no

developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S. G.S. 7 ½ minute quadrangle topographic map or the U.S.D.A Soil Survey Of Durham County, North Carolina, unless the development can demonstrate to the stormwater administrator's satisfaction that the North Carolina Department of Environment and Natural Resources/Division of Water Quality has approved the development.

(b) The following requirements shall apply to developments within the Neuse River Basin and outside Falls Lake Drainage Basin (Subject to Neuse River Nutrient Sensitive Waters Management Strategy):

(1) Developments shall plan for and implement stormwater management controls which will limit the nitrogen load of runoff to 3.6 pounds/acre/year. Developers who have obtained an offset by participation in the North Carolina Wetland Restoration Fund established by the North Carolina Department of Environment and Natural Resources, shall plan for and implement management controls which will limit the nitrogen load of runoff from the site to six pounds /acre/year for single-family, detached and duplex residential development and ten pounds per acre year for other development. Nitrogen export calculations shall be made using a formula approved by the County Engineer, or designee.

(2) Developments shall plan for, and implement stormwater management controls which will ensure that there is no net increase in peak flow leaving the site from the predevelopment conditions for the one-year 24- hour storm, of more than ten percent. If the development results in an increase of greater than ten percent, the developer will be responsible for installing measures which will result in no net increase. The same methodology must be used for calculating both the pre- and post-development flow rates.

(3) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A N.C.A.C 2B 0233, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 1/2-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the County Engineer, or designee's satisfaction that the North Carolina Department of Environment and Natural Resources/Division of Water Quality has approved the development.

(c) The following requirements shall apply to developments outside the Neuse River Basin:

(1) Developments shall plan for and implement stormwater management controls which shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent Best Management Practice Manual approved by the North Carolina Department of Environment and Natural Resources/Division of Water Quality. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event.

(2) Developments shall plan for, and implement, stormwater management controls shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS)

(3) Developments shall plan for, and implement, stormwater management controls which will limit the unit-area mass nitrogen load of runoff to 2.2 pounds/acre/year and limit the unit-area mass phosphorus load of runoff to 0.82 pounds/acre/year.

(4) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the most recent Nutrient Accounting Tool approved by the North Carolina Environmental Management Commission.

(5) Notwithstanding 15A NCAC 2B.104 (q), redevelopment subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: 35 percent and 5 percent reduction for nitrogen and phosphorus, respectively.

(6) Plans for developments shall protect and maintain existing riparian areas. No developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 1/2 –minute quadrangle topographic map or the U.S.D.A. Soil Survey of the Durham County, North Carolina.

(7) Notwithstanding the foregoing, developments may be approved within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S 7 1/2 –minute quadrangle topographic map or the version U.S.D.A Soil Survey of Durham County, North Carolina provided:

(a) For streams, a stream delineation is performed by a person selected by the county engineer from an approved list, which is to be compiled by the county engineer, to do stream delineations and presented to the county engineer which, to the county engineer's satisfaction, shows that the stream shown on the most recent version of either the U.S.G.S. 7 1/2 -minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina does not exist. Any person requesting such a stream delineation to be performed as provided in this subsection shall make application to the county engineer for the stream delineation to be done and shall pay a fee to cover the cost of said delineation in an amount as determined by the board of commissioners.

(b) For ponds and lakes, that the ponds or lakes are manmade and are located outside natural drainage ways.

(8) Developers who desire to pursue offsite offset reduction measures for developments subject to this ordinance shall attain a maximum nitrogen loading rate on-site of six pounds per acre per year for single-family, detached and duplex residential development and ten pounds per acre year for other development, including multi-family residential, commercial, and industrial and shall meet any requirements for engineered stormwater controls otherwise imposed by this ordinance. A developer subject to this ordinance may achieve the additional

reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may propose other offset measures to Durham County, including providing his or her own offsite or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B.0273 (2) through 4) and 15A NCAC 02B.0240.

(9) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A N.C.A.C. 2B.0267/.0268/.0269, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½ -minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the County Engineer, or designee's satisfaction that the North Carolina Department of Environment and Natural Resources/Division of Water Quality has approved the development.

(Ord. of 2-26-01, § 1; Ord. of 4-12-04, § 1; Ord. of 6-11-12, § 1)

Sec. 14-154. Proposed development review.

(a) All proposed developments within the unincorporated of Durham County shall be subject to this ordinance and shall be reviewed by the County Engineer, or designee, where the development:

(1) For development/redevelopment located within the Falls Lake Drainage Basin for conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21:

(a) Disturbs greater than one-half acre of land in order to establish, expand, or modify a single-family, detached and duplex residential development or a recreational facility;

(b) Disturbs greater than 12,000 square feet of land in order to establish, expand, or modify a multifamily residential development or a commercial, industrial, or institutional facility.

(2) For development/redevelopment located outside of the Falls Lake Drainage Basin for conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art.21:

(a) Disturbs greater than one acre of land in order to establish, expand, or modify a single-family, detached and duplex residential development or a recreational facility;

(b) Disturbs greater than one-half acre of land in order to establish, expand, or modify a multifamily residential development or a commercial, industrial, or institutional facility.

(3) The development/redevelopment is not part of a larger common plan of development or sale; or

(4) Includes a stormwater collection system.

(b) Proposed developments consisting solely of agriculture, mining, or forestry activities shall not be subject to review.

(c) No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development or redevelopment for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-155. Permit requirements.

(a) No person shall undertake any development subject to this article without first obtaining a permit therefore from the County Engineer, or designee. Permits must be maintained for the life of the development and shall be reviewed and renewed every ten years from the date the initial permit was issued.

(b) A stormwater permit may be obtained upon submitting the following:

(1) Stormwater Permit Application in the form of a Durham County Stormwater Financially Responsibility/ Obligation form,

(2) Permit application fee as approved buy the Durham County Board of Commissioners,

(3) Zoning compliance check off issued by the Durham County City-Planning Department,

(4) Approved development/stormwater control plan plans.

(5) If the proposed development is affecting riparian buffer areas, as detailed in 15A N.C.A.C. 2B.0233 and 15A N.C.A.C. 2B.0267 shall also be accompanied by proof that it has been approved by the Division of Water Quality of the North Carolina Department of the Environment and Natural Resources for areas within the Neuse Basin or as prescribed by Section 14-153.c.7.a for those areas outside of the Neuse River Basin,

(6) Improvement security,

(7) An Operations and Maintenance Agreement and Manual.

(8) As -built plans and final approval from the County Engineer, or designee at project construction completion.

(c) The applicant shall submit three copies of the permit application, including the control plan, to the County Engineer, or designee, at least 30 days prior to commencement of the proposed development. The County Engineer, or designee, shall review permit applications for developments and, within 30 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. If the permit application is disapproved the reasons for this action will be stated with particularity in writing.

(d) No permit shall be issued until such time as the County Engineer, or designee is assured that the proposed development will be carried out in accordance with this article and the approved stormwater control plan.

(e) Improvement security. The County Engineer, or designee, shall require security to assure performance of the continuing conditions of the permit. The applicant shall be required to file an improvement security in the form of a performance bond, executed by one or more surety companies legally authorized to do business in the State of North Carolina and approved by the county attorney. The amount shall be deemed sufficient by the County Engineer, or designee, to cover all costs of constructing and maintaining the stormwater control measures required by the permit for conformity with the standards specified in this article. A performance bond(s) shall be maintained by the applicant to provide for continuous improvement security for the life of the development. At the time of renewal of the permit pursuant to subsection 14-155(a), the amount of the performance bond shall be recalculated and revised to reflect any increase in the costs of construction or maintenance and shall be in the amount specified by the County Engineer, or designee. No improvement security shall be required from an applicant which is a federal, state or county governmental entity, or is a school board.

(Ord. of 2-26-01, § 1; Ord. of 2-10-03, § 1; Ord. of 4-10-06, § 1; Ord. of 6-11-12, § 1)

Sec. 14-156. Plan submission procedures.

(a) A stormwater measures control plan shall be prepared for all land-disturbing activities subject to this article, as defined in section 14-154.

(b) The County Engineer, or designee will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a stormwater control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan shall specifically state in writing the reasons for disapproval. The County Engineer, or designee, shall approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved.

(c) Plans for which no permit has been issued shall expire one year from the approval date.

(d) One copy of the approved plan shall be kept on file at the job site.

(e) After approving the plan, if the County Engineer, or designee, upon inspection of the job site, determines that the measures will not be effective, the stormwater administrator, or their designee, may require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue only under conditions outlined by the County Engineer, or designee.

(f) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the County Engineer, or designee, on request.

(g) Stormwater control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, ~~or~~ registered architect, or registered surveyor.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-157. Maintenance and obstruction of stormwater collection systems.

(a) During the development of a site, the developer shall install and maintain all temporary and permanent stormwater control measures as required by the approved plan or any provision of this article, the Act or any order adopted pursuant to this article or the Act. After site development, the developer shall install and/or maintain all necessary permanent stormwater control measures specified in the approved plan, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency. Conveyance of the property shall not terminate the original developer's obligations under this article until such time as a replacement permit is approved by the County Engineer, or designee. The original developer shall include in the deed conveying the property notice of the existence of the stormwater control measures and the purchaser's obligations to maintain and inspect them and to obtain a permit and otherwise comply with the terms of this article.

(b) The developer shall have the stormwater control measures inspected, by a registered professional engineer, a registered land surveyor, or a registered landscape architect, upon completion of their construction, and shall have additional inspections conducted to certify their maintenance and continued function per a schedule established by the County Engineer, or designee, but at least annually. The developer shall transmit to the County Engineer, or designee a copy of all inspection reports within three working days of their being conducted. The inspection report shall contain all of the following :

- (1) The name and address of the land owner;
- (2) The recorded book and page number of the lot of each engineered stormwater control;
- (3) A statement that an inspection was made of all engineered stormwater controls;
- (4) The date the inspection was made;
- (5) A statement that all inspected engineered stormwater controls are performed properly and are in compliance with the terms and conditions of the approval maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the registered professional engineer, registered landscape architect, registered architect, or registered surveyor.

(c) Prior to the conveyance or transfer of any lot or building site to be served by a engineered stormwater control pursuant to this ordinance, and prior to issuance of any permit for development requiring a engineered stormwater control pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the engineered stormwater control, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater control. In addition, it shall grant to Durham County a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case

shall the right of entry, of itself, confer an obligation on Durham County to assume responsibility for the engineered stormwater control.

(d) It is unlawful for any person to place any obstruction in any stormwater collection system so as to obstruct or impede the free flow of surface water, unless same has been authorized by the County Engineer, or designee.

(e) If the County Engineer, or designee, finds any stormwater collection system constructed, arranged, clogged, or in such disrepair as to impede, obstruct, or hinder the free flow of surface water in a manner which conflicts with acceptable engineering practices, or if a planned and permitted stormwater control measure has not been installed per an approved plan, he shall give written notice to the developer of the property. This notice shall specify the problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

f) Inspections by Durham County may be conducted or established on any reasonable basis, including but not limited to routine inspections ; random inspections; inspections based upon complaints or other notice of possible violations; 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 Best Management Practices (BMPs); and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the County Engineer, or designee shall proceed to obtain an administrative search warrant pursuant to G.S. 12-27.2 or its successor. No person shall obstruct, hamper or interfere with the County Engineer, or designee while carrying out his or her official duties.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-158. Illegal discharges.

(a) It is unlawful for any person to empty or deposit in any stormwater collection system, directly or indirectly, any substance, liquid or solid, which by reason of its nature:

- (1) Is, or may become, a public health hazard endangering human or animal health;
- (2) Is a nuisance, including substances which are unsightly or malodorous, or may become so;
- (3) Interferes, or may interfere, with the free and rapid flow of surface water;
- (4) Is flammable or explosive;
- (5) Is toxic to plant or animal life;
- (6) Is corrosive, or has properties which may damage or render unsightly the stormwater collection system; or
- (7) Affects adversely the State of North Carolina classification of the stream into which the stormwater collection system discharges.

(b) Any developer, or other person, who makes, directly, or indirectly, an illegal discharge into a stormwater collection system shall be subject to both civil and criminal penalties as provided in section 14-160 of this article.

(c) The developer is responsible for taking immediate action to report and remove an illegal discharge occurring on its property, regardless of the source of same. Upon receiving any report of an illegal discharge the County Engineer, or designee shall issue notice to the developer. This notice shall specify the problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-159. Inspections and investigations.

(a) Agents, officials or other qualified persons authorized by the County Engineer, or designee may periodically inspect public and private property in order to ensure compliance with the Act, this ordinance or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required have been implemented and are effective in achieving the goals of this ordinance.

(b) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting, or attempting to inspect, a development or installed stormwater collection system under this article.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-160. Penalties.

(a) *Civil penalties.*

(1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article or who initiates or continues a development for which a stormwater control plan and/or permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or permit shall be subject to a civil penalty. The maximum civil penalty for a violation is \$5,000.00 per day.

(2) No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 14-157 of this article. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date the violation was detected. However, no time period for compliance need be given for failure to submit a stormwater control plan for approval, for failure to obtain a stormwater permit, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for an illegal discharge. Each day of continuing violation shall constitute a separate violation.

(3) The county engineer, upon consideration of the recommendation of the stormwater administrator, shall assess the civil penalty authorized by this section. The county engineer shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the following factors shall be considered: the degree and extent of harm caused by the violation, the cost, if any, of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was

committed willfully, and the prior record of the violator in complying or failing to comply with the Act, promulgated rules and this article. The notice of assessment shall be served by certified mail, return receipt requested, or personal service by the sheriff, county engineer, stormwater administrator, or their designee, and shall direct the violator to either pay the assessment or contest the assessment, within 15 days after receipt of the notice of assessment, by requesting a hearing before the board of county commissioners.

(4) If payment is not received within 30 days after the assessment is due, the matter will be referred to the county attorney's office for initiation of a civil action to recover the amount of the civil penalty. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative review of the assessment.

(b) *Criminal penalties.* Violation of this article is punishable as a misdemeanor as provided in section 1-6 of this Code, above.

(Ord. of 2-26-01, § 1)

Sec. 14-161. Appeals.

(a) *Plan and permit denials.* The disapproval or modification of any proposed stormwater control plan or the refusal to issue a stormwater permit by the County Engineer, or designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing before the county engineer if such person submits written demand to the county engineer for a hearing within 15 days after receipt of written notice of disapproval or modifications. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. Such hearing will be held within 21 days after the date of the appeal or request for a hearing, or at such later time as the parties mutually agree.

(b) *Civil penalties.* Any person so assessed shall have a right of appeal to the board of county commissioners upon serving written notice of appeal on the clerk to the board within 15 days after the assessed person receives notice of the assessment. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. The board of county commissioners shall hold a quasi-judicial hearing and may affirm, increase, reduce or remit the penalty initially assessed by the county engineer. Appeals from the final decision of the board of county commissioners shall be to the appropriate division of the general court of justice.

(Ord. of 2-26-01, § 1; Ord. of 6-11-12, § 1)

Sec. 14-162. Injunctive relief.

(a) Whenever there is reasonable cause to believe that any person is violating or threatening to violate this ordinance or any rule or order adopted or issued pursuant to the Act, this ordinance, or any term, condition or provision of an approved stormwater control plan, the county attorney may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the local government for injunctive relief as provided in section 1-6 of this Code, above, to restrain the violation or threatened violation, or to obtain mandatory relief, in superior court.

(b) The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this article, or the Act.

(Ord. of 2-26-01, § 1)

Sec. 14-163. Recordation Requirements.

A deed restriction or restrictive covenants shall be recorded which require compliance with the approved stormwater control plan and stormwater permit, as described in Article V. The deed restriction or restrictive covenants shall provide for enforcement by the County of Durham.

(Ord. of 5-14-07, § 1)