

ARTICLE V. STORMWATER MANAGEMENT

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Sec. 14-150. Definitions.

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

Act means N.C.G.S. §143, Article 21, pt. 1, 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 North Carolina Department of Environmental Quality Environmental Management Commission (EMC) for the relevant geography and development type under review.

Built-Upon Area means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour)."

Developer means:

- (1) The person who has, or holds himself out as having, financial or operational control and/or responsibility 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 land disturbing activity that increases the amount of built upon area or that otherwise decreases the infiltration of precipitation into the subsoil within the unincorporated areas of Durham County.

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 Stormwater Regulatory 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 Falls Lake Stormwater Regulatory Basin map which is maintained by the Durham Planning Department.

Impervious surfaces means a hard area that does not allow water to infiltrate into the ground.

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

Jordan Lake Stormwater Regulatory Basin means land which drains only to Jordan Lake within the Cape Fear River Basin, as determined by the Durham Planning Department and as shown on Jordan Lake Stormwater Regulatory map which is maintained by the Durham Planning Department.

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 **for conveyance calculations only**; or
- (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

Project Density shall be calculated as the total built-upon area divided by the total project area;

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.

Runoff Treatment means that the volume of stormwater runoff generated from all of the built upon area of a project at build-out during a storm of the required storm depth is treated in one or more primary stormwater control measures or a combination of primary and secondary SCMs that provides equal or better treatment.

Runoff Volume Match means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development, except in areas subject to SA waters requirements per Rule 15A NCAC 02H .1019 where runoff volume match means that the annual runoff volume after development shall not be more than five percent higher than the annual runoff volume before development.

Primary SCM means a wet pond, stormwater wetland, infiltration system, sand filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, construction and maintained in accordance with the North Carolina Stormwater Minimum Design Criteria.

Secondary SCM means an SCM that does not achieve the annual reduction of Total Suspended Solids (TSS) of a “Primary SCM” but may be used in a treatment train with a primary SCM or other Secondary SCMs to provide pre-treatment, hydraulic benefits, or a portion of the required TSS removal.

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. 14-151. Purpose

The purpose of this article is to further the health, safety and general welfare and convenience of the public through:

- (a) Establishing and implementing a program which will protect and enhance the quality of surface waters by controlling the amount of new and existing stormwater runoff volume, and addressing nutrient reductions within the unincorporated areas of Durham County.
- (b) Improving the water quality of the surface waters by identifying and eliminating illegal discharges to the basin through stormwater collection systems.
- (c) Maintaining and protecting the riparian areas.

Sec. 14-152. General Provisions

- (a) All developments and redevelopment to which this ordinance applies shall comply with the standards of this section and of the current official North Carolina Division of Environmental Quality New Stormwater Design Manual.
- (b) 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.

Sec. 14-153. 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 N.C.G.S. §143, Article 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.

Sec. 14-154. Exemptions

- (a) All proposed developments within the unincorporated area of Durham County shall be subject to this ordinance and shall be reviewed by the County Engineer, or designee, with the exception of where the development:
- (1) Meets the following criteria:
 - a. Less than 12,000 square feet of disturbance; and,
 - b. Less than 500 square feet of new impervious surface area; and,
 - c. No new structural stormwater conveyance.
 - (2) Consist solely of agriculture, mining, or forestry activities as defined by North Carolina General Statutes.

Sec. 14-155. Design and performance standards.

- (a) Durham County has been included in the Falls Lake Nutrient Management Strategy and Neuse River Sensitive Waters Management Strategy. Accordingly, all developments and redevelopment to which this ordinance applies shall comply with the standards of this section and of the current official North Carolina Division of Environmental Quality New Stormwater Design Manual. New development and redevelopment within the Durham County unincorporated limits must comply with the following:

1. Runoff treatment or runoff volume match according to density calculations per section 14-155(a) and exemptions,
2. Nutrient loading reduction per section 14-155(b),
3. Riparian buffer areas must be protected and maintained per section 14-155(e),
4. Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall.
5. Total Suspended Solids (TSS) requirements per section 14-153(f),

- (b) Runoff Treatment and Volume Match

For purposes of applying the runoff treatment and volume match requirements for the one-year storm, the land cover (including type and location) that existed as of March 9, 2001 for land in the Falls Basin and Lower Neuse Basin, and as of March 17, 2009 for land in the Jordan Basin shall be considered the "pre-development conditions";

1. **Applicability** – Runoff treatment and volume match requirements are applicable to all developments that meet the following condition(s):
 - a. Increase in impervious area on any lot subject to limitations on impervious area in an approved plat or plan for reasons such as watershed protection or stormwater control measure requirements;
 - b. Increase of more than 500 square feet in impervious area on a detached and duplex residential development, recreational, commercial, industrial or institutional;
 - c. Increase of more than 2,000 square feet of impervious area on a single-family, detached and duplex residential development or a recreational facility;

- d. Inclusive of an existing or proposed SCM (Stormwater Control Measure) requiring:
 - i.Changes to the drainage area of an existing SCM; or
 - ii. Change to the size, grades or outlet structure of an existing SCM

2. Requirements

- a. Low density projects shall not exceed the low density development thresholds set forth in the stormwater programs to which they are subject pursuant to Rules 15A NCAC 02H.1017, .1019, and .1021.
- b. High density projects SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" per 15A NCAC 02H .1003.
- c. The same methodology must be used for calculating both the pre- and post-development flow rates. Approved calculation methodologies include:
 - i. Rational Method
 - ii. Peak Discharge Method as described in the USDA Soil Conservation Service's Technical Release Number 55 (TR-55)
 - iii. Alternative peak flow calculation methods must be approved by the County at the time of site plan submittal.
- d. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

(c) Nutrient Loading

1. Applicability-

- a. Properties located within the Falls Lake Drainage Basin, are exempt from nutrient requirements when;
 - i. Disturbs less 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; or
 - ii. Disturbs less 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.
- b. Nutrient requirements apply to properties located within the Neuse River Basin but outside of the Falls Lake Drainage Basin, are exempt from nutrient requirements when;
 - i. Projects disturbing less than:
 - 1. One acre for single family and duplex residential property and recreational facilities; or
 - 2. One-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception:
 - b. Projects below one half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Item (5) of this Rule;
 - 1. Development of an individual single-family or duplex residential lot that:
 - a. Is not part of a larger common plan of development or sale as defined in 15A NCAC 02H .1002; and
 - b. Does not result in greater than five percent built upon area on the lot;

2. Existing development as defined in 15A NCAC 02H .1002;
3. Redevelopment as defined in N.C.G.S. 143-214.7(a1)(2); and

2. Requirements

- a. Nitrogen and phosphorous loads contributed by proposed new development shall not exceed the following unit-area mass loading rates:
 - i. Falls Lake Watershed
 - a. Nitrogen – 2.2 lb/ac/yr
 - b. Phosphorous – 0.33 lb/ac/yr
 - ii. Neuse River Basin (Outside of the Falls Lake Watershed)
 1. Nitrogen – 3.6 lb/ac/yr or runoff volume match
- b. 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.

(d) Total Suspended Solids

1. Developments within the Cape Fear River basin shall plan for, and implement, Stormwater management controls designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).

(e) Offset Payments

1. Developers subject to this ordinance may achieve additional reductions in nitrogen and phosphorous loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program.
2. Falls Lake Watershed
 - a. 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:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.

- vi. Notwithstanding 15A NCAC 2B.0282, 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.
3. Neuse River Basin (Outside the Falls Lake Watershed)
 - a. 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;
 - i. Six pounds per acre per year for single-family, detached and duplex residential development.
 - ii. Ten pounds per acre per year for other development including commercial, industrial, and multi-family residential.

(f) Riparian Buffers

1. Neuse River Basin
 - b. Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 02B.0610-.0612, .0714, 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.
2. Cape Fear River Basin
 - c. 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, 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.
 - d. 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:

- i. For streams, a stream delineation is performed by a member of Durham County staff to determine the presence and location of waters of the County if requested by applicant. Staff will have completed the North Carolina Division of Water Resources Surface Water Identification Training and Certification Course. The determination between a perennial and intermittent stream is based on a combination of hydrological, physical and biological characteristics of the stream. Stream determinations are made using a standardized methodology developed by the North Carolina Department of Environmental Quality. The current version is 4.11 effective September 1, 2010. Any person requesting a stream delineation to be performed shall fill out an application and pay a fee to cover the cost of said delineation in an amount as determined by the board of commissioners. Aerials of the stream shown on the most recent version of the U.S.G.S. 7 ½ - minute quadrangle topographic map and the U.S.D.A Soil Survey of Durham County shall be submitted with the application.
- b. For ponds and lakes, that the ponds or lakes are manmade and are located outside natural drainage ways.

Sec. 14-156. Plan submission procedures.

- (a) A stormwater control plan shall be prepared for all land-disturbing activities subject to this article, as defined in section 14-152.
- (b) The County Engineer, or designee, will review each complete plan submittal and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved or if written comments are provided. The County Engineer, or designee will, in writing, notify the person submitting the plan of the need for an extension to respond. The County Engineer, or designee, shall approve or provide written comments for a revised plan within 15 days of receipt.
- (c) Plans for which no Construction Stormwater Permit has been issued shall expire one year from the approval date.
- (d) A complete stormwater construction plan submittal set shall include:
 - (1) Electronic submittal via Durham County Stormwater and Erosion Control Electronic Plan Submittal Portal of all documents, including but not limited to;
 - (2) Signed and sealed engineering drawings containing all notes, plans, and details pertinent to stormwater construction,
 - (3) Stormwater Impact Analysis, containing all maps, assumptions, methodologies, 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,
 - (4) "Stormwater Construction Drawing Submittal Checklist",
 - (5) Signed and sealed construction cost estimate for the construction of each SCM associated with the development, and maintenance for ten (10) years,
 - (6) Plan review fees per the Durham County Stormwater and Erosion Control Fee Schedule, made payable to "Durham County"
- (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 County Engineer, or designee, may require a revised plan. Pending the preparation of the revised plan, work shall cease immediately or shall continue only under conditions outlined by the County Engineer, or designee.

- (f) Stormwater control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer

Sec. 14-157. Permit requirements.

- (a) No person shall undertake any development subject to this article without first obtaining a Construction Stormwater Permit from the County Engineer, or designee.
- (b) A Construction Stormwater Permit may be obtained upon submitting the following:
 - (1) Durham County Stormwater Financial Responsibility/Ownership Form with Landowner Consent,
 - (2) Approved Stormwater Construction Drawing Plans and Calculations,
 - (3) If the proposed development is affecting riparian buffer areas, as detailed in 15A N.C.A.C. 2B.0610, .0611, .0612, and .0714, and 15A N.C.A.C. 2B.0267, it 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 14-155(4) for those areas outside of the Neuse River Basin,
 - (4) Construction security.
 - (a) The County Engineer, or designee, shall require security to assure construction of stormwater control measure facilities approved by County Engineer. The applicant shall be required to file a construction security in the form of a performance bond or letter of credit executed by one or more surety companies legally authorized to do business in the State of North Carolina and approved by the county attorney.
 - (b) A security equal to 125% of the cost of the construction of the stormwater device(s) associated with the proposed improvements shall be paid prior to permit issuance.
 - (c) A performance bond(s) shall be maintained by the applicant to provide for continuous improvement security for the life of the development.
 - (d) No construction security shall be required from an applicant which is a federal, state or county governmental entity, or is a school board.
 - (e) The construction security shall be void once Operational Stormwater Permit has been issued.
- (c) An Operational Stormwater Permits shall be obtained upon completion of construction of the project. Operational Stormwater Permits are perpetual permits for the lifetime of the development, and shall be maintained annually through submittal requirements to the County Engineer.
- (d) An Operational Stormwater Permit may be obtained upon submitting the following:
 - (1) Durham County Stormwater Financial Responsibility/Ownership Form with Landowner Consent,
 - (2) As-built plans and certification per Section 14-158,

(3) An Operations and Maintenance Agreement and Manual

- (a) The Operations and Maintenance Agreement and Manual shall contain a narrative describing each installed measure and its design specifications.
- (b) The maintenance manual shall describe which lots are served by each device.
- (c) The maintenance manual shall indicate for each device the frequency of inspections that are needed, the specific components of the device to be inspected, the types of problems that may be observed, and the appropriate remedy for any problems that may occur.

Sec. 14-158. As-Built Plans and Certification.

- (a) An Operational Stormwater Permit must contain as-built plans certified under seal, that the Stormwater measures and devices and their installation are in compliance with this ordinance and the County-approved or modified stormwater control plan. No full certificate of occupancy may be issued by City-County Inspections Department without approved as-built plans. At a minimum, the as-built plans must contain the following information:
 - (1) The name and address of the land owner;
 - (2) Certified survey of stormwater control measure including, but not limited to, at a minimum:
 - (a) Minimum 2 foot contours
 - (b) Spot elevations of bottom of stormwater control device, top of berm, emergency spillway, toe of slope
 - (c) Outlet control structure size, inverts, orifice and rim
 - (d) Associated pipe size, material, inverts
 - (e) Property boundaries; and
 - (f) Maintenance and access easements
 - (3) A statement that all inspected Stormwater control facilities are in compliance with the approved Stormwater control plan, the applicable Operations and Maintenance Manual required and requirements set forth in this ordinance; and
 - (4) The original signature and seal of the engineer, surveyor or landscape architect performing the certification.
 - (5) Owner's security.
 - (a) 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 owner's security in the form of a performance bond or letter of credit executed by one or more surety companies legally authorized to do business in the State of North Carolina and approved by the county attorney.
 - (b) A security equal to 125% of the cost of the construction of the stormwater device(s) associated with the proposed improvements shall be paid prior to operational stormwater permit issuance.
 - (c) A performance bond(s) shall be maintained by the applicant to provide for continuous improvement security for the life of the development.
 - (d) No improvement security shall be required from an applicant which is a federal, state or county governmental entity, or is a school board.

Sec. 14-159. 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. If no such appeal is served upon the clerk to the board within 15 days, the civil penalty assessment becomes final.

Sec. 14-160. 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 financially responsible party 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, no later than the anniversary date of the Operational Stormwater Permit Issuance of each calendar year. 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, including any defects identified, all repairs completed, and dates of repairs; 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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 Stormwater Control Measures (SCMs); taking pictures of the areas; 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 N.C.G.S §15-27.2 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. 14-161. 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. 14-162. 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 14-161 and 14-162 of this article.

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

Sec. 14-163. 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, or when such development was ordered to cease by the County Engineer or designee, 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 14-160 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. Appeals of civil penalty assessments shall be conducted in accordance with Sec. 14-160.

(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. 14-164. 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)