

Village of Menands
MCM 7 Stormwater Program Management
BMP 7- 7 Procedures and Forms Compendium

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NOTE: Throughout this document there are references to Best Management Practices (BMPs) which are described in greater detail in the Coalition Joint Storm Water Management Program Plan (SWMP Plan). The SWMP Plan is posted on the Coalition website (www.stormwateralbanycounty.org).

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II. Administrative Information

- A. Stormwater Management Program Organizational Chart (BMP 7-2 Local MS4/Municipal Mgmt)
- B. Enforcement Measures and Tracking – Enforcement Plan (Anticipated in MS4 Permit GP 0-17-002)
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Chapter 143 Stormwater Mgmt & Erosion & Sediment Control “Construction Activity Local Law”
Chapter 144 Storm Sewers “IDDE Local Law”

III. MCM 3 Illicit Discharge Detection & Elimination Program Procedures (BMP 3-8 IDDE Program Procedures)

Information and Background

- A. Identification of areas contributing to the MS4 with high illicit discharge potential
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IV. MCM 4/5: MS4 Oversight of Construction Activity Permit

- A. SWPPP Review Procedures and Check List (BMP 4-2 and 5-1 SWPPP Review Procedures)

Attachments:

Chapter 140 Site Plan Review

Chapter A172 Site Plan Review Regulations

SW Coalition Oversight of the New York State Department of Environmental Conservation
Construction Activity Permit (GP-0-15-002) – A Guidance Document for MS4s

Construction Activity Permit Forms and Permit GP-0-15-002

- B. Complaint Procedures (BMP 4-4 Complaint Procedures)
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<http://www.cdrpc.org/data/cfs>

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Population

1980	1990	2000	2010	2020	2030	2040	2050
4,012	4,333	3,910	3,990	4,088	4,195	4,240	4,233

Source: 1980, 1990, 2000, & 2010 Census

Source: CDRPC Projections

Age Cohorts

Cohort	1990	2000	2010	2020	2030	2040	2050
Under 5	187	175	196	204	208	199	201
5 to 14	327	414	405	416	424	458	430
15 to 24	521	333	465	421	448	449	467
25 to 34	775	560	622	715	656	667	677
35 to 44	605	593	466	560	658	591	604
45 to 54	479	599	584	463	550	639	553
55 to 64	502	439	565	549	421	520	591
65 to 74	499	376	316	443	398	301	406
75 & Over	438	421	371	317	432	416	304
Total	4,333	3,910	3,990	4,088	4,195	4,240	4,233

Source: U.S. Dept. of Commerce, Bureau of the Census, & CDRPC Projections

2010 Census Gender & Age

	<i>Female</i>	<i>Male</i>	<i>Total</i>
Total	2,088	1,902	3,990
4 & Under	100	96	196
5 to 9 years	96	105	201
10 to 14 years	92	112	204
15 to 19 years	88	105	193
20 to 24 years	133	139	272
25 to 29 years	179	167	346
30 to 39 years	269	240	509
40 to 49 years	266	248	514
50 to 59 years	294	285	579
60 to 64 years	157	132	289
65 to 74 years	173	143	316
75 to 84 years	139	96	235
85 & Over	102	34	136
18 years +	1,743	1,518	3,261
21 years +	1,689	1,450	3,139
62 years +	515	338	853
65 years +	414	273	687

2010 Census Race & Hispanic Origin

White Alone	2,824	70.78%
Black Alone	485	12.16%
Nat. Am. Alone	10	0.25%
Asian Alone	527	13.21%
Other Alone	43	1.08%
Two + Races	101	2.53%

Not Hispanic	3,838	96.19%
Hispanic	152	3.81%
Mexican	26	17.11%
Puerto Rican	67	44.08%
Other Hisp.	59	38.82%

Minority Pop.	1,239	31.05%
= Total Population - Non-Hispanic White Pop.		

2010 Census	Total	41.5
Median Age	Female	43.7
	Male	39.4

Source: U.S. Dept. of Commerce, Bureau of the Census, 2010 Census



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2010 Census Population by Relationship

Total Population	3,990	In Group Quarters	71
In Households	3,919	Institutionalized Population	0
		Noninstitutionalized Population	71

Source: 2010 Census

Household Data

	1990	2000	2010	2020	2030	2040	2050
Households	2,164	1,906	1,888	1,930	1,971	1,989	1,976
Persons/HH	1.97	2.00	2.08	2.08	2.09	2.10	2.11

Source: 1990, 2000, & 2010 Census

Source: CDRPC Projections

2010 Census Housing Units by Tenancy

Total Units	2,047		Vacant	159	7.77%
Occupied	1,888	92.23%	For Rent	81	50.94%
Owner	775	41.05%	For Sale	14	8.81%
Renter	1,113	58.95%	Seasonal	28	17.61%
			Other	36	22.64%
Owner Vacancy Rate	1.77%		Renter Vacancy Rate	6.77%	
			Total Rate	4.78%	

Source: 2010 Census

2010 Census Households by Type

Total Households	1,888	100.00%
Married Couples	723	38.29%
Married Couple with Children	297	15.73%
Married Couple without Children	426	22.56%
Single Female Head of Household	193	10.22%
Single Female with Children	98	5.19%
Single Female without Children	95	5.03%
Single Male Head of Household	50	2.65%
Single Male with Children	17	0.90%
Single Male without Children	33	1.75%
Single Person Living Alone	764	40.47%
Single Person Living Alone: 65 & Over	248	13.14%
Other Non-Family Household (2 or More People)	158	8.37%

Source: 2010 Census

All Percentages computed as a percent of Total Households



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2011-2015 ACS Income Data

	Income	MOE
Per Capita Income	\$35,386	\$4,718
Median Household Income	\$62,683	\$6,567

2011-2015 ACS Households by Income Range

Income Range	Households	MOE	Income Range	Households	MOE
Less than \$10,000	53	82	\$50,000 to \$74,999	447	151
\$10,000 to \$19,999	69	52	\$75,000 to \$99,999	192	84
\$20,000 to \$29,999	170	107	\$100,000 to \$149,999	244	100
\$30,000 to \$39,999	160	80	\$150,000 to \$199,999	66	56
\$40,000 to \$49,999	144	77	\$200,000 & Over	125	65

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

2011-2015 ACS Poverty Status of Persons for Whom Poverty Status Was Determined

Poverty Status of Persons	Total #	MOE	# Below	MOE	% Below	MOE
Total Persons	3,988	133	255	94	6.39%	2.35%
5 & Under	400	91	0	31	0.00%	7.86%
6 to 17	516	96	28	38	5.43%	7.31%
18 to 64	2,673	168	153	44	5.72%	1.62%
65 & Over	399	82	74	44	18.55%	10.24%

Poverty Status of Households	Total #	MOE	# Below	MOE	% Below	MOE
Total Households	1,670	137	110	111	6.59%	6.62%
Married Couples	712	116	46	44	6.46%	6.09%
Married w/ Related Children	272	106	13	26	4.78%	9.42%
Married w/o Related Children	440	96	33	39	7.50%	8.71%
Single Female Head of Household	176	123	0	11	0.00%	6.25%
Female w/ Related Children	154	118	0	19	0.00%	12.37%
Female w/o Related Children	22	37	0	11	0.00%	50.00%
Single Male Head of Household	53	50	0	11	0.00%	20.75%
Male w/ Related Children	42	51	0	19	0.00%	45.36%
Male w/o Related Children	11	21	0	11	0.00%	100.00%
Single Person Living Alone	548	177	63	84	11.50%	14.87%
Other Non-Family Household (2+)	181	249	1	120	0.55%	66.02%

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

Note: The ACS replaces the decennial census long form. CDRPC recommends using the 5-year data, which is more reliable than the 1- or 3-year data. This also allows for better comparability among municipalities. For more information, please see <http://cdrpc.org/ACS.html>

Note: The Margins of Error (MOE) suitable for creating 90% confidence intervals are now published for most of the estimates. Statistically, there will be a 90% probability that the true population parameter (e.g., mean, median, percent, etc.) falls within the interval: ESTIMATE ± MOE.

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2011-2015 ACS Housing Unit Estimate by Structure

	Estimate	MOE
Total Units	1,990	178
Single Family	827	167
Two Family	31	27
Three to Four Family	89	53
Five or More Family	1,043	201
Mobile Homes & Other	0	11

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

2011-2015 Housing Value/Cost — Value of Specified Owner-Occupied Single Family Homes

Value Range	Estimate	MOE	Value Range	Estimate	MOE
Less than \$100,000	10	20	\$200,000 to \$299,999	135	97
\$100,000 to \$149,999	84	63	\$300,000 to \$399,999	130	71
\$150,000 to \$199,999	173	89	\$400,000 or More	75	59

Owner Costs	Estimate	MOE
Median Housing Value for Owner-Occupied Units	\$255,700	\$86,488
% of Owners Spending >30% of Income on Housing Costs	35.22%	19.89%

2011-2015 ACS Rental Value/Cost — Gross Rent

Value Range	Estimate	MOE	Value Range	Estimate	MOE
Less than \$500	0	11	\$1,000 to \$1,499	48	44
\$500 to \$749	449	131	\$1,500 or More	0	19
\$750 to \$999	554	117	No Cash Rent	17	29

Renter Costs	Estimate	MOE
Median Monthly Gross Rent for Renter-Occupied Units	\$1,073	\$11
% of Renters Spending >30% of Income on Housing Costs**	28.16%	10.48%

**Excludes units with "No Cash Rent"

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

2011-2015 ACS Educational Attainment of Persons 25 & Older

Number of Persons with:	Estimate	MOE	% of Total	MOE	% with At Least:
Less than a High School Diploma	129	65	4.73%	2.40%	100.00%
High School Diploma (including GED)	497	250	18.23%	9.17%	95.27%
Some College, No Degree	421	153	15.44%	5.61%	77.04%
Associate's Degree	220	90	8.07%	3.30%	61.61%
Bachelor's Degree	839	192	30.77%	7.04%	53.54%
Graduate or Professional Degree	621	195	22.77%	7.15%	22.77%

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey



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2011-2015 ACS Employment by Industry & by Place of Residence

	Estimate	MOE
Total (Civilian Employed Population 16 & Over)	2,289	202
Agriculture, Forestry, Fishing, Hunting, & Mining	0	16
Construction	50	56
Manufacturing	44	45
Wholesale Trade	22	26
Retail Trade	217	102
Transportation and Warehousing, & Utilities	72	64
Information	98	73
Finance and Insurance, and Real Estate and Rental & Leasing	314	156
Finance and Insurance	257	144
Real Estate and Rental & Leasing	57	53
Professional, Scientific, Management, Administrative, & Waste Mgmt. Services	329	135
Professional, Scientific, and Technical Services	329	135
Educational Services, and Health Care & Social Assistance	598	156
Educational Services	235	110
Health Care & Social Assistance	363	148
Arts, Entertainment, Recreation, Accommodation, & Food Services	150	93
Other Services (except Public Administration)	27	32
Public Administration	368	119

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

2011-2015 ACS Workers by Class

	# Estimate	MOE	% Estimate	MOE
Total (Civilian Employed Population 16 & Over)	2,289	202	100.00%	
Employee of Private Companies			57.49%	10.01%
Self-Employed in Own Incorporated Businesses			1.53%	1.89%
Private Not-for-Profit Wage and Salary Workers			14.29%	6.11%
Local, State, and Federal Government Workers			24.51%	6.35%
Self-Employed in Own Not Incorporated Businesses and Unpaid Family Workers			2.18%	2.00%

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

2011-2015 ACS Workers by Means of Transportation to Work

	Estimate	MOE		Estimate	MOE
Car, Truck, or Van	1,931	196	Bicycle	0	11
Drove Alone	1,794	213	Walked	29	33
Carpooled	137	80	Taxi, Motorcycle, Other	19	32
Public Transportation (excl. taxicab)	173	104	Worked at home	119	61
			Total (16 & Over)	2,271	210

Source: U.S. Dept. of Commerce, Bureau of the Census, 2011-2015 American Community Survey

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Land Use Regulations and Programs

Planning Board	No	Zoning Regulations	Yes
Written Comprehensive Plan	No	Subdivision Regulations	Yes
Site Plan Review	Yes		

Source: 2008 Land Use Planning and Regulations: A Survey of New York State Municipalities

2014 Real Property Tax Rates

Albany County Full Value Tax Rate	\$	3.97
Village of Menands Full Value Tax Rate	\$	4.76
Total Full Value Tax Rate	\$	8.73

*Note: These rates do not include school taxes.
Villages do not include Town Full Value Tax Rates.*

Source: New York State Office of the Comptroller

School Districts

Menands UFSD

Source: CDRPC

FY 2015 Government Revenue & Expenditures in \$1,000s

Revenue	Expenditure †
Property Tax \$ 2,168.8	General Government \$ 674.0
<i>Non-Property Taxes</i>	Public Safety 1,378.3
Sales Tax 1,443.4	Health -
Other Non-Property Tax 86.0	Transportation 890.0
State Aid 152.9	Utilities 1,596.4
Federal Aid -	Community Services 97.4
Other Intergovernmental 73.0	Economic Assistance 46.5
Charges for Services 1,720.8	Employee Benefits 1,227.3
Other Local (fees, etc.) 236.7	Debt Service 196.4
Other Sources 18.8	Education -
Total Revenue \$ 5,881.6	Other Uses 18.8
	Total Expense \$ 6,106.2
	Revenues Less Expenditures \$ (224.6)

† Includes Capital and Equipment Outlays. Individual items may not sum to totals due to rounding errors.
Revenue sources such as debt or fund balance appropriations are not classified as revenues and may account for apparent shortfalls.
Source: New York State Office of the Comptroller

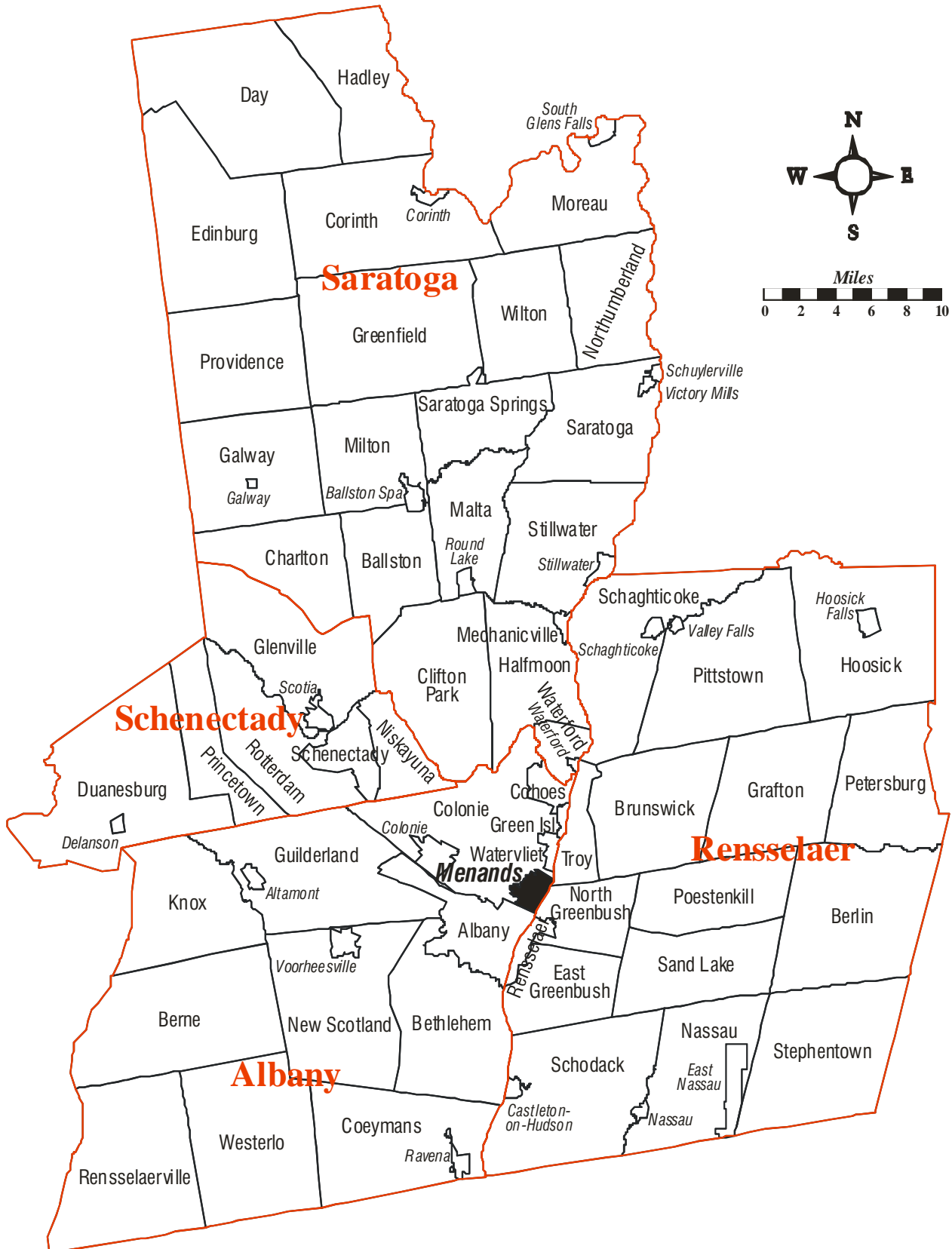


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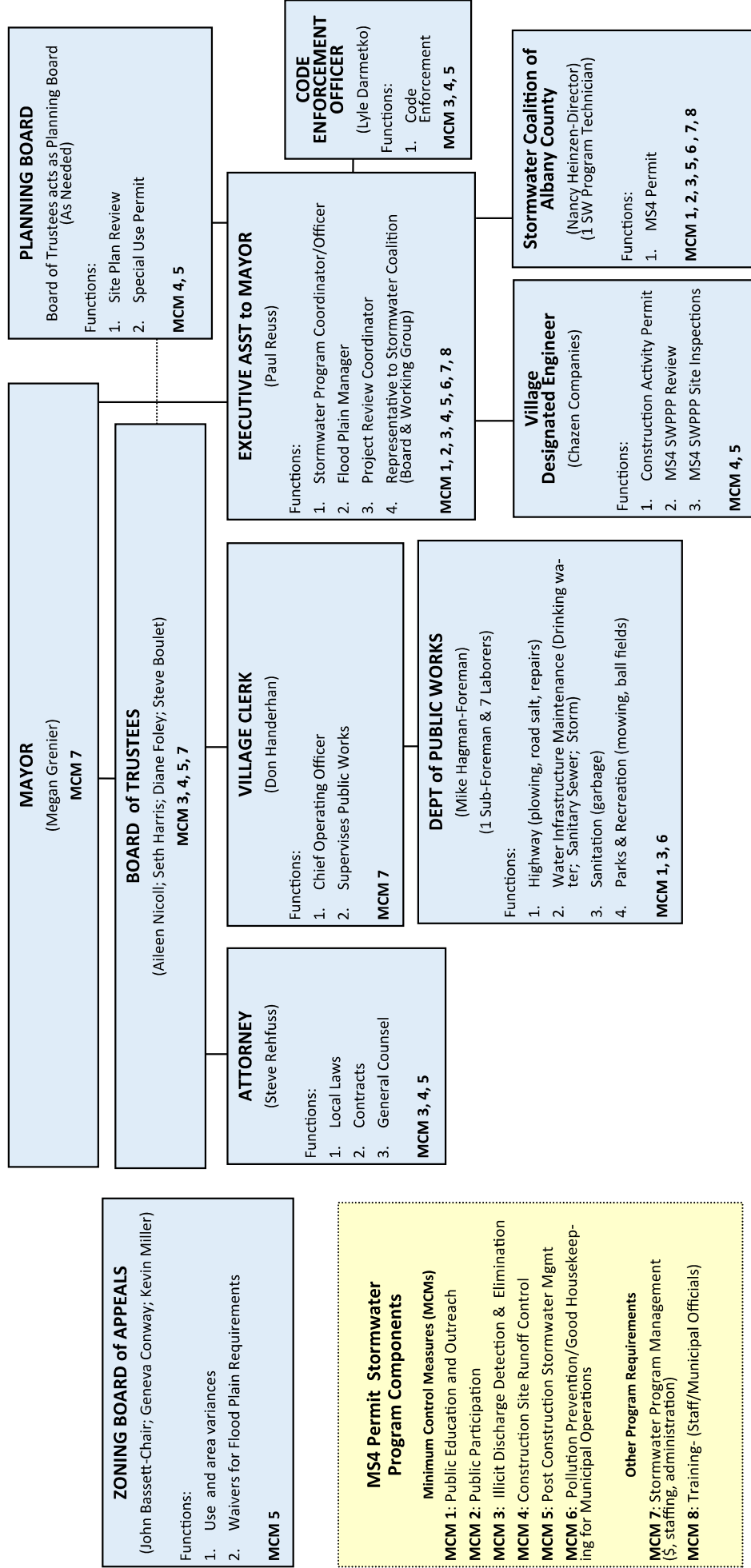
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As of 9/6/2017

Village of Menands Stormwater Management Program MS4 Permit (GP-0-15-003) ORGANIZATIONAL CHART



- MS4 Permit Stormwater Program Components**
- Minimum Control Measures (MCMs)**
- MCM 1:** Public Education and Outreach
 - MCM 2:** Public Participation
 - MCM 3:** Illicit Discharge Detection & Elimination
 - MCM 4:** Construction Site Runoff Control
 - MCM 5:** Post Construction Stormwater Mgmt
 - MCM 6:** Pollution Prevention/Good Housekeeping for Municipal Operations
- Other Program Requirements**
- MCM 7:** Stormwater Program Management (S, staffing, administration)
 - MCM 8:** Training- (Staff/Municipal Officials)

Village of Menands

Enforcement Measures and Tracking

Enforcement Response Plan and Documentation of Enforcement

BMP 3-8 IDDE Program Procedures – Enforcement Procedures BMP 4-5 Construction Site Runoff Control – Enforcement Procedures

I. Enforcement Philosophy

The general policy of the Village is to be welcoming to residents and businesses. As such, Village officials prefer a cooperative, rather than punitive approach to addressing enforcement issues. At the same time, officials recognize that stormwater related laws are intended to protect water quality and to be effective, need to be enforced. When cooperation fails, the Village relies on various options to bring about compliance. It is also generally felt that cooperation, if effective saves time and money for the Village and others.

II. Village of Menands - Stormwater Management Local Laws

In 2007, the Village adopted two local laws pertaining to stormwater management. This was a requirement of the MS4 Permit. One empowers the Village to manage and enforce NYSDEC Construction Activity Permit requirements (*Chapter 143 Stormwater Management and Erosion and Sediment Control*); the other empowers the Village to regulate non-stormwater, illicit discharges to their separate storm sewer system (*Chapter 144 Storm Sewers, better known as the IDDE Local Law*).

Within each of these laws, there is language which explains Administration & Enforcement and penalties for offenses, specifically *Section 144-12 of the IDDE Local Law (Chapter 144 Storm Sewers)* and *Section 143-9 of the Stormwater Management and Erosion and Sediment Control Local Law (Chapter 143)*.

While the language explains various enforcement option, actual enforcement preferences vary one municipality to another. The purpose of the Enforcement Response Plan is to make explicit these preferences for the Village of Menands, serving as a guide for Village staff charged with enforcing these laws and for others potentially facing enforcement action.

To better understand how enforcement functions within the Village, an organizational chart is provided which explains by name and job title, who is responsible for what.

III. Key Elements of the Enforcement Response Plan

A. Establishing The Facts – What is the pollutant of concern? Who is the responsible party? Which local laws apply?

Before proceeding with enforcement, various facts pertaining to the water quality issue need to be established. They include identifying the pollutant of concern; establishing the source of the pollution, and identifying who may be the responsible party. This can be a time consuming process and there are often unforeseen delays, but nonetheless is critical to the enforcement process. Without solid evidence

and an accurate assessment of responsibility, the effectiveness of any enforcement action is compromised.

In general, the Stormwater Management Officer takes the lead on establishing the facts of the case. As needed, site visits are scheduled with the property owner and likely responsible party. Others may be brought in to assist with identifying the pollutant (water sample tests by ACSD); providing suggestions for how best to handle local enforcement (advice from other MS4s); establishing which environmental laws may be relevant (NYSDEC staff); addressing impacts to human health (Albany County DOH staff); and providing technical support (maps from the Stormwater Coalition).

The SMO also establishes which local law is relevant to the case. An active development site discharging turbid water points to erosion and sediment control language embedded in village code *Chapter 143 Stormwater Management and Erosion and Sediment Control*; a failed stormwater management practice causing or contributing to a water quality violation points to post-construction language in *Chapter 143*; while motor oil dumped into a catch basin, for example points to *Chapter 144 Storm Sewers Article I. Illicit Discharges, Activities, and Connections*.

Other laws may also apply, such as pre-treatment regulations associated with the Albany County Sewer District or potentially state and federal laws. The SMO is responsible for coordinating with other agencies their input, with the end goal of establishing which agency has jurisdiction. If enforcement and follow-up is transferred from the Village to another jurisdiction this is documented in writing by the SMO.

B. Priority Pollutants and Enforcement Response Time

The urgency of the enforcement response often depends on the type of pollutant identified and its impact on public health and the environment. The actual response often depends on available resources. The Village of Menands SMO as evident in the organizational chart, has multiple responsibilities unrelated to stormwater management. Consequently, on any day there are competing responsibilities.

In general, pollutants which affect human health, such as bacteria from sanitary waste and organics associated with industrial facilities (paint thinner, solvents, cleaners) trigger an immediate enforcement response. Active sites where erosion and sediment controls have failed also generate an immediate response.

Less urgent enforcement responses are typical of pollutants and behaviors which don't immediately affect human health, the environment, and property, plus have some chance of getting resolved. This includes oil and grease from nearby restaurants, motor oil, and/or pet waste routinely dumped into a catch basin. If the responsible party is quickly identified, the enforcement response can be quick. Otherwise, it may take some time to identify the violator as the behavior may be intermittent. Ongoing surveillance of some kind may be necessary.

Other pollutants and behaviors, such as the overuse of pesticides and fertilizers may be difficult to associate with a particular individual, consequently enforcement defers more to an educational approach potentially directed towards a particular neighborhood.

C. Possible Enforcement Responses

In general, the enforcement response of the Village SMO mimics that of a NYS Code Enforcement Officer. As such, there are two general categories of enforcement; administrative actions which fall under the jurisdiction of the SMO and enforcement actions which fall under the jurisdiction of the Village Justice Court (fines, imprisonment).

In general, there's a strong interest in avoiding "having to go to court" as it is time-consuming and expensive for all involved. Therefore, administrative actions are preferred over court actions, with the various administrative tools flexible enough so that the enforcement strategy can fit the personal style of the SMO and the interests of the municipality.

Listed in the MS4 Permit (DRAFT GP-0-17-002, pg. 12) are various types of enforcement. [These may change, or the ERP is dropped entirely....]

They are:

- a. Verbal Warnings;
- b. Written Notices;
- c. Citations (with Fines);
- d. Stop Work Orders;
- e. Withholding of Plan Approvals or Other Authorizations affecting the facility's ability to discharge to the MS4;
- f. Additional Measures, supported in local legal authorities, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials to correct violations.

What follows is a description of the enforcement methods used by the Village SMO for all types of confirmed water quality issues associated with stormwater local laws, Chapter 143 and Chapter 144. The description includes methods listed above and others which reflect the Village preference for cooperation rather than litigation.

They are sequenced to reflect an escalating enforcement plan and generally apply to water quality issues where there is an urgent need to address the problem. Less urgent water quality issues may follow the same sequence, but at a slower pace.

Methods specific to the oversight of active construction sites are highlighted separately. These options include those cited in local law *Chapter 143* as well as options embedded within the broader development process. Issuing building permits, withholding a certificate of occupancy, setting aside escrow funds to address construction failures, and stop work orders are allowable in a variety of Village laws related to development. These can simultaneously serve to address water quality issues evident during construction.

The developer is often motivated by financial pressures to complete construction and have units available for lease or sale. Consequently mandated municipal approvals prescribed at certain intervals throughout the development process, from pre-construction to project completion, provide opportunities to leverage from the developer certain actions related to protecting water quality. While not punitive in nature, as in no fines, they are valuable enforcement tools possible because of time-dependent interests of the developer as construction unfolds.

D. Escalating Enforcement Responses

What follows is a description of enforcement responses taken by the SMO, grouped according to general categories suggested in the MS4 Permit and used in practice by the Village. The responses are based on a likely chronology of events, with each response bringing more pressure to bear on the violator.

First Response:

Verbal Warning and/or Letter for Out of Area Property Owners

1. The SMO identifies individual empowered to make decisions about the identified discharge issue.
2. If the individual is local and easily available, the SMO explains by phone the pollution issue and arranges a site visit to better explain the problem. Verbal warnings, which include a description of the problem; a description of the legal consequences; and timeline for implementing the corrective action are typically explained in person by the SMO. The SMO documents in writing the phone call and site visit.
3. If individual is not local or likely to be unavailable, a “soft” written Notice of Violation (NOV) is sent to the property owner requesting a response (meeting, conference call, site visit).
4. If no response within ~10 days, a written “hard” Notice of Violation is issued.

Second Response:

Written Notice of Violation (NOV)

1. The violator is sent a written notice to correct the discharge within 5 days.
 - a. The content of the NOV includes the following:
[NOTE: adapted from *Chapter 143 E/SC H. NOV* and *Chapter 144-12 A. NOV*]
 - (1) The name and address of the person responsible for the illegal discharge (i.e. owner-operator of the construction site; landowner; developer);
 - (2) The address, when available, or a description of the building, structure, or land upon which the violation is occurring; or in cases of illicit connections, where the cross connection is occurring (map provided, if possible).
 - (3) A statement specifying the nature of the violation which references the appropriate local law;
 - (4) A description of the remedial measure necessary to remove the illegal discharge and a time schedule for completion;
 - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the violation is directed;
 - (6) A statement encouraging compliance and a shared interest in avoiding court proceedings;

2. If the problem cannot be corrected within 5 days, the violator must acknowledge the problem and develop an action plan, all in writing within 5 days. The SMO monitors compliance with the action plan. Once action plan is completed and the violation has been addressed or removed, the SMO sends an acknowledgement letter to the violator.

3. If no response after 5 days, the violator is requested in writing to meet at the Village Hall to work out solution to problem. This is an administrative decision and the SMO serves as mediator.

**Third Response:
Mediation**

1. The meeting is at Village Hall; SMO facilitates, and functions as mediator. The violator shows up or his/her representative.

2. All parties acknowledge the problem and a plan is developed of mutual agreement.

3. The SMO sets deadlines for the plan, typically a range of dates.

4. The SMO explains that if mediation fails to get results, the issue will go to court, and that an Appearance Ticket will be served with a court date. The SMO (mediator) explains that once turned over to the courts, the SMO loses control. The Village judge make a final determination regarding fines and other penalties.

5. Compliance with the plan is as determined by the SMO and the plan is documented in writing.

6. If the violator or his/her representative does not show up, an Appearance Ticket is immediately issued by the SMO.

**Fourth Response:
Village Justice Court**

Menands Municipal Building, 250 Broadway, Menands, NY

1. The violator typically with an attorney shows up.

2. The Village Justice Court judge reads the charge based on content of the Chapter 144 Storm Sewer or Chapter 143 Stormwater Management and Erosion and Sediment local laws.

3. The judge may consult with SMO regarding reasonable remediation, implementation time frame, fines.

4. The judge makes a determination that day in court regarding the substance of the remediation action plan, time frame, documentation of compliance, the role of each player associated with action plan, and fines for non-compliance.

5. The back and forth with the judge can get protracted and all may choose to settle out of court. This avoids fines and attorney fees.

6. Once the issue is resolved, the judge issues an Adjourned and Contemplation of Dismissal document (ACOD).

7. The Village SMO monitors compliance and documents in writing the date of compliance. This information is communicated to the judge.

Additional Options for Active Construction Sites:

1. If there is a water quality violation of particular and/or persistent concern due to erosion and sediment control failures on site, the SMO can issue a Stop Work Order.
2. If the developer needs a Certificate of Occupancy for a completed structure but there continue to be water quality issues elsewhere on the site, the SMO can refuse issuing a Certificate of Occupancy until these other violations are addressed.
3. If the developer fails to address site issues pertaining to water quality (ex. removal of silt fence; construction and performance issues with SMP elsewhere on site; failure to submit record plans of final design specification for SMPs, etc.) the SMO in cooperation with the Village Clerk as approved by the Village Board of Trustees can withhold the release of escrow funds until the problem is addressed.

E. Documentation of Enforcement Action – Tracking the Case History

Throughout the enforcement process, the Village SMO tracks and documents in writing key information pertaining to the case. This is available both electronically and as a printed document. Minimally this includes the following:

- Name of owner/operator of facility or site of violation;
- Location of stormwater source (i.e., construction project, industrial facility);
- Description of violation;
- Required schedule for returning to compliance;
- Description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner;
- Accompanying documentation of enforcement response (e.g., notices of noncompliance, notices of violations);
- Any referrals to different departments or agencies; and
- Date violation was resolved.

Village of Menands, NY
Friday, October 14, 2016

Chapter 143. Stormwater Management and Erosion and Sediment Control

[HISTORY: Adopted by the Board of Trustees of the Village of Menands 12-17-2007 by L.L. No. 21-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction code — See Ch. 71.
Fire prevention and building construction — See Ch. 90.
Flood hazard control — See Ch. 93.
Site plan review — See Ch. 140.
Storm sewers — See Ch. 144.
Subdivision of land — See Ch. 148.
Zoning — See Ch. 169.

§ 143-1. Findings of fact.

It is hereby determined that:

- A. Development of real property and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat. Improper clearing of vegetation, and burial of vegetative and other wastes, can result in unstable soil conditions and the production of noxious gases through decomposition of said wastes;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow;
- F. Substantial economic losses can result from these impacts on the waters of the municipality;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development activities;
- H. The regulation of stormwater runoff discharges from real property activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;
- I. Regulation of development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 143-2. Purpose.

The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact above. This chapter seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 (construction runoff) and 5 (postconstruction maintenance) of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- B. Require work on real property to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01, or as amended or revised;
- C. Minimize increases in stormwater runoff from activities on real property in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;
- D. Minimize or decrease pollution caused by stormwater runoff from activities on real property which would otherwise degrade local water quality;
- E. Minimize or decrease the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable;
- F. Reduce or decrease stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety. Specific consideration of stormwater runoff shall be provided to critical watersheds; and
- G. Eliminate unstable soil conditions and the production of noxious gases which result from improper stormwater practices, improper grading practices, improper clearing of vegetation and the burial of vegetative and other wastes.

§ 143-3. Definitions.

The terms used in this chapter or in documents prepared or reviewed under this chapter shall have the meaning as set forth in this section. If a term is not defined in this section, then the definition provided in § 190-2 of the Code of the Town of Colonie shall apply. Any conflict between a definition provided in § 190-2 and this chapter shall be resolved in favor of the definition provided below.

AGRICULTURAL ACTIVITY

The activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

BUILDING

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.

CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING

Any activity that removes the vegetative surface cover.

DEC

The New York State Department of Environmental Conservation.

DESIGN MANUAL

The New York State Stormwater Management Design Manual, as amended. This manual serves as the official guide for stormwater management principles, methods and practices.

EROSION CONTROL MANUAL

The New York Standards and Specifications for Erosion and Sediment Control manual, as amended. This is commonly known as the "Blue Book."

IMPERVIOUS COVER

Surfaces, improvements and structures that cannot effectively be infiltrated by rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT

A State 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.

INFILTRATION

The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND

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 "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY

An activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or an activity disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER

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.

MAINTENANCE AGREEMENT

A document which provides for long-term maintenance of stormwater management practices. It is anticipated this document will be recorded in the Albany County Clerk's Office and will act as a property deed restriction or encumbrance.

NONPOINT SOURCE POLLUTION

Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT

Any construction or development activity upon real property.

RECHARGE

The replenishment of underground water reserves.

SEDIMENT CONTROL

Measures that prevent sediment from leaving the site.

SENSITIVE AREAS

Coldwater fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SMP

See "stormwater management practices."

SPDES

The New York State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01

A SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER

An order issued which requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER

An employee or officer designated by the Village Board to accept and review stormwater pollution prevention plans, forward the plans to the applicable Village board or department, inspect stormwater management practices, and enforce this chapter.

STORMWATER MANAGEMENT PRACTICES (SMPs)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

SWPPP

See "stormwater pollution prevention plan."

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 143-4. Applicability.

- A. This chapter shall be applicable to all real property within the Village of Menands.
- B. All land development activities subject to subdivision and/or site plan review and approval under the Colonie Land Use Law regulations shall be reviewed subject to the standards contained in this chapter. In this instance, the SWPPP shall be submitted along with the subdivision and/or site plan application.
- C. All land development activities not subject to subdivision and/or site plan review shall be required to submit a SWPPP to the Stormwater Management Officer who shall review the SWPPP for compliance with the requirements of this chapter.

§ 143-5. Exemptions.

The following activities are exempt from the permit requirements under this chapter. However, even those projects which are exempt from the permit requirements must meet the standards set forth in this chapter.

- A. Agricultural activity as defined in this chapter.
- B. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a stormwater management facility.
- C. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- D. Cemetery graves.
- E. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- F. Emergency activities immediately necessary to protect life, property or natural resources.
- G. Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.
- H. Landscaping and horticultural activities in connection with an existing structure that does not change the drainage patterns.
- I. Creation or restoration of wetlands pursuant to a state or federal wetlands permit.
- J. Creation, restoration, or preservation of Village greenspace.

§ 143-6. Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No approval of a land development activity shall be issued until a stormwater pollution prevention plan (SWPPP) has been accepted in accordance with the specifications in this chapter.
- B. Contents of stormwater pollution prevention plans. All SWPPPs shall, at a minimum, have a sediment and erosion control plan which shall provide the following background information and erosion and sediment controls. Development within impaired watersheds or where a five-acre variance request is submitted to DEC may require additional data.
- (1) Background information about the scope of the project, including location, type and size of project, and pre-construction photographs of the site and immediate downstream conditions (digital preferred);
 - (2) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale no smaller than one inch equals 100 feet (e.g., one inch equals 500 feet is smaller than one inch equals 100 feet). At a minimum, the site map should show the total site area; all improvements; areas of disturbance: Areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
 - (3) Description of the soil(s) present at the site;
 - (4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP and DEC variance approval;
 - (5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - (6) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
 - (7) Information regarding the location of disposal of any material to be removed from the site. Off-site disposal areas may not be within regulated wetlands, buffer zones, protected watercourse areas, or other environmentally sensitive areas unless applicable permits are obtained. The proposed method of any on-site processing and reuse of organic materials shall be specified and may require certification by a New York state registered professional engineer or landscape architect as a safe and effective means of disposal.
 - (8) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
 - (9) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (10) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (11) Temporary practices that will be converted to permanent control measures;
 - (12) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (13) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (14) Name(s) of the receiving water(s);

- (15) Delineation of SWPPP implementation responsibilities for each part of the site;
- (16) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable;
- (17) Any existing data that describes the stormwater runoff at the site; and
- (18) A slope stability analysis, if requested by the Building Department, where grading is steep or for slippage-prone slopes.

C. Postconstruction stormwater runoff control.

- (1) In addition to the SWPPP described above, land development activities meeting any of the three conditions below shall also be required to provide a report as to water quantity and water quality controls (postconstruction stormwater runoff controls):
 - (a) Stormwater runoff from project activity disturbing between one and five acres of land during the course of the Project, exclusive of the construction of single-family residences and construction activities at agricultural properties; or
 - (b) Stormwater runoff from land development activities disturbing five or more acres; or
 - (c) Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (2) The additional report to be provided for postconstruction stormwater controls shall include:
 - (a) Description of each postconstruction stormwater management practice;
 - (b) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
 - (c) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (d) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;
 - (e) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
 - (f) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
 - (g) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
 - (h) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 143-8 of this chapter.
 - (i) If the land development activity meets either of the conditions described in Subsection **C(1)(b)** or **(c)** above (activity disturbs 5 acres or more, or runoff discharges a pollutant of concern to either an impaired water or a TMDL designated watershed) then the SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control (CPESC), soil scientist or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this chapter.
- D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

E. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- (4) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 143-7. Performance and design criteria.

Every soil disturbance shall meet the criteria set forth in the New York Standards for Erosion and Sediment Control (aka "The Blue Book"; see Subsection A(1) below) Also, all land development activities shall be subject to all of the following performance and design criteria:

- A. Technical standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this chapter:
 - (1) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual" or the "Blue Book");
 - (2) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").
 - (3) The Village of Menands Standard Format For Stormwater Management Plans and Reports.
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in the Design Manual and the SWPPP shall be prepared by a professional in erosion and sediment control (CPESC), soil scientist or professional engineer.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.
- D. Permitting process; additional standards.
 - (1) Applications shall be made on forms prescribed by the Village therefor, which shall be accompanied by the required fee, if any, established by the Village Board.
 - (2) The Stormwater Management Officer shall review the application and act to approve, approve with modification, or deny the requested SWPPP.
 - (3) In the event that the submittal is denied, the applicant may have the decision reviewed by Village Board.
 - (4) The smallest practical area of land shall be exposed at any one time during the project.

- (5) When land is exposed during development, the exposure shall be kept to the shortest practical period of time;
 - (6) To protect areas in excess of one acre exposed for a period over two weeks during development, the following controls shall be applied:
 - (a) Temporary vegetation, mulch, geotextiles, and/or emulsion shall be provided as needed to prevent soil erosion. Application of these materials shall be by approved equipment.
 - (b) On areas that will be exposed for short periods of time (daily) where weather conditions are conducive to airborne soil particles, a construction fence shall be installed, as directed by the SMO.
 - (c) On areas such as temporary roadways, when dry conditions prevail, the contractor shall be required to apply water or take other measures as required to prevent dust during daily construction activities.
 - (7) Sediment basins, debris basins, silting basins, silt fencing, or silt traps shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.
 - (8) Permanent final vegetation and structures shall be installed as soon as practical in the development.
 - (9) The development plan should be fitted to the type of topography and soils so as to create the least erosion potentials.
 - (10) Wherever feasible, natural vegetation should be retained and protected.
 - (11) In areas of proposed fill, all existing vegetation and other organic material, including the root mat, shall be removed prior to placement of fill. The material shall be disposed of in an appropriate off-site facility, or processed for reuse on site in a manner that will not be conducive to adverse effects of decomposition, such as the production of odors or of concentrations of noxious or explosive gases, or the creation of unstable subsurface conditions. The proposed method of on-site processing and reuse shall be specified in the permit application and may require certification by a licensed professional engineer as a safe and effective means of disposal.
 - (12) No vegetation or other waste materials shall be buried on the site.
 - (13) All fill placed on the site shall be as free of organic material as is practicable.
- E. Deposit, performance of site work; inspection.
- (1) To ensure that the site work is performed in accordance with the controls of this chapter, before obtaining approval, the applicant shall deposit with the Village Clerk-Treasurer of the Village of Menands a cash escrow as set forth in the fee schedule adopted by the Village Board by separate resolution.
 - (2) Said site work shall be performed and completed in accordance with the approved plan and schedule of vegetation removal and disposal, grading, construction operation and erosion control methods on file with the Building Department at the time of issuance of the approval.
 - (3) Upon completion of the site work set forth in the plan, the applicant will request the Building Department to inspect the work; upon approval of the site work, the Department will direct the Village Clerk - Treasurer to release all of the applicant's money deposited pursuant to Subsection **E(1)** above.
 - (4) Upon the failure of the applicant to perform the site work in accordance with the site plan submitted as aforesaid, the Village of Menands and/or its agents shall be permitted to enter upon the premises and complete the necessary site work and charge the cost of the site work to the funds on deposit with the Village Clerk-Treasurer pursuant to Subsection **E(1)** above, and the Village Clerk-Treasurer shall be authorized to pay any charge or charges approved by the Bureau of Engineering without further approval of the applicant. If the Village should undertake completion of any site work upon the applicant's failure to do so, any sums remaining on deposit with the Village Clerk-Treasurer after completion of said site work shall be returned to the applicant.

§ 143-8. Maintenance, inspection and repair of stormwater facilities.

A. Maintenance and inspection during construction.

- (1) The Building Department or its designee shall have the power to make necessary inspections. The Department may employ, at its discretion, a Construction Inspector to act as its agent for the purpose of assuring satisfactory completion of permit requirements. The inspection provided may include, but not necessarily be limited to, all grading, drainage, stormwater management systems and erosion control measures, and may include soil testing as necessary to determine compliance with the provisions of this chapter and the conditions of the approval.
- (2) The Building Department will determine an amount sufficient to defray the costs of such inspection. The applicant shall deposit said amount of moneys with the Village Clerk-Treasurer in an escrow account prior to the issuance of the approval. The Building Department shall be authorized to pay the costs of inspection by its Construction Inspector from the moneys on deposit in said account and shall return to the applicant any such moneys, including interest, on balance in the account at the time of completion of the permitted site work, provided that all inspection costs have been paid. If the moneys on deposit prove to be insufficient for the costs of required inspections, the Building Department shall require that the applicant deposit additional moneys in an amount sufficient to satisfy the costs of such additional inspections as may be required.
- (3) The applicant or developer of the land development activity or his or her representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (4) For land development activities meeting any of the conditions set forth in § 143-6C(1)(a), (project activity of between one and five acres of land during course of job, exclusive of one-family residences and construction activities at agricultural properties, or stormwater runoff from land development activities disturbing five or more acres, or stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water or a TMDL designated watershed), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Menands to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Village Attorney.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this legislation. Proper operation and maintenance also includes, as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 143-7C, Water quality standards.

- D. Maintenance agreements. The Village of Menands shall approve a formal maintenance agreement for stormwater management facilities which are going to be privately owned after construction. The agreement shall be binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of a sample Stormwater Control Facility Maintenance Agreement on file in the Building Department. The Village of Menands, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 143-9. Administration and enforcement; penalties for offenses.

A. Inspection.

- (1) In addition to the DEC inspections required to be performed by the applicant, the Village of Menands Stormwater Management Officer, or his or her designee, may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this chapter and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Village of Menands enforcement official at least 48 hours before any of the following, as required by the Stormwater Management Officer:
- (a) Start of construction;
 - (b) Installation of sediment and erosion control measures;
 - (c) Completion of site clearing;
 - (d) Completion of rough grading;
 - (e) Completion of final grading;
 - (f) Close of the construction season;
 - (g) Completion of final landscaping;
 - (h) Successful establishment of landscaping in public areas.
- (2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

- B. Inspection of stormwater facilities after project completion. Inspection programs shall 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 SPDES stormwater 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 stormwater management practices.

- C. Submission of reports and record plans. The Village of Menands Stormwater Management Officer may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter. All applicants are required to submit record plans for any stormwater 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 licensed professional.

- D. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Village of Menands the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.
- E. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village of Menands in its approval of the stormwater pollution prevention plan, the Village may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Village of Menands as the beneficiary. The security shall be in an amount to be determined by the Village based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Village of Menands, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Village. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- F. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Village of Menands with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Village of Menands may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- G. Recordkeeping. The Village of Menands may require entities subject to this chapter to maintain records demonstrating compliance with this portion of the Village of Menands Code.
- H. Notice of violation. When the Village of Menands determines that a project is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
- (1) The name and address of the landowner, developer 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 project into compliance with this chapter 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 Village by filing a written notice of appeal within 15 days of service of notice of violation.
- I. Stop-work orders. The Village of Menands may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all work of any nature on the site, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Village of Menands confirms that the project is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter.
- J. Violations. Any land development activity that is commenced or is conducted contrary to this chapter may be restrained by injunction or otherwise abated in a manner provided by law.

- K. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter law shall be guilty of a violation punishable by a fine not exceeding \$5,000 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$10,000 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$15,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- L. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter, the Stormwater Management Officer may prevent the occupancy of said building or land.
- M. 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 Village of Menands may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- N. Fees for services. The Village of Menands may require any person undertaking activities regulated by this chapter to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by Village personnel or performed by a third party for the Village of Menands.

Village of Menands, NY
 Tuesday, October 18, 2016

Chapter 144. Storm Sewers

[HISTORY: Adopted by the Board of Trustees of the Village of Menands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction code — See Ch. 71.
 Fire prevention and building construction — See Ch. 90.
 Flood hazard control — See Ch. 93.
 Site plan review — See Ch. 140.
 Stormwater management and erosion and sediment control — See Ch. 143.
 Subdivision of land — See Ch. 148.
 Zoning — See Ch. 169.

Article I. Illicit Discharges, Activities and Connections

[Adopted 12-17-2007 by L.L. No. 22-2007]

§ 144-1. Purpose; intent.

The purpose of this article of the Village of Menands Code is to provide for the health, safety, and general welfare of the citizens of the Village of Menands through the regulation of nonstormwater discharges to the municipal separate storm sewer system (aka "MS4") to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this article are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges From MS4s, Permit No. GP-02-02, or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, pain products, hazardous waste, sediment and other pollutants into the MS4.

§ 144-2. Definitions.

Whenever used in this article, unless a different meaning is stated in a definition applicable to only a portion of this article, the following terms will have meanings set forth below:

BEST MANAGEMENT PRACTICES (BMPs)

Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY

Activities requiring authorization under the SPDES Permit for Stormwater Discharges From Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEC

The New York State Department of Environmental Conservation.

HAZARDOUS MATERIALS

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTIONS

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

- A. Any conveyances which allow any nonstormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE

Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 144-5 of this article.

INDUSTRIAL ACTIVITY

Activities requiring the SPDES Permit for Discharges From Industrial Activities Except Construction, GP-98-03, as amended or revised.

MS4

Municipal separate storm sewer system.

MUNICIPALITY

The Village of Menands.

MUNICIPAL SEPARATE STORM SEWER SYSTEM

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Village of Menands;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and

- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONSTORMWATER DISCHARGE

Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT

Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS

- A. Discharge compliance with water quality standards: the condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters: the condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy: the condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition, the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee, the municipal engineer or other public official(s) designated by the Village of Menands to enforce this article. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

303(d) LIST

A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the DEC as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL

Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD

The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water allocated among the sources of that pollutant.

VILLAGE

The Village of Menands.

WASTEWATER

Water that is not stormwater and which is contaminated with pollutants and is or will be discarded.

§ 144-3. Applicability.

This article shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 144-4. Responsibility for administration.

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this article. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

§ 144-5. Discharge prohibitions; exceptions.

- A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Subsection **A(1)** below. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:
- (1) The following discharges are exempt from discharge prohibitions established by this article, unless the DEC or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.
 - (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.
 - (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

- (4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- B. Prohibition of illicit connections.
- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
 - (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the municipality's MS4 or allows such a connection to continue.

§ 144-6. Activities contaminating stormwater prohibited.

- A. Activities that are subject to the requirements of this section are those types of activities that:
- (1) Cause or contribute to a violation of the Village's MS4 SPDES permit.
 - (2) Cause or contribute to the Village being subject to the special conditions as defined in § 144-2, Definitions, of this article.
- B. Such activities include improper management of pet waste or any other activity that causes or contributes to violations of the Village's MS4 SPDES permit authorization.
- C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization.

§ 144-7. Prevention, control and reduction of stormwater pollutants by use of best management practices.

Where the SMO has identified illicit discharges as defined in § 144-2 or activities contaminating storm water as defined in § 144-7, the Village may require implementation of best management practices (BMPs) to control those illicit discharges and activities.

- A. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
- B. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge as defined in § 144-2 or an activity contaminating stormwater as defined in § 144-7, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
- C. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

§ 144-8. Suspension of access to MS4.

- A. Illicit discharges in emergency situations. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the Village's MS4 in violation of this article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

§ 144-9. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Village prior to the allowing of discharges to the MS4.

§ 144-10. Applicability; access to facilities; monitoring of discharges.

- A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.
- B. Access to facilities.
- (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
 - (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.
 - (3) The Village shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Village has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at his or her own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) Unreasonable delays in allowing the Village access to a facility subject to this article is a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the Village reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.
 - (6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program

designed to verify compliance with this article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 144-11. 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 information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Village in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Village within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 144-12. Enforcement; penalties for offenses.

A. Notice of violation.

- (1) When the Village's SMO finds that a person has violated a prohibition or failed to meet a requirement of this article, he/she may order compliance by written notice of violation to the responsible person. Such notice may, require without limitation:
 - (a) The elimination of illicit connections or discharges;
 - (b) That violating discharges, practices, or operations shall cease and desist;
 - (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (d) The performance of monitoring, analyses, and reporting;
 - (e) Payment of a fine; and
 - (f) The implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

- ### B. 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 guilty of a violation punishable by a fine not exceeding \$5,000 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$10,000 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$15,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 144-13. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Village Board within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the Village Clerk-Treasurer and mail a copy of its decision by certified mail to the discharger.

§ 144-14. Corrective measures after appeal.

- A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 144-15. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 144-16. Alternative remedies.

- A. Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Village Attorney and concurrence of the Stormwater Management Officer, where:
 - (1) The violation was unintentional; and
 - (2) The violator has no history of previous violations of this article; and
 - (3) Environmental damage was minimal; and
 - (4) The violator acted quickly to remedy violation; and
 - (5) The violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
 - (1) Attendance at compliance workshops; and/or
 - (2) Storm drain stenciling or storm drain marking; and/or
 - (3) River, stream or creek cleanup activities.

§ 144-17. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance maybe taken.

§ 144-18. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.