

ARTICLE 908: STORMWATER MANAGEMENT

(Adopted December 15, 2009)

908.1 GENERAL PURPOSE

The purpose of this regulation is to provide for the health, safety, and general welfare of the citizens of Kingston, NH through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This regulation establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

The Town of Kingston's storm drainage system is designed and operated to handle stormwater runoff flows from public and private properties. In order to function effectively, this system requires all private connections to it to be properly constructed, maintained and operated.

Stormwater runoff flows from individual properties onto the streets, then through storm drains to local waterways. It is therefore in the public interest to ensure that both public and private drainage systems are properly maintained, in order to facilitate the proper functioning of the town's storm drainage system, and to prevent pollutants from entering local waterways.

The objectives of this regulation are:

- A.** To maintain and improve the quality of surface water and groundwater within the Town of Kingston, NH, the Great Bay Estuary, and the State of New Hampshire.
- B.** To prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters of the Town of Kingston, NH.
- C.** To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm drainage system and natural waters of the Town of Kingston, NH.
- D.** To prohibit illicit connections and discharges to the MS4.

- E. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this regulation.

908.2 DEFINITIONS

For the purpose of this regulation, the following shall mean:

- A. **Authorized Enforcement Agency.** Employees or designees of the Town of Kingston, NH designated to enforce this regulation.
- B. **Best Management Practices (BMPs).** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- C. **Clean Water Act.** The Federal Water Pollution Control Act (33r S.C. 1251 et seq.), and any subsequent amendments thereto.
- D. **Construction Activity.** Activities subject to the NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- E. **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.
- F. **Illicit Discharge.** Any discharge to a municipal separate storm sewer that is not composed entirely of storm water.
- G. **Illegal Connections.** An illegal connection is defined as: Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drainage system including but not limited to any conveyances that allow any non stormwater discharge including sewerage, process wastewater, and wash water to enter the storm drainage system 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.
- H. **Industrial Activity.** Activities subject to NPDES Industrial Stormwater Permits as defined in 40 CFR, Section 122.26(b) (14).
- I. **Municipal Separate Storm Sewer System (MS4).** The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the Town of Kingston, NH, and designated or used for collecting or conveying stormwater, and

that is not used for collecting or conveying sewerage, also known as storm drainage system.

- J. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.** A permit issued by the Environmental Protection Agency (EPA) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- K. Non-Stormwater Discharge.** Any discharge to the storm drainage system that is not composed entirely of stormwater.
- L. 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.
- M. Pollutant.** Anything which causes or contributes to pollution (as defined in EPA 40CFR 122.2). Pollutants may include, but are not limited to: paints, varnishes, and solvents, oil and other automotive fluids; non-hazardous liquid and solid wastes and yard waste; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, fertilizers; detergents, grease, washwater; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- N. Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- O. Storm Drainage System.** Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, catch basins, piped storm drains, pumping facilities, retention and detention basins, natural and human made or altered drainage channels, reservoirs, and other drainage structures; also referred to as municipal separate storm sewer system (MS4).
- P. Stormwater.** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- Q. Stormwater Management Plan.** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or receiving waters to the Maximum Extent Practicable also known as a Stormwater Pollution Prevention Plan (SWPPP).
- R. Wastewater.** Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

908.3 APPLICABILITY

This regulation shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by the Town of Kingston, NH.

908.4 RESPONSIBILITY FOR ADMINISTRATION

The Town of Kingston, NH shall administer, implement, and enforce the provisions of this regulation. Any powers granted or duties imposed upon the Town of Kingston, NH may be delegated in writing by the Kingston Board of Selectmen to persons or entities acting in the beneficial interest of or in the employ of the agency.

908.5 COMPATIBILITY WITH OTHER REGULATIONS

This regulation is not intended to modify or repeal any other regulation, rule regulation, or other provision of law. The requirements of this regulation are in addition to the requirements of any other regulation, rule, regulation, or other provision of law, and where any provision of this regulation imposes restrictions different from those imposed by any other regulation, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

908.6 SEVERABILITY

The provisions of this regulation are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this regulation or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this regulation.

908.7 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this regulation are minimum standards; therefore this regulation does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

908.8 GENERAL DISCHARGE PROHIBITIONS

908.8.1 Prohibition of Illicit Discharges.

No person shall throw, drain, deposit, or otherwise discharge, cause, or allow others under its control to throw, drain, deposit or otherwise discharge into the MS4 any pollutants or waters containing pollutants, other than stormwater.

No person shall throw, deposit, leave or permit to be thrown, deposited, or left in or upon any public or private property, driveway, parking area, street, or sidewalk any refuse, rubbish, garbage, litter, or other discarded or abandoned objects articles and accumulations, so that the same may cause or contribute to pollution. Waste in proper waste receptacles for the purpose of collection are exempted from this prohibition.

The commencement or continuance of any illicit discharge to the storm drainage system is prohibited except as described as follows:

- A.** The following discharges are exempt from discharge prohibitions established by this regulation:
 - 1. Waterline flushing;
 - 2. Landscape irrigation;
 - 3. Diverted stream flows;
 - 4. Rising groundwaters;
 - 5. Uncontaminated groundwater infiltration;
 - 6. Uncontaminated pumped groundwater;
 - 7. Discharges from potable water source;
 - 8. Air conditioning condensation;
 - 9. Irrigation water;
 - 10. Springs;
 - 11. Water from crawl space pumps;
 - 12. Foundation drains;
 - 13. Footing drains;
 - 14. Lawn watering;
 - 15. Individual residential car washing;
 - 16. Flows from riparian habitats and wetlands;
 - 17. De-chlorinated swimming pool water;
 - 18. Residential building wash waters, without detergents;
 - 19. Street wash water.
- B.** Discharges or flow from firefighting.
- C.** Discharges associated with dye testing; however this activity requires a verbal notification to the Town of Kingston, NH prior to the time of the test.
- D.** The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that

the discharger is in full compliance with all requirements of the permit, waiver, or waste discharge order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drainage system.

- E. The Town of Kingston, NH has the right to remove any of the above exemptions if it is determined that they are causing an adverse impact.

908.8.2 *Prohibition of Illegal Connections*

- A. The construction, use, maintenance or continued existence of illegal connections to the storm drain system is prohibited.
- B. This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. A person is considered in violation of this regulation if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- D. Improper connections in violation of this regulation must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Town of Kingston, NH.
- E. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation for the Town of Kingston, NH requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm drainage system, sanitary sewer system, or other discharge point be identified. Results of these investigations are to be documented and provided to the Town of Kingston, NH.

908.9 SPECIFIC PROHIBITIONS AND REQUIREMENTS

The specific prohibitions and requirements in this section are not (necessarily) inclusive of all discharges prohibited.

- A. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town of Kingston, NH to violate a water quality standard, the Town's NPDES permit, or any state-issued discharge permit for discharges from its MS4.

- B.** No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:
1. Any used motor oil, antifreeze, or any other motor vehicle fluid;
 2. Any industrial waste;
 3. Any hazardous waste;
 4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 5. Any garbage, rubbish, yard waste, or other discarded or abandoned objects;
 6. Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than 2 such vehicles;
 7. Any wastewater from the washing, cleaning, repair or other maintenance of any type of equipment including grease hoods, grills, exhaust fans;
 8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
 9. Any wastewater from floor, rug, or carpet cleaning;
 10. Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
 11. Any wastewater resulting from hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
 12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
 13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
 14. Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area, or deposition of animal wastes to storm drain system;
 15. Any water from a water curtain in a spray room used for painting vehicles or equipment;

16. Any substance or material that will damage, block, or clog the MS4;
- C. Any person responsible for any release as described in Subsection A. above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
 - D. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

908.10 COMPLIANCE MONITORING

908.10.1 Right of Entry: Inspection and Sampling

The Town of Kingston, NH shall be permitted to enter and inspect facilities subject to regulation under this regulation as often as may be necessary to determine compliance with this regulation.

- A. 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 representatives of the Town of Kingston, NH.
- B. Facility operators shall allow the Town of Kingston, NH ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of the NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- C. The Town of Kingston, NH shall have the right to set up on any permitted facility such devices as necessary in the opinion of the Town of Kingston, NH to conduct monitoring and/or sampling of the facility's stormwater discharges.
- D. The Town of Kingston, NH has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall promptly be removed by the operator at the written or oral request of the Town of Kingston, NH and shall not be replaced.

- F. Unreasonable delays in allowing the Town of Kingston, NH access to a permitted facility is a violation of a stormwater discharge permit and of this regulation. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Town of Kingston, NH reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this regulation.

908.10.2 Search Warrants

If the Town of Kingston, NH 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 regulation, 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 regulation or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Town of Kingston, NH may seek issuance of a search warrant from any court of competent jurisdiction.

908.11 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES (BMPs)

Best Management Practices shall be implemented for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drainage system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater management plan as necessary for compliance with requirements of the NPDES permit.

908.11.1 GOOD HOUSEKEEPING REQUIREMENTS FOR REDUCTION OF STORMWATER RUNOFF AT EXISTING COMMERCIAL/INDUSTRIAL/INSTITUTIONAL PROPERTIES

- A. All materials with the potential to pollute stormwater runoff shall be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff treatment and disposal.
- B. Cleaning and maintenance products may not be disposed of or rinsed into the parking lot, street, storm drainage system or receiving waters.
- C. Fertilizers, pesticides, and herbicides shall be used in accordance with label directions and may not be disposed of or rinsed into the parking lot, street, storm drainage system or receiving waters.
- D. All paved parking lots used for motor vehicle parking shall be swept to remove debris.
- E. Catch basins shall be inspected and cleaned.
- F. Structural stormwater controls must be inspected and maintained in accordance with their Stormwater Maintenance Manual.
- G. Fuel and chemical residue and garbage shall be removed immediately and disposed of properly.
- H. Automotive fuel, oil and other chemicals must be cleaned up and prevented from entering storm drainage system.
- I. Leaking machinery and equipment, including vehicles must be repaired.
- J. Vehicle washing other than individual residential motor vehicle washing is prohibited, unless all wash and rinse water is diverted to on contained and disposed to the sanitary sewer. (Some vehicles may be washed over a porous surface if approved by the NH Dept of Environmental Services).

908.12 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 stormwater, the storm drainage system, or waters of the United States, 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 non-hazardous materials, said person shall notify the Town of Kingston, NH in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Kingston, NH within 5 business days of the phone 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 7 years.

Failure to provide notification of a release as provided above is a violation of this regulation.

908.13 CITIZEN PARTICIPATION

908.13.1 Citizen Reports of Violations

All citizens are encouraged to report to the Town of Kingston, NH any spills, releases, illicit connections, and other instances of anyone discharging pollutants into the street, parking lot, catch basin, inlet, gutter, ditch or local waterways, and any other violation of this Regulation of which they become aware.

908.14 VIOLATIONS, ENFORCEMENT, AND PENALTIES

908.14.1 Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this regulation. Any person who has violated or continues to violate the provisions of this regulation, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Town of Kingston, NH is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town of Kingston, NH is authorized to seek costs of the abatement as outlined in “Cost of Abatement of the Violation”.

908.14.2 Warning Notice

When the Town of Kingston, NH finds that any person has violated, or continues to violate, any provision of this regulation, or any order issued hereunder, the Town of Kingston, NH may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the Town of Kingston, NH to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

908.14.3 Notice of Violation

Whenever the Town of Kingston, NH finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the Town of Kingston, NH, by certified mail, may order compliance by written notice of violation to the responsible person.

A. The Notice of Violation shall contain:

1. The name and address of the alleged violator;
2. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to restore compliance with this regulation 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 Town of Kingston, NH by filing a written notice of appeal within 5 business days of service of notice of violation; said notice of appeal shall be sent by certified mail, and
7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.

908.14.4 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this regulation, the Town of Kingston, NH may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, waterway cleanup, etc.

908.14.5 Suspension of MS4 Access

A. Emergency Cease and Desist Orders

When the Town of Kingston, NH finds that any person has violated, or continues to violate, any provision of this regulation, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Town of Kingston, NH may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all regulation requirements; and
2. Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Town of Kingston, NH may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Town of Kingston, NH may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Town of Kingston, NH that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this regulation. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, occurrence, to the Town of Kingston, NH within 5 business days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

B. Suspension due to Illicit Discharges in Emergency Situations

The Town of Kingston, NH 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, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town of Kingston, NH may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

C. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this regulation may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Town of Kingston, NH will notify a violator of the proposed termination of its MS4 access. The violator may petition the Town of Kingston, NH for a reconsideration and hearing.

908.14.6 Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within 5 business days, or such greater period as the Town of Kingston, NH shall deem appropriate, after the Town of Kingston, NH has taken one or more of the actions described above, the Town of Kingston, NH may impose a penalty not to exceed \$275.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

908.14.7 Appeal of Notice of Violation

Any person receiving a notice of violation may appeal the determination of the Town of Kingston, NH. The notice of appeal must be received within 5 business days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 14 business days from the receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

908.14.8 Enforcement Measures After Appeal

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 5 business days of the decision of the municipal authority upholding the decision of the Town of Kingston, NH, then representatives of the Town of Kingston, NH shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

908.14.9 Cost of Abatement of The Violation

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 5 business days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the

charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the Town of Kingston, NH by reason of such violation. The liability shall be paid in full or through installments as determined by the Kingston Board of Selectmen.

908.14.10 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 regulation 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 a nuisance may be taken.

908.15 REMEDIES NOT EXCLUSIVE

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Town of Kingston, NH to seek cumulative remedies

The Town of Kingston, NH may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this regulation, including sampling and monitoring expenses.

908.16 CONSTRUCTION AND POST-CONSTRUCTION STORMWATER MANAGEMENT AND EROSION CONTROL

908.16.1 General

The purpose of this regulation is to control runoff and soil erosion and sedimentation resulting from site construction and development. Secondly, it is to comply with US Environmental Protection Agency (EPA) Stormwater Management legislation for Municipal Separate Storm Sewer Systems (MS4s, as amended). **Subdivisions and site plans shall include plans for managing stormwater and controlling erosion and sedimentation as provided below.** Any errors or omissions in these regulations shall not exempt applicants from complying with applicable state and federal statutes. In the event of conflicting requirements, the stricter standard applies as stated in the Conflict and Severability and Conflicting Provisions sections of Kingston's regulation and regulations.

908.16.2 Definitions

- A. Best Management Practice (BMP):** A proven or accepted structural, non-structural, or vegetative measure the application of which reduces erosion, sediment, or peak storm discharge, or improves the quality of stormwater runoff.
- B. Certified Soil Scientist:** A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists.
- C. Critical Areas:** Disturbed areas of any size within 50 feet of a stream, bog, waterbody, or poorly or very poorly drained soils; disturbed areas exceeding 2,000 square feet in highly erodible soils; or, disturbed areas containing slope lengths exceeding 25 feet on slopes greater than 10 percent.
- D. Development:** Any construction or land construction or grading activities other than for agricultural and silvicultural practices.
- E. Disturbed Area:** An area where the natural vegetation has been removed exposing the underlying soil, or vegetation has been covered.
- F. Erosion:** The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
- G. Highly Erodible Soils:** Any soil with an erodibility class (K factor) greater than or equal to 0.43 in any layer as found in Table 3-1 of the "Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire."
- H. Project Area:** The area within the subdivision or site plan boundaries
- I. Sediment:** Solid material, either mineral or organic, that is in suspension is transported or has been moved from its site of origin by erosion.
- J. Stabilized:** When the soil erosion rate approaches that of undisturbed soils. Soils which are disturbed will be considered protected when covered with a healthy, mature growth of grass or a good covering of straw mulch or other equivalent (seedless) mulch (2 tons/acre). Mulch is only a temporary measure; ultimately, the site needs vegetation.
- K. Stormwater Runoff:** The water from precipitation that is not absorbed, evaporated, or otherwise stored within the contributing drainage area.
- L. Stream:** Areas of flowing water occurring for sufficient time to develop and maintain defined channels but may not flow during dry portions of the year. Includes but is not limited to all perennial and intermittent streams located on U.S. Geological Survey Maps.

908.16.3 Applicability

The applicant shall submit a stormwater management and erosion control plan to the Planning Board for any tract of land being developed or subdivided, where one or more of the following conditions are proposed:

- A.** A cumulative disturbed area exceeding 15,000 square feet.
- B.** Construction or reconstruction of a street or road.
- C.** A subdivision of more than three building lots.

D. Disturbed critical areas. (See Definitions)

908.16.4 Minimum Requirements

The following minimum requirements apply to all projects, regardless of size. Additional requirements may be found in this and other sections of the Site Plan Review and Subdivision regulations.

- A. Site drawing of existing and proposed conditions:**
 - 1. Locus map showing property boundaries
 - 2. North arrow, scale, date
 - 3. Property lines
 - 4. Easements
 - 5. Structures, utilities, roads and other paved areas
 - 6. Topographic contours
 - 7. Critical areas
 - 8. Surface water and wetlands, drainage patterns, and watershed boundaries
 - 9. Vegetation
- B. Soils information for design purposes or for determining highly erodible soils shall be determined from a National Cooperative Soil Survey (NCSS) soil series map. A High Intensity Soil Map of the site, prepared in accordance with the Society of Soil Scientists of Northern New England (SSSNE) Special Publication No. 1, can only be used for design purposes and not for determining highly erodible soils.**
- C. Temporary and permanent stormwater management and erosion and sediment control BMPs**
- D. Areas and timing of soil disturbance**
- E. A schedule for the inspection and maintenance of all BMPs**
- F. A narrative section including discussion of each measure, its purpose, construction sequence, and installation timing as they apply to the site.**

908.16.5 Design Standards

The following standards shall be applied in planning for stormwater management and erosion control: Additional requirements may be found in this and other sections of the Site Plan Review and Subdivision regulations.

- A. All measures in the plan shall meet as a minimum the Best Management Practices set forth in the “New Hampshire Stormwater Manual”, NHDES, December, 2008, as amended, a copy of which is available in the planning board office.**

Additional BMP’s are available at the following locations:

- 1. <http://www.des.state.nh.us/factsheets/wqe/wqe-6.htm> - NHDES Environmental Fact Sheet WD-WQE-6, (Soil Erosion and Sediment control on Construction Sites, 1996)

2. <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm> - EPA National Pollution Discharge Elimination System, (NPDES) (Stormwater Menu of Best Management Practices (BMPs)).
 3. http://cfpub.epa.gov/npdes/stormwater/menuofbmps/con_site.cfm - EPA NPDES (Construction Site Stormwater Runoff Control).
- B. Whenever practical, natural vegetation shall be retained, protected or supplemented. The stripping of vegetation shall be done in a manner that minimizes soil erosion.
 - C. Appropriate erosion and sediment control measures shall be installed prior to soil disturbance.
 - D. The area of disturbance shall be kept to a minimum. Disturbed areas remaining idle for more than 30 days shall be stabilized.
 - E. Measures shall be taken to control erosion within the project area. Sediment in runoff water shall be trapped and retained within the project area using approved measures. Wetland areas and surface waters shall be protected from sediment.
 - F. Off-site surface water and runoff from undisturbed areas shall be diverted away from disturbed areas where feasible or carried non-erosively through the project area. Integrity of downstream drainage systems shall be maintained.
 - G. Measures shall be taken to control the post-development peak rate of runoff so that it does not exceed pre-development runoff for the 2-year, 24-hour storm event and for additional storm event frequencies as specified in the design criteria of the “New Hampshire Stormwater Manual”.
 - H. Priority should be given to preserving natural drainage systems including perennial and intermittent streams, wetlands, swales, and drainage ditches for conveyance of runoff leaving the project area.
 - I. All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within 30 days unless conditions dictate otherwise.

908.16.6 Completed Application Requirements

The Planning Board shall require each of the following in the final plan unless the project is deemed of sufficiently minimal impact to qualify for the minimum requirements specified in Section 908.16.4 of this regulation.

908.16.6.1 Construction drawings

- A. Existing and proposed conditions:
 1. Locus map showing property boundaries
 2. North arrow, scale, date
 3. Property lines
 4. Structures, roads, utilities, earth stockpiles, equipment storage, and plan for stump and debris removal

5. Topographic contours at two-foot intervals
 6. Critical areas, stockpile and staging areas and snow storage areas
 7. Within the project area and within 400 feet of project boundary surface waters, wetlands, and drainage patterns and watershed boundaries
 8. Vegetation
 9. Extent of 100-year flood plain boundaries if published or determined
 10. Soils information for design purposes from a National Cooperative Soil Survey (NCSS) soil series map or a High Intensity Soil Map of the site, prepared in accordance with SSSNNE Special Publication No. 1. Highly erodible soils shall be determined by soil series.
 11. Easements
 12. Areas of soil disturbance
 13. Areas of cut and fill
 14. Areas of poorly or very poorly drained soils including any portion to be disturbed or filled
 15. Location of all structural, non-structural, and vegetative stormwater management and erosion control BMPs
 16. Identification of all permanent control BMPs
 17. Tabulated sequence of construction
- B. Other plan requirements:**
1. Construction schedule
 2. Earth movement schedule
 3. A proposed schedule for the inspection and maintenance of all BMPs
 4. Description of temporary and permanent vegetative BMPs including seeding specifications
 5. Description of all structural and non-structural BMPs with detailed drawings of each as appropriate

908.16.6.2 Report section including:

- A.** Design calculations for all temporary and permanent structural control BMP measures
- B.** A proposed schedule for the inspection and maintenance of all BMPs
- C.** Identification of all permanent control measures and responsibility for continued maintenance
- D.** Drainage report with calculations showing volume, peak discharge, and velocity of present and future runoff
- E.** When detention structures are planned to reduce future condition peak discharge, the soil cover complex method shall be used to compute the runoff volume and peak discharge for designing the structure. The design will conform to the criteria outlined for those types of structures given in the “New Hampshire Stormwater Manual”.

908.16.7 Responsibility For Installation/Construction

The applicant shall bear final responsibility for the installation, construction, inspection and disposition of all stormwater management and erosion control measures required by the provisions of this regulation.

The Planning Board shall require a bond or other security in an amount and with surety conditions satisfactory to the Board, providing for the actual construction and installation of such measures within a period specified by the Planning Board and expressed in the bond or the surety

Site development shall not begin before the stormwater management and erosion control plan receives conditional approval. Best Management Practices shall be installed as designed and scheduled as a condition of final approval of the plan.

908.16.8 Plan Approval And Review

The Planning Board shall indicate approval of the stormwater management and erosion control plan, as filed, if it complies with the requirements and objectives of this regulation. Such approval shall be a component of subdivision or site plan approval. If disapproved, a list of plan deficiencies and the procedure for filing a revised plan will be given to the applicant.

Technical review of any stormwater management and erosion control plan prepared under this regulation shall be reviewed by the Town's Engineer, at the expense of the applicant.

908.16.9 Maintenance And Inspection

A. A narrative description of on-going maintenance requirements for water quality measures required by stormwater management and erosion and sediment control plans after final planning board approval shall be recorded on the deed to the property on which such measures are located. The narrative shall be in the form of a typical site plan management, development agreement or as otherwise set forth by the planning board. The description so prepared shall comply with the requirements of RSA 478:4-a, as detailed below.

1. The register of deeds shall not accept a deed or instrument for filing/recording unless it recites the following information:
 - a. The latest mailing address of the grantees named in the deed or instrument;
 - b. In the first sentence of the first description paragraph, the names of all municipalities in which the property is located;

- c. The name of each person signing the deed or instrument as a party to the transaction printed or typewritten under the signature.
- B. All documents shall be suitable for reproduction as determined by the register of deeds, who shall provide document standards as amended and adopted by the New Hampshire registers of deeds. The standards and any amendments thereto shall include a statement of their effective date, and shall be posted in and distributed by all registries of deeds for at least 60 days prior to such effective date.
- C. The purpose of this article is to enact locally the administrative and enforcement procedures set forth in RSA 676 of the existing planning and land use statutes.
- D. RSA 676 authorizes the following penalties and remedies for enforcement of the provisions of this regulation:
 - 1. Injunctive relief in accordance with RSA 676:15;
 - 2. Fines and penalties in accordance with RSA 676:17;
 - 3. Issuance of a cease and desist order in accordance with RSA 676:17-a;
 - 4. Pleas by mail for local land use citations in accordance with RSA 676:17-b.
- E. The Planning Board shall require inspections to verify on-going maintenance of water quality protection measures. Such inspections shall be performed by the Town Engineer at reasonable times to the landowner. If permission to inspect is denied by the landowner, the Board of Selectmen shall secure an administrative inspection warrant from the district or superior court under RSA 595-B.
- F. The Planning Board shall require a fee for inspections of water quality protection measures. See Article 905, Planning Board Fee Schedule for Subdivisions, Site Plans, Sign Permits and Plan Recording, found in Kingston's Subdivision Review Regulations. The owner of the property or site plan operator shall be responsible for fee payment on and into the future on an annual basis. Fee payments for site plans, regardless of approval date, shall be due on or before December 31 to cover inspections for the following year. A schedule of fees shall be adopted by the Planning Board, which represents the cost of performing routine inspections of various types of water quality protection measures. Inspections shall be performed by an inspector(s)/consultant(s) knowledgeable in water quality, storm water and erosion control devices and their maintenance. The procedure for adoption of the fee schedule shall be as provided for in RSA 676:4(l)(g), as detailed below.
 - 1. "Reasonable fees in addition to fees for notice under subparagraph (D) may be imposed by the board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications."

908.17 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

A. Submission of NOI to the Town of Kingston, NH

1. All operators of (1) municipal landfills; (2) hazardous waste treatment, disposal, and recovery facilities; (3) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023; and (4) industrial facilities that the Town's Inspection Agent determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity, shall comply with the following requirements:
 - a. Any operator who intends to obtain coverage for storm water discharge associated with industrial activity under the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity ("the Industrial General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the Town's Inspection Agent at least 5 days prior to the commencement of the industrial activity at the facility. If industrial activity is already underway upon the effective date of this Regulation, the NOI shall be submitted within thirty (30) days. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by the Industrial General Permit changes, the new operator of the facility shall submit an NOI at least 5 days prior to the change.
 - b. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Industrial General Permit or any individual or group NPDES permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under this Regulation, and any other Town regulation.
 - c. The SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer. The signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Industrial General Permit, or with any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, and within any additional requirement imposed by or under this Regulation. The SWPPP shall contain the name, title, and business address of the Registered Professional Engineer signing it, and the date that he/she did so.
 - d. The SWPPP shall be completed prior to the submittal of the NOI to the Town's Inspection Agent and, for a new industrial operation, prior to the commencement of the industrial activity at

the facility. The SWPPP shall be updated and modified as appropriate and as required by the Industrial General Permit and this Regulation. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.

- e. A copy of any NOI that is required by section 908.17 shall be submitted to the Town in conjunction with any application for a permit or any other Town approval necessary to commence or continue operation of the industrial facility.
- 2. The Town's Inspection Agent may require any operator who is required by section 907.17.A.1.b to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the Town's Inspection Agent for review. Such submittal and review of the SWPPP may be required by the Town's Inspection Agent prior to commencement of or during industrial activity at the facility.
 - a. Upon the Town Engineer's review of the SWPPP and any site inspection that he/she may conduct, the Town may deny approval of any application for a permit or any other Town approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the Industrial General Permit, any individual or group NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under this Regulation. Also, if at any time the Town's Inspection Agent determines that the SWPPP is not being fully implemented, the Town may similarly deny approval of any application for a permit or other Town approval necessary to commence or continue operation of the industrial facility.
 - b. Any significant modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer, as required for the original SWPPP by section 908.17.A.1.d.
 - c. The SWPPP, with the Registered Professional Engineer's signature and seal affixed, and with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all storm water discharges associated with industrial activity at the facility are eliminated and the required Notice of Termination (NOT) has been submitted.
 - d. The operator shall make the SWPPP and any modification thereto available to the Town's Inspection Agent upon request as well as to EPA and State inspectors.
 - e. The Town's Inspection Agent may notify the operator at any time that the SWPPP does not meet the requirements of the Industrial General Permit, any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or

under this Regulation. Such notification shall identify those provisions of the permit or Regulation which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within thirty (30) days of such notification from the Town's Inspection Agent, the operator shall make the required changes to the SWPPP and shall submit to the Town's Inspection Agent a written certification that the requested changes have been made.

- f. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with industrial activity.
3. Qualified personnel (provided by the operator) shall inspect equipment and areas of the facility specified in the SWPPP at appropriate intervals. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained.
 - a. Qualified personnel (provided by the operator) shall conduct comprehensive site compliance evaluations as required by Part 908.10 of the Industrial General Permit at intervals of no less than once per year. Based on the results of the compliance evaluation, the description of potential pollutant sources and the pollution prevention measures and controls identified in the SWPPP shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the SWPPP in a timely manner, but in no case more than twelve weeks after the compliance evaluation.

A report summarizing the scope of the comprehensive site compliance evaluation required by paragraph VI.A.14, personnel making the compliance inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with necessary and appropriate plan revisions shall be made and retained as part of the SWPPP for at least one year after all storm water discharges from the facility are eliminated and the required NOT has been submitted. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES permit, and this Regulation. The report shall be signed by the

individual responsible for the comprehensive site compliance evaluation and it shall be submitted to the Town's Inspection Agent within ten days of its completion.

- b. If the industrial facility is required by Part 908.16.6 of the Industrial General Permit to conduct semi-annual monitoring, a signed copy of each semi-annual monitoring report prepared in accordance with Part 908.16.9. shall be submitted to the Town's Inspection Agent.
 - c. If the industrial facility is required by Part VI.B.3 of the Industrial General Permit to conduct annual monitoring, records of the monitoring results shall be retained at the facility and made available to the Town's Inspection Agent upon request. If expressly required by the Town's Inspection Agent, a written report of the annual monitoring shall be prepared and submitted to the Town's Inspection Agent.
4. By written notice, the Town's Inspection Agent may require any industrial facility identified in accordance with this Section VI to implement a monitoring program that includes the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for the facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 C.F.R. 122.21(g)(7)(iii) and (iv). The Town's Inspection Agent may require written reports of any such monitoring to be submitted to him/her.
 5. By written notice, the Town's Inspection Agent may require any industrial facility identified in this Section 908.17 to conduct semi-annual or annual monitoring of storm water discharges, or the Town's Inspection Agent may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. The Town's Inspection Agent may require written reports of any such additional monitoring to be submitted to him/her.
 6. The operator shall retain the SWPPP until at least one year after storm water discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and a Notice of Termination (NOT) in compliance with paragraph 908.17.2.c has been submitted. The operator shall retain all records of all monitoring information, copies of all required reports, and records of all data used to complete the NOI, until at least one year after all storm water discharges associated with industrial activity at the facility are eliminated, or the operator ceases to operate that facility, and the required Notice of Termination (NOT) has been submitted.
 7. For discharges subject to the semi-annual or annual monitoring requirements of Part 908.17. of the Industrial General Permit, in

addition to the records-retention requirements of the paragraph above, operators are required to retain for a six year period from the date of sample collection, records of all monitoring information collected. Operators must submit such monitoring results, and/or a summary thereof, to the Town's Inspection Agent upon his/her request.

- a. **No** discharge shall exceed the maximum allowable concentrations as outlined in the New Hampshire Env-Ws 1700 Surface Water Quality Regulations.
- b. Where all storm water discharges associated with industrial activity that are authorized by this Regulation, and by the NPDES permit for those discharges from industrial activities, are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the Town's Inspection Agent a Notice of Termination (NOT) that includes the information required for Notices of Termination by Part 908.17 of the Industrial General Permit.

- B. Any owner of a facility with a storm water discharge associated with industrial activity to which Subsection A applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with the best management practices (BMP) measures required in the SWPPP for the facility and for compliance with the effluent limitations for coal pile runoff and hazardous metals specified in paragraphs VI.A.22 and VI.A.23 above.
- C. Upon request by the Town's Inspection Agent, all owners and operators of any facility that experiences a problem complying with the requirements of this Regulation, the Industrial General Permit, or any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, shall consult with the Town's Inspection Agent, or any other representative of the Town, and any third-party designated by the Town in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the Town's satisfaction, the Town may, in its discretion, report the noncompliance to EPA and/or the State, and/or the Town may itself undertake any enforcement action authorized by Sections IX, XI, or XII of this Regulation. Exercise of the Town's option for consultation under this Subsection VI.C. shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

908.18 OTHER REQUIRED PERMITS

In addition to local approval, the following shall be required if applicable:

Stormwater Management Regulation

- A. RSA 485-A:17 requires a permit from the New Hampshire Water Supply and Pollution Control Division for “...any person proposing to significantly alter the characteristic of the terrain, in such a manner as to impede natural runoff or create an unnatural runoff ...”. Regulations require this permit for any project involving more than 100,000 contiguous square feet of disturbance or if such activity occurs in or on the border of the surface waters of the state.
- B. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by the EPA or by the State under authority delegated pursuant to 33 USC, section 1342 (b) that authorizes the discharge of pollutants to waters of the United States.
- C. For a cumulative disturbance of one acre of land that EPA considers “construction activity”, which includes, but is not limited to clearing, grading, excavation and other activities that expose soil typically related to landscaping, demolition and construction of structures and roads, a federal permit will be required. Consult EPA for specific rules. This EPA permit is in addition to any state or local permit required. To apply, the entity or individual responsible for construction site operations shall file a Notice of Intent (NOI) with the EPA postmarked at least 24 hours prior to work beginning. EPA will respond within two weeks with a written permit, provided the NOI meets their criteria.

908.19 ENFORCEMENT

Any violation of the requirements of this regulation shall be subject to the enforcement procedures detailed in RSA 676. The Board of Selectmen or their designee shall be responsible for enforcement of the provisions of this regulation.

- A. **Written Notice of Violation.** A written notice of violation shall be issued to the property owner by registered mail from the Board of Selectmen or their designee if the agent determines that conditions at the site are in violation of any of the requirements of this regulation or plans approved under this regulation and that the violation is not an immediate threat to public health and safety. The notice of violation shall:
 - 1. Specify the actions or conditions which violate the requirements of this regulation or plans approved under this regulation;
 - 2. Identify what needs to be done to correct the violation(s);
 - 3. Specify a reasonable time frame within which the violation will be corrected;
 - 4. Be provided to the property owner with a copy to be kept in the official records of the (local land use board or local administrator).
- B. **Cease and Desist Order.** In accordance with NH RSA 676:17-a, Cease and Desist Orders, A cease and desist order may be issued to the property owner by the Board of Selectmen or their designee if the

agent determines that conditions at the site are in violation of any of the requirements of this regulation and the violation is either:

1. An immediate threat to public health and safety; or
2. The property owner has failed to take corrective action(s) identified in a written notice of violation issued under Section 908.14 of this regulation within the time frame specified therein.

908.20 ADOPTION OF REGULATION

This regulation shall be in full force and effect immediately upon passage and adoption. All prior regulations in conflict with this regulation are hereby repealed.