

Article 15-24 STORMWATER

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15-24-1 Authority

This article may be referred to as the Town of Oro Valley Stormwater Utility Ordinance. This article is adopted pursuant to ARS 9-521, which defines stormwater as a utility undertaking, and ARS 9-522, which authorizes the Town to issue bonds and prescribe service charges so that a utility undertaking for which bonds are issued will always remain self-supporting with revenue sufficient to repay bonds and provide for the expenses of operation, maintenance, expansion and replacement of facilities.

(01-15, Added, 06/20/2001)

15-24-2 Need and Purpose

A. The occurrence of storms and other events that may cause periodic flooding of land. Such periodic flooding, in sound engineering practice, requires the planning, design, construction, operation, and maintenance of facilities that safely drain and control the quantity and quality of runoff from such storms and other events.

B. The purpose of this article is to provide for the creation of the Town of Oro Valley Stormwater Utility and to adopt appropriate funding mechanisms and service charges to provide the needed stormwater facilities.

(01-15, Added, 06/20/2001)

15-24-3 Area of Jurisdiction

The Stormwater Utility applies to all areas within the incorporated limits of the Town.

(01-15, Added, 06/20/2001)

15-24-4 “Town-Owned Stormwater Utility (“Enterprise”)

A. The Stormwater Utility shall constitute an enterprise of the Town. The Town, may issue its own revenue bonds or other obligations (including refunding securities) on behalf of the Town. The revenue bonds or other obligations shall be payable solely from the net revenues derived from the operation of the Stormwater Utility. Such revenue bonds or other obligations may be additionally secured by mortgages on or security interest in any real or personal property of the Town used in the operation of the Stormwater Utility. The ordinance issuing any such revenue bonds or other obligations shall be adopted in the same manner and shall be subject to referendum to the same extent as any ordinance of the Town in accordance with Arizona law.

B. Any pledge of net revenues derived from the operation of the Stormwater Utility shall be subject to limitations on future pledges thereof contained in any ordinance authorizing the issuance of outstanding bonds or other obligations of the Town payable from the same source or sources. All bonds or other obligations issued by ordinance payable from the net revenues derived from the operation of the Stormwater Utility and all revenue bonds or other obligations of the Stormwater Utility payable solely from the net revenues derived from the operation of the Stormwater Utility, shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

C. The Stormwater Utility shall also be authorized to have and exercise the following powers in furtherance of its purpose: 1) to hold meetings concurrently with regular and special meetings of the Town Council; 2) to have and use a seal; 3) to issue its revenue bonds for stormwater purposes in the manner in which Town revenue bonds may be issued; 4) to pledge any revenues of the Town’s stormwater system to the payment of such revenue bonds and to pay such revenue bonds therefrom; 5) to enter into contracts relating to the stormwater system in the manner in which Town contracts may be entered into; 6) to make representations, warranties, and covenants relating to the stormwater system on behalf of the Town; 7) to exercise rights and privileges of the Town relating to the stormwater system; and 8) to bind the Town to perform any obligation relating to the

stormwater system other than the multiple-fiscal year direct or indirect debt or other financial obligation(s) of the Town without adequate present cash reserves pledged irrevocably and held for payments in all future years.

D. All revenues and expenditures of the Town, or of the Stormwater Utility relating to the stormwater system, shall be considered revenues and expenditures of the Stormwater Utility.

(01-15, Added, 06/20/2001)

15-24-5 (Reserved)

(Reserved).

(01-15, Added, 06/20/2001)

15-24-6 Stormwater Utility Commission

There is hereby established an entity to be called the Town of Oro Valley Stormwater Utility Commission. The Commission shall be comprised of five (5) Oro Valley residents, and the Mayor and Council shall appoint the members.

(01-15, Added, 06/20/2001)

15-24-7 Director of Administration

The Public Works Director, or designee, shall serve as the Administrator of the Stormwater Utility.

(01-15, Added, 06/20/2001)

15-24-8 Adoption of Stormwater Management Plan

The Stormwater Utility shall adopt a comprehensive Stormwater Management Plan in conformance with the Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) Phase II guidelines (40 C.F.R. 9.122-125). The Stormwater Management Plan shall outline the goals and objectives of the stormwater system and identify the various elements of the system necessary to achieve the goals and the associated costs in accordance with generally accepted hydrology practices.

(01-15, Added, 06/20/2001)

15-24-9 Facilities

All stormwater conveyance facilities owned by or dedicated to the Town within the area of jurisdiction shall be considered the facilities of the Stormwater Utility. Stormwater conveyance facilities constructed as a part of private development shall not be dedicated to the public unless a request is made of the Town to accept dedication of such facilities and the Administrator determines that the facilities are constructed to current Town standards and that it is in the public interest to accept such dedication. Such facilities and/or interests in real property shall not be conveyed to the Town prior to the issuance of a formal acceptance by the Town.

(01-15, Added, 06/20/2001)

15-24-10 Reserve Funds

The Stormwater Utility shall maintain reserve funds for unexpected and/or emergency needs. The need for use of said funds shall be determined by the Board with recommendations from the Commission, or in the case of an emergency where the Commission can not be convened in a timely manner, with recommendation from the Director. This reserve shall be fifteen percent (15%) of the collected annual stormwater fees.

(01-15, Added, 06/20/2001)

15-24-11 Disclaimer

Floods from stormwater runoff may occasionally exceed the capacity of stormwater facilities constructed and maintained pursuant to this article. This article does not denote that property liable for the fees and charges established by this article would always be free from stormwater flooding or flood damage. This article does not purport to reduce the need or the necessity for the property owners to obtain flood insurance. This article does not create any liability on the part of the Town or any officer or employee thereof for any damages that may result from reliance on this article or actions of the Stormwater Utility. This article, other than as provided for in this section, does not relieve any person from liability for actions taken, or not taken, for damage to persons or the property of others.

(01-15, Added, 06/20/2001)

15-24-12 Rules of Interpretation

Nothing in this article shall be construed to limit or repeal other powers granted to the Town. Should provisions of this article conflict or overlap with other regulations, ordinances, or statutes, the regulation, ordinance, or statute that imposes the more stringent requirement or restriction shall prevail.

(01-15, Added, 06/20/2001)

15-24-13 Stormwater Utility Fee System

A. Findings.

1. The Town maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways.
2. The stormwater system in the Town needs regular maintenance, repair and improvements.
3. Stormwater quality is degraded due to erosion and the discharge of nutrients, metals, organic compounds including oil and grease, and other substances into and through the stormwater system.
4. Stormwater quantity is affected by erosion, design of drainage, maintenance of stormwater channels, channel vegetation, floodway and flood plain characteristics and changes, and deposition of material in the channels.
5. The public's health, safety, and welfare are adversely affected by poor stormwater quality and flooding that result from inadequate management of both the quality and quantity of stormwater.
6. All real property in the Town either uses or benefits from the maintenance of the stormwater system.
7. The extent of use of the stormwater system by each property is dependant on factors that influence runoff, including land use and the amount of impervious surface on the property.
8. The costs of improving, maintaining, repairing, operating, and monitoring the stormwater system shall be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the stormwater control and conveyance system.
9. Management of the stormwater system to protect the public health, safety, and welfare as well as meet the Arizona Pollutant Discharge Elimination System Phase II permit and FEMA requirements requires adequate revenues. It is in the interest of the public to finance stormwater management with a fee system that is reasonable and equitable. Single-family residences will be charged a flat rate for one (1) ERU. Non-single-family and religious/educational property owners

will be charged a multiple rate equal to the amount of impervious area on their property divided by the amount of one (1) ERU (~~five thousand (5,000) square feet~~) four thousand (4,000) square feet. This formula will charge property owners on the basis of their properties' impact to the stormwater system.

B. **Authority.** Authority for the adoption of a system of charges to fund the implementation of stormwater management programs is conferred on the Town by ARS 9-530, as amended.

C. **Definitions.** For the purposes of this chapter, the following words and phrases shall have the meanings indicated:

1. "Administrator of the Stormwater Utility" or "Administrator" means the Town Engineer, or designee, shall serve as the Administrator of the Stormwater Utility.
2. "Arizona Pollutant Elimination Discharge System (AZPDES)" means a program required under Section 402(b) of the Clean Water Act (CWA), in accordance with 40 CFR 123.22. The program specifies how the Arizona Department of Environmental Quality (Department) will administer the National Pollutant Discharge Elimination System (NPDES) program. The program is found in Article (3.1) of the Arizona Revised Statutes in Chapter 2, under Title 49 authorizing a state NPDES program. The administrative rules for an Arizona Pollutant Discharge Elimination System (AZPDES) program are consistent with, but no more stringent than, the NPDES program and the requirements of Sections 402(b) (state permit programs) and 402(p) (municipal and industrial stormwater discharges) of the CWA.
3. "Equivalent residential unit (ERU)" means approximate average amount of impervious area associated with single-family residential property in the Town.
4. "Base rate (BR)" means the Stormwater Utility flat fee to an ERU of ~~five thousand (5,000)~~ four thousand (4,000) square feet of impervious surface.
5. "Commission" means the Stormwater Utility Commission for the Town of Oro Valley established under this article.
6. "Developed property" means real property which has been altered from its structures, or other impervious area.
7. "Undeveloped property" means real property in its untouched natural state.

8. "Fee" or "Stormwater Utility fee" means the charge established under this section and levied on owners of parcels or pieces of real property to fund the costs of stormwater management, implementation of the Stormwater Management Plan together with constructing, operating, maintaining, repairing, and improving the stormwater system in the Town.
9. "FEMA" means the Federal Emergency Management Agency.
10. "Fiscal year" means July 1st of a calendar year to June 30th of the next calendar year, both inclusive.
11. "Impervious surface area" means the number of square feet of horizontal surface covered by buildings and other impervious surface, which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or other surface that impedes the natural infiltration of surface water.
12. "Multifamily dwelling" means a building with more than three (3) dwelling units (to include apartments and condominiums).
13. "Nonresidential property" means developed property other than single-family residential property. Such property shall include, but not be limited to, multifamily dwellings, commercial properties, industrial properties, parking lots, hospitals, recreational and cultural facilities, hotels, and offices.
14. "Educational facilities, religious institutions and nonprofits" means any developed public, private, or parochial school or any building recognized as a religious facility or nonprofit use.
15. "Property owner" means the property owner of record as listed in the Pima County Assessor's roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
16. "Single-family residential property (SFR)" means a developed property that serves the primary purpose of providing a permanent dwelling unit. Single-family residential property shall also include duplexes and triplexes. A single-family detached dwelling containing an accessory apartment or second dwelling unit is included in this definition.

17. "Stormwater utility fund" or "fund" means the fund created by this chapter to operate, maintain, repair, and improve the Town's stormwater system and implement the Town's Stormwater Management Plan.

18. "Stormwater Management Plan" means the planning, design, construction, regulation, improvement, repair, maintenance, operation of facilities and programs necessary for the Town to meet the compliance requirements of the Arizona Pollutant Discharge Elimination System (AZPDES) Phase II Municipal General Permit and FEMA Regulations as relating to water, flood plains, flood control, grading erosion, and sediment control along those activities.

19. "Stormwater system" means the system or network of storm and surface water facilities including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components as well as all natural waterways (including washes). It shall also mean the activities associated with implementing the Stormwater Management Plan.

20. "Water" means any stormwater, surface water, snow melt or ground water.

D. Establishment of Stormwater Utility Fund.

1. The Stormwater Management Plan is established to provide for the Town's compliance with the AZPDES Phase II Municipal General Permit requirements and to provide the stormwater system necessary to convey stormwater, control flooding, and to protect the natural environment. The costs of complying with the AZPDES Phase II program and FEMA Regulations along with designing, developing, improving, operating, maintaining, and monitoring the stormwater system required in the Town should, therefore, be allocated, to the extent practicable, to all property owners based on their impact on the stormwater system. In order to provide revenue to fund those costs and to fairly allocate those costs, a Stormwater Utility Fund (the "fund") is established.

2. All revenues collected from the Stormwater Utility fee, from grants, permit fees, penalties and other charges collected under this article, shall be deposited to the fund. The Town Council may make additional appropriations to the fund. All disbursements from the fund shall be for the purposes of the fund as set forth in subsection E of this section, and the fund shall be used for those purposes only.

E. Purposes of the Fund. The fund shall be used for the following purposes:

1. All costs of implementation and administration of the Stormwater Management Plan, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements. There shall be a reserve fund of fifteen percent (15%) of the collected annual stormwater fees as specified under Section 15-24-10 of this code.
2. Inspection and enforcement activities.
3. Billing and administrative costs.
4. Other activities that are reasonably required to accomplish the mission of the Stormwater Management Plan.

F. **Stormwater Utility Fee.** A monthly service charge is imposed upon all real property in the Town, as of the first day of each month, beginning January 1, 2008, to fund the Stormwater Management Plan and stormwater system with invoicing as defined in subsection J of this section. This service charge shall be known as the Stormwater Utility fee ("fee"). As any real property is developed or developed real property is annexed into the Town it will be subject to the fee. The fee is based on the cost of implementing a stormwater management program.

G. **Classification of Property for Purposes of Determination of the Stormwater Utility Fee.**

1. For purposes of determining the Stormwater Utility fee, all properties in the Town are classified into one of the following classes:
 - a. Single-family residential property; or
 - b. Nonresidential property; or
 - c. Educational facilities, religious institutions and nonprofits.
2. **Single-Family Residential (SFR) Fee.** All developed single-family residential properties in the Town shall be charged a flat Stormwater Utility fee, equal to the base rate, regardless of the size of the parcel or the improvements.
3. **Non-Single-Family Residential Property (NSFR) Monthly Fee.** A developed non-single-family residential (NSFR) property will be charged a fee for the number of ERUs of impervious area. The impervious area for developed NSFR property may be determined through site examination,

mapping information, aerial photographs and other available information. NSFR without first flush capabilities or other approved stormwater pollution prevention devices shall pay the base rate times the number of ERUs on the site. The monthly fee shall be determined by dividing the total impervious surface (in square feet) by ~~five thousand (5,000)~~ four thousand (4,000) and rounding that value up or down to the nearest whole ERU amount and then multiplying the result by the base rate to obtain the monthly fee. NSFR properties that incorporate first flush capabilities or other approved stormwater pollution prevention devices are eligible for a twenty-five percent (25%) reduction in the fee, providing they apply to and are approved by the Stormwater Utility Commission and meet the annual inspection and maintenance requirements.

4. Educational Facilities, Religious Institutions and Nonprofits Monthly Fee. A developed religious institution, school or other non-profit property shall be eligible for a twenty-five percent (25%) fee reduction provided they apply to and are approved by the Stormwater Utility Commission. In order to qualify for the fee reduction, the educational facility, religious institution or non-profit organization must conduct educational programs or other tasks on the topic of stormwater management as approved by the Stormwater Utility Commission. No developed educational facility, religious institution or nonprofit property shall pay less than seventy-five percent (75%) of the base rate. The monthly fee shall be determined by dividing the total impervious surface (in square feet) by ~~five thousand (5,000)~~ four thousand (4,000) and rounding that value up or down to the nearest whole ERU amount and then multiplying the result by the base rate to obtain the monthly fee.

H. Base Rate.

1. The Town Council shall, by resolution, establish the annual (fiscal year) monthly base rate for the Stormwater Utility fee. The base rate shall be calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the Town.
2. A schedule of fees shall be maintained by the Stormwater Utility, three (3) copies of which shall be available at the Town Clerk's office.
3. The Stormwater Utility Commission shall annually review the Stormwater Utility revenue requirements and recommend to the Town Council rate adjustments as necessary.

I. Exemptions.

1. Property which is owned by the Town and other governmental agencies shall be exempt from the fee.
2. Undeveloped property shall be exempt from the fee.

J. Billing.

1. Each property served by the Oro Valley Water Utility shall be billed monthly for the Stormwater Utility fee. Properties not served by the Oro Valley Water Utility shall be billed quarterly. The bill may be part of the Oro Valley Water Utility bill, a separate billing, or some other reasonable mechanism.
2. Service charges shall begin January 1, 2008, with invoicing at the end of the month or quarter, as appropriate.

K. Delinquent Stormwater Utility Fee Process/Penalties. For Oro Valley residents being served water by the Oro Valley Water Utility and charged their stormwater utility fees as part of their Water Utility bill, the Oro Valley Water Utility regulations shall apply to all delinquent fees.

For all other Oro Valley Stormwater Utility customers, the following shall be followed to obtain payment of delinquent fees and penalties:

1. Process. Stormwater Utility fees are overdue twenty-one (21) days after the Stormwater Utility bill is issued and a penalty for any overdue payments may be imposed.
 - a. The Stormwater Utility Manager shall send a delinquency notice to property owners responsible for Stormwater Utility fees demanding payment of their delinquent fee within ten (10) days of the date of the notice.
 - b. If there is no reply to the Stormwater Utility Manager's letter, the Town Attorney's office shall send a letter demanding payment of the Stormwater Utility fee from property owners who have not replied to the first notice. In the event that there is no response to the Town Attorney's letter, the Town will initiate legal proceedings in the Oro Valley Magistrate Court after ten (10) days.

- c. Failure to pay the fee, including any late charges, by the due date shall be considered a civil violation and a summons and complaint will be served on the property owner. The summons and complaint will be served on the property owner by a process server.
- d. In the event the defendant(s) fail(s) to appear in court, the Oro Valley Magistrate is authorized to issue a default judgment against the defendant(s) in accordance with subsection (K)(2) of this section.

2. Penalties.

a. Civil Sanctions. A person found responsible for a violation of this article shall be sanctioned by the Magistrate or Hearing Officer as follows:

- i. First violation within a twenty-four (24) month period: a sanction of not more than one hundred dollars (\$100.00).
- ii. Second violation within a twenty-four (24) month period: a sanction of not more than one hundred fifty dollars (\$150.00).
- iii. Third or subsequent violation within a twenty-four (24) month period: a sanction of not more than two hundred dollars (\$200.00).
- iv. The court may, at its discretion, reduce or suspend the sanction.

Sanctions are in addition to the delinquent Storm Water Utility fee, late fees and charges.

b. Default Judgment.

- i. If, after being legally served with a summons and complaint, the party fails to appear at the hearing time designated in the summons and complaint and/or time designated for a hearing by the Court, that individual shall be deemed to have admitted the allegation in the complaint and the Court shall enter judgment and impose a civil sanction in accordance with the provisions of this chapter.
- ii. Upon entry of the default judgment, the Court, in addition to the sanctions, may impose all applicable surcharges, security fees, a default judgment fee and other court fees as authorized by State law or Town ordinance.

iii. If any penalty ordered to be paid by the Magistrate or forfeited pursuant to default is not paid within thirty (30) days of the Magistrate's order, a lien on the real property to which the delinquent stormwater fees apply may be filed in the amount of the judgment by the Town Attorney. The Magistrate may also institute judicial proceedings as provided by law to collect any such penalty. All penalties collected pursuant to this article shall be paid to and become the property of the Town.

L. Requests for Correction of the Stormwater Utility Fee.

1. A property owner may request correction of the fee by submitting the request in writing to the Stormwater Utility Administrator. Grounds for correction of the fee include:

- a. Incorrect classification of the property for purposes of determining the fee;
- b. Errors in the square footage of the impervious surface area of the property;
- c. Mathematical errors in calculating the fee to be applied to the property; and
- d. Errors in the identification of the property owner of a property subject to the fee.

2. The Stormwater Utility Administrator shall make a determination within thirty (30) days after the receipt of (as indicated by the receipt date stamp) the property owner's completed written request for correction of the fee. The applicant may appeal the Administrator's determination to the Stormwater Utility Commission.

3. A property owner must comply with all rules and procedures adopted by the Town when submitting a request for correction of the fee and must provide all information necessary for the Stormwater Utility Administrator to make a determination on a request for correction of the fee. If a property owner alleges an error under subsection (L)(1)(b) of this section, the request for correction must include a certification by a registered civil engineer or professional land surveyor of the impervious surface area of the property. Failure to comply with the provisions of this subsection shall be grounds for denial of the request.

((O)10-14, Amended, 11/17/2010; (O)10-04, Amended, 04/07/2010; (O)07-40, Added, 11/07/2007)

15-24-14 Stormwater Management and Discharge Control

A. **Title.** This section shall be known as the “Storm Water Quality Management and Discharge Control Ordinance” of the Town of Oro Valley and may be so cited.

B. **Purpose and Intent.** The purpose and intent of this section is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. 1251 et seq.), National Pollutant Discharge Elimination System Regulations (40 CFR Part 122), and State regulations for stormwater discharge (ARS Title 49, Chapter 2, Article 3.1) by establishing minimum stormwater management requirements for the management of pollutants that are or may be discharged to the municipal storm sewer system.

C. **Definitions.** The terms used in this section shall have the following meanings:

1. *ADEQ* means the Arizona Department of Environmental Quality, Arizona’s regulatory entity responsible for administering Federal and State environmental laws and programs including most water-quality, air-quality, and waste programs.

2. *Authorized Representative* means the Town Engineer, or his/her designee, who has the delegated duties and powers pursuant to this section.

3. *AZPDES* means the Arizona Pollutant Discharge Elimination System.

4. *AZPDES Permit* means any permit issued by the ADEQ pursuant to 33 U.S.C. 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, a group, or on a general area-wide basis.

5. *Best Management Practices (BMPs)* means activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain and ephemeral wash systems and waters of the United States. BMPs include but are not limited to: treatment facilities, including first-flush technology, to remove pollutants from stormwater; public education and involvement; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of nonstormwater, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such other provisions as the Town determines appropriate for the control of pollutants.

6. *Certified Industrial Hygienist* means a professional industrial hygienist who is certified by the American Board of Industrial Hygiene.
7. *Clean Water Act* means the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 through 1376), as amended.
8. *Construction Activity* means activities subject to the ADEQ construction general permit (AZG2008-001) and the Town of Oro Valley's grading permit requirements.
9. *Connection* means the location/juncture at which discharge can enter a municipal separate storm sewer or ephemeral wash system.
10. *Corrective Action Plan* means a plan that is required under this section and approved by an authorized representative that consists of structural and/or nonstructural BMPs to minimize to the maximum extent practicable stormwater pollution or to remediate anthropogenic impacts to the storm-drain/wash system.
11. *De Minimus Discharge* means a discharge that is a low flow volume and/or low frequency, seldom occurring, event of relatively pollutant-free water which is discharged with appropriate BMPs to reduce any pollutant concentrations to below the applicable surface standard (A.A.C. Title 18, Chapter 11, Article 1).
12. *Discharge* means any addition of any pollutant to waters of the United States or to an MS4 from any point source.
13. *Discharger* means any person who causes or allows a discharge or who owns property from which a discharge originates.
14. *Engineer* means a professional civil engineer who is registered with the State of Arizona.
15. *Environment* means navigable waters, any other surface waters, ground water, drinking water supply, land surface, subsurface strata, ambient air, biotic community, or wildlife habitat within or bordering on the Town.
16. *EPA* means the United States Environmental Protection Agency charged with primary enforcement of the Clean Water Act.

17. *First-Flush* means a collection system approved by the Town that is employed to capture and isolate the first one-half (1/2) inch runoff from the commercial development site.
18. *Illicit/Illegal Discharge* means any direct or indirect nonstormwater discharge to the Town's storm drain or wash systems, or placement of anthropogenic materials in the preceding systems, except as exempted in subsection (H)(1) of this section or discharges pursuant to and in compliance with an applicable NPDES or AZPDES permit or other written authorization from the U.S. Environmental Protection Agency (EPA) or the Arizona Department of Environmental Quality (ADEQ).
19. *Industrial Facility* means the site of any industrial activity regulated under NPDES or AZPDES industrial stormwater permits as defined in 40 CFR Section 122.26(b)(14).
20. *Land Disturbance Activity* means any activity that is regulated under NPDES or AZPDES stormwater permit requirements for construction sites.
21. *Municipal Separate Storm Sewer System (MS4)* means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under A.A.C. R28-9-C902(A)(1)(g)(i) through (iv). [A.A.C. R18-9-A901(23)]. This also includes similar systems owned or operated by separate storm sewer municipal jurisdictions not required to obtain stormwater discharge authorization.
22. *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permits* means general, group, and individual stormwater discharge permits which regulate facilities defined in Federal NPDES regulations pursuant to the Clean Water Act.
23. *Notice of Intent (NOI)* means a document which describes the intent to operate in accordance with an NPDES/AZPDES Construction General Permit.
24. *Notice of Termination (NOT)* means the document to terminate coverage under the NPDES/AZPDES Construction General Permit.
25. *Nonstormwater Discharge* means any discharge to the storm drain and wash system that does not originate from precipitation.

26. *Owner or operator* means any owner or operator of any “facility or activity” subject to regulation under the NPDES/AZPDES program.
27. *Person* means an individual, property owner, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, the State of Arizona, or any political subdivision or agency of this State.
28. *Point Source* means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This does not include return flows from irrigated agriculture or agricultural stormwater runoff.
29. *Pollutant* means sediment, fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt (e.g., overburden material), and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances. [A.R.S. Section 49-201(29)]
30. *Pollution* means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses.
31. *Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
32. *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.
33. *Stormwater Pollution Prevention Plan (SWPPP)* means a document required under NPDES/AZPDES regulations or imposed pursuant to this section that describes the stormwater quality controls in place at a site and how these controls will be inspected and maintained.
34. *Town* means the Town of Oro Valley.
35. *Watercourse* means any drainage channel, wash, road or path through which water can flow.

36. *Waters of the United States (U.S.)* is defined in 40 CFR 122.2.

D. **Applicability.** This section shall apply to all activities which may potentially affect the municipal separate storm sewer system, any private storm sewer system, or any wash system on any land within the Town. Additionally, this includes discharge from permanent or temporary stormwater management controls and facilities, constructed as part of any activities listed in this section, which are located within the Town. Stormwater management standards shall apply to industrial, commercial, institutional, and multi-family residential development, as well as subdivision, roadway, and drainage projects that result in land area disturbance equal to or greater than areas established by the current construction general permit.

E. **Responsibility for Administration.** The Town Engineer shall adopt, administer, implement, and enforce such rules, regulations, standards, processes, and forms as he/she deems necessary for the efficient administration and enforcement of the provisions of this section. Any powers granted or duties imposed upon the Town Engineer/Public Works Director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the Town.

F. **Regulatory Consistency.** This section shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, or any applicable implementing regulations including those set forth in the Arizona State permit, and any amendments to, revisions of, or re-issuance thereof. No permit or approval issued pursuant to this section shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable code, rule, act, or ordinance. Additionally, the Town does not certify or take any position whether the applicant has met all requirements of the Federal Clean Water Act.

G. **Ultimate Responsibility of Discharger.** The requirements set forth herein and promulgated pursuant to this section are intended to meet minimum standards as required by Federal and State regulations but can, as determined by the Town Engineer, exceed the minimum standards. This section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This section shall not create liability on the part of the Town or any agent or employee thereof for any damages that may result from any discharger's reliance on this section or any administrative decision lawfully made thereunder.

H. **Discharge Prohibitions and Controls to Reduce Pollutants Entering Drainage Systems.**

1. General Requirements.

a. Any person engaged in activities which will or may result in pollutants entering a storm sewer system shall undertake appropriate measures to reduce such pollutants. Examples of such activities include, but are not limited to, proper use and disposal of household chemicals, such as pesticides and fertilizers, cleaning solutions, and cleaning solution waste water; and ownership and use of facilities which may be a source of pollutants including but not limited to parking lots, gasoline stations, industrial facilities, construction sites, and retail establishments.

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

2. Prohibition of Illegal Discharges.

a. No person shall discharge or cause to be discharged into the municipal separate storm sewer system (MS4) or Town watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater or pumped or rising unpolluted ground water. Additionally, depositing, dumping, or storing any material in a manner that may contribute pollutants to or obstruct the flow of stormwater is prohibited. The following activities are also subject to and enforceable under this section as they can contribute to contaminants which are regulated by Federal and State regulations to which this section applies:

i. Failing to comply with any applicable AZPDES/NPDES permit including any permit requirements to develop, implement, maintain or comply with a stormwater pollution prevention plan (SWPPP);

ii. Failing to provide required information to the Town including:

(A) Copies of the SWPPP, notice of intent, notice of termination, or any other documents relating to the permit;

(B) Upon request, copies of the SWPPP, water quality monitoring laboratory analytical results, and/or final hydrologic reports/development plans certifying compliance with any discharge detention or first-flush treatment requirements;

iii. Failing to develop, implement, or comply with a SWPPP or a corrective action plan utilizing BMPs that is either required under an AZPDES/NPDES permit or imposed by the Town pursuant to this section, including requirements to implement good housekeeping practices, spill control and response procedures, employee training, record keeping, proper material storage and waste management practices for control of nonstormwater flows, and structural stormwater controls; and

iv. Misrepresentation in any document pertaining to an approved plan, permit, or certification relating to a discharge activity.

b. The commencement, conduct, or continuance of any illegal discharge to the Town's MS4 is prohibited except as follows:

i. Discharges from the following activities will not be considered a source of pollutants to the Town's MS4 including any waters of the U.S. when properly managed to ensure that potential pollutants are minimized to the maximum extent practicable, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Clean Water Act, ADEQ AZPDES General Permit No. AZG-2001-0001, "General Waste Discharge Requirements for Discharges to Waters of the U.S. Which Pose a Limited or an Insignificant (De Minimus) Threat to Water Quality" (including amended or reissued permits):

(A) Potable water line flushing;

(B) Uncontaminated pumped groundwater and other discharges from potable water sources;

(C) Diverted stream flows;

(D) Air conditioning condensation;

(E) Uncontaminated non-industrial roof drains;

- (F) Individual residential and occasional noncommercial car washing;
- (G) Flows from riparian habitats;
- (H) Dechlorinated swimming pool discharges with the exception of filter back wash water;
- (I) Street wash waters;
- (J) Flows from fire fighting;
- (K) Irrigation water;
- (L) Foundation and footing drains;
- (M) Water from sump pumps; and
- (N) Dust control water.

ii. The prohibition shall not apply to any nonstormwater discharge permitted under an NPDES/AZPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of Arizona under the authority of the U.S. EPA; 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 by the Town for any discharge to the storm sewer system.

iii. With written concurrence of the Arizona Department of Environmental Quality, the Town may exempt in writing other nonstormwater discharges which are not a source of pollutants to the storm sewer system or waters of the U.S. Such authorization from ADEQ or the U.S. EPA shall be submitted to the Town prior to the time of discharge, and must be retained for at least three (3) years after the last authorized discharge.

3. Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit. Any person subject to any type of NPDES or AZPDES water or stormwater discharge permit shall comply with all provisions of such permit. Such compliance includes but is not limited to implementing BMPs to minimize the chance of pollutant entry into the storm sewer system, to reduce the potential for accidental discharge of pollutants to the municipal storm sewer system,

and to comply with the cleanup and notification requirements of this section as well as other pertinent Federal/State regulations. Proof of compliance with said permit may be required in a form acceptable to the Town Engineer/Public Works Director prior to or as a condition of a grading permit, subdivision plat, development plan, building permit, or grading or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

I. Requirement to Prevent, Control, and Reduce Stormwater Pollutants from Construction Sites.

1. **Basic Requirements.** All persons engaged in construction activities that are required by Federal or State law to submit to the EPA and/or the ADEQ a notice of intent (NOI) to comply with NPDES or AZPDES stormwater permit regulations shall provide the Town with a copy of the NOI, the site-specific SWPPP, and the AZPDES stormwater permit issued by the ADEQ. Any person performing construction who has submitted an NOI to the Town shall not cause or contribute to a violation of the AZPDES stormwater permit issued to the Town.

2. **Authorization to Adopt and Impose Best Management Practices.** The Town Engineer/Public Works Director has the final authority to require and accept BMPs as required for pre- and post-construction activities and must be presented in a SWPPP that is included as a section in the plans and permits submitted for Town review and acceptance as well as BMPs that are submitted as a part of corrective action plans. Town acceptance of a SWPPP is required prior to issuance of a grading permit.

3. **Every owner, operator, or contractor undertaking any construction activity or operation of any industrial facility having the potential to discharge pollutants to a water of the U.S. or the Town's MS4, or as otherwise required by the Town, the State of Arizona, or Federal agency, shall submit a stormwater pollution prevention plan (SWPPP) to the Town. The SWPPP shall include BMP plans including those required by the Town such as the installation of first-flush technology at commercial sites and shall be prepared by a qualified person. Additionally, SWPPPs shall be prepared and reviewed in accordance with the Arizona Pollutant Discharge Elimination System construction general permit issued by the ADEQ. The Town shall not certify or take any position on whether the applicant has met the requirements of the Federal Clean Water Act.**

4. **New Development and Redevelopment.** Owners of new development and redevelopment projects shall implement BMPs to control the volume, rate, and potential pollutant load, including

sediment, of stormwater runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants including sediment in accordance with the requirements of the AZPDES construction general permit. The Town shall incorporate such requirements in the conditions of relevant development and/or plat approvals as well as grading or other construction/building-related permit to be issued relative to such development or redevelopment. Additionally, proof of all applicable Town, State, and Federal permits such as the SWPPP, NOIs, inspection and maintenance logs, CWA 404s, etc., shall be maintained on site for inspection by authorized representatives. To maintain compliance with construction general permit requirements for inspections, construction site BMPs as delineated in the SWPPP must be inspected by the site operator in accordance with the SWPPP.

5. Responsibility to Implement Best Management Practices. Any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering stormwater, the Town's MS4, or waters of the U.S. shall implement best management practices including first-flush control technology on commercial development to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner's or operator's expense. Furthermore, notices to employees containing information about whom to contact and what procedures to follow in the event of a spill or accidental discharge must be posted at the site. Site owners or operators shall have a trained employee or staff member who will be responsible for any necessary cleanup or remediation.

6. In the event of a spill or release in reportable quantities as defined in 40 CFR 302, 40 CFR 110 and 40 CFR 117, the owner, operator, or the person who has control of the source or location from which a discharge which is not in compliance with this section shall immediately take all reasonable safety precautions including, if appropriate, calling 911 and completing the following steps:

- a. Proceed with containment and cleanup in accordance with:
 - i. The orders of an involved health and safety agency, or if no such orders have been issued;

- ii. The orders of an authorized representative, or if no such orders have been issued;
 - iii. The stormwater pollution prevention plan or approved corrective action plan utilizing best management practices for the involved facility;
- b. Report any violations of the Town fire code or other such applicable safety or health codes in the manner required by such code;
 - c. Notify the Oro Valley Town Engineer/Public Works Director and the Arizona Department of Environmental Quality of the release by telephone before 5:00 p.m. of the next working day;
 - d. Provide written notification, within five (5) working days, to the Oro Valley Town Engineer/Public Works Director of the type, volume, cause of the discharge, corrective actions taken, and measures to be taken to prevent future occurrences.

7. Compliance with these requirements shall not relieve the discharger of any fines, penalties, or liability incurred, or that may be imposed by this section or other applicable laws as a result of the discharge. In addition, compliance with these requirements shall not relieve the discharger from the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302.

J. Requirement to Eliminate Illegal Discharges. Notwithstanding the requirements of subsection (Q) of this section, the Town Engineer/Public Works Director shall require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges. Compliance with these requirements shall not relieve the owner/operator of property from which the illegal discharge occurred of any fines, penalties, or liability associated with the action that may be imposed by this section or other applicable laws.

K. Requirement to Eliminate or Secure Approval for Illicit Connections.

1. The Town Engineer/Public Works Director shall require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this section to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of the ordinance codified in this section.

2. If, subsequent to eliminating a connection found to be in violation of this section, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request Town approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense. At the discretion of the Town Engineer/Public Works Director, periodic, random monitoring may be required to ensure compliance with subsection (N) of this section.

L. **Watercourse Protection.** As required by AZPDES Phase II regulations and Chapter 17 of the Oro Valley Town Code, 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 reasonably 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. Failure on the part of the property owner to comply may result in liabilities incurred and penalties and fines imposed upon the property owner as defined in this section.

M. **Requirement to Remediate.** Whenever the Town Engineer/Public Works Director finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of stormwater, the Town's MS4, or waters of the U.S., the Town Engineer/Public Works Director may convey by written notice to the owner of the property and/or the responsible person the requirement for remediation of the pollution and the restoration of affected property within a specified time pursuant to the provisions of subsections (S), (T), (U), and (V) of this section. Failure to take prompt remedial action may result in fines, penalties, and liabilities incurred under this section or other applicable laws.

N. **Requirement to Monitor and Analyze.** The Town may in the future be required to adhere to a total maximum daily load (TMDL) or other restriction(s) to a specific pollutant or pollutants established by the State of Arizona or the Federal Government. Should this occur, the Town Engineer/Public Works Director may, by written notice, require that any person engaged in any activity and/or owning or operating any facility which may cause or contribute these specific pollutants in stormwater to undertake at said person's expense such monitoring and analyses and furnish such reports to the Town of Oro Valley as deemed necessary to determine compliance with this section. Additionally, regardless of the restrictions discussed above, the Town Engineer/Public Works Director may, by written notice, require that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution, illegal discharges, and/or nonstormwater discharges to the storm drain/wash system or waters of the U.S., undertake at said

person's expense such monitoring and analyses and furnish such reports to the Town of Oro Valley as deemed necessary to determine compliance with this section.

O. Notification of Spills.

1. In the event of a spill or release in reportable quantities as defined in 40 CFR 302, 40 CFR 110, and 40 CFR 117, the person responsible for a facility or operation, or responsible for emergency response for a facility shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of nonhazardous materials, said person shall notify the Town's Public Works Department in person or by phone or facsimile no later than 5:00 p.m. of the next business day. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also document the type, volume, cause of discharge, corrective actions taken, and remedial actions taken to prevent future occurrences. This information shall be provided to the Town Engineer/Public Works Director in writing within five (5) working days and shall also be retained by the owner/operator for at least three (3) years.
2. Compliance with subsection (O)(1) requirements of this section shall not relieve the discharger from the reporting requirements of 40 CFR 110, 117, and 302.

P. Maintenance of Stormwater Facilities.

1. Stormwater facilities shall be maintained per the approved drainage plans or manufacturer's specifications by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.
2. Disposal of waste from maintenance of facilities shall be conducted in accordance with applicable Federal, State and local laws and regulations.
3. Records of installation and maintenance and repair of facilities referenced in subsection (P)(1) of this section shall be retained by the owner or other responsible party for a period of three (3) years and shall be made available to the Public Works Department upon request.

4. Any failure to maintain facilities or correct problems with facilities after receiving due notice from the Town may result in criminal or civil penalties and the Town may perform corrective or maintenance work which shall be at the owner's expense.

Q. Authority to Inspect. Whenever necessary to make an inspection to enforce any provision of this section, or whenever the Town Engineer/Public Works Director has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this section, the Town Engineer may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. When inspections by Town staff reveal deficiencies in the implementation of the SWPPP, a written inspection report will be provided to the owner and operator within fifteen (15) working days of the inspection. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the Town is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

R. Authority to Sample, Establish Sampling Devices, and Test. During any inspection as provided herein, the Town Engineer/Public Works Director may take any samples and perform any testing deemed necessary at the expense of the owner/operator of the facility to aid in the pursuit of the inquiry or to record site activities.

S. Charges and Penalties. Charges and penalties levied pursuant to this section shall be collected by the Department of Public Works, Stormwater Utility and utilized for activities in compliance with the Town's MS4 permit. The Town Engineer shall make and enforce efficient management decisions in the maintenance and protection of the Town's storm drainage system.

T. Operator and/or Owner of Record. The operator performing on-site activities and/or owner of record of the property upon which a violation of this section occurs shall be presumed to be the person having lawful control over the activity or premises unless it is demonstrated and documented that another person has knowingly and in good faith accepted responsibility for the activity at issue. If more than one (1) person is identified as owner, such persons shall be presumed to be jointly and severally in lawful possession and control of the premises or activity.

U. Notice to Correct. The Town may issue a written notice to correct to any person who has violated or is in violation of this section. Failure to comply with actions described in and required by the notice to correct may result in a notice of violation and/or stop work order as described in subsection (V) of this section.

V. Notice of Violation.

1. Whenever the Town Engineer/Public Works Director finds that a person has violated a prohibition or failed to meet a requirement in accordance with a notice to correct (subsection (U) of this section), the Town Engineer may order compliance by written notice of violation to the responsible person. The written notice shall state the nature of the violation, the corrective action required, the time frame for the corrective action, and penalties for continued noncompliance. The notice shall be served by either personal service or certified mail to the owner, owner's agent, the operator, the occupant, or the lessee. Such notice may require the violator, without limitation, to:

- a. Submit a corrective action plan utilizing best management practices to the authorized representative indicating the cause of the violation, corrective actions to prevent recurrence, and a proposed compliance schedule;
- b. Perform monitoring, sampling, laboratory analysis, and reporting of results to the authorized representative and pay costs associated with these activities;
- c. Eliminate illicit connections or discharges;
- d. Abate and remediate stormwater pollution or contamination hazards, restore affected property, ensure that cleanup has been completed, and make operational changes to prevent future violations;
- e. Implement a corrective action plan utilizing source control treatment BMPs to prevent stormwater pollution. Based on site conditions and nature of the contaminant, the authorized representative will determine if the corrective action plan must be prepared, certified and implemented by a qualified person, such as a professional engineer, landscape architect, industrial hygienist registered with the State of Arizona or certified by the American Board of Industrial Hygiene;
- f. Stop work on clearing, grading, dredging, excavating, storing, transporting, and/or filling of land, new construction, improvements, alterations, or additions;
- g. Maintain, repair, and/or replace existing BMPs;
- h. Stop any activity that is in violation of this section;
- i. Abate/correct, within time frame specified in notice, any condition that is in violation of this section;

j. Abate immediately any condition in violation of this section that the authorized representative determines to present an immediate threat to public health, safety, or the environment.

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 the Town or a contractor designated by the Town Engineer/Public Works Director and the expense thereof shall be charged to the violator pursuant to subsection (AA) of this section.

3. Failure to comply with any action required by the notice of violation shall be a separate violation for each day beyond the thirtieth calendar day following the notice of violation. Nothing in this section shall limit the authority of the Town to take any action, including emergency actions or other enforcement action, without first issuing a notice of violation.

W. **Civil Penalties.** In addition to any other enforcement authority contained in this section, the Town may issue a civil citation to any person who has violated, or continues to violate, any provision of this section or any related laws or regulations. A person who is found to have violated any requirement of this section shall be civilly liable to the Town for a sum not to exceed two thousand five hundred dollars (\$2,500) per day for each violation.

X. **Criminal Penalties.** A person who willfully or negligently violates any provision of this section shall, upon conviction, be guilty of a class one misdemeanor and may be sentenced to a fine not to exceed two thousand five hundred dollars (\$2,500) per day for each violation, imprisonment for a period not to exceed six (6) months and/or probation not to exceed three (3) years.

Y. **Violations Deemed a Public Nuisance.** In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the Town at the violator's expense, and/or the Town may bring a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

Z. **Appeal.**

1. Appeals of any determination made by the Town Engineer/Public Works Director relating to a notice of violation issued pursuant to subsection (V) of this section may be made to the Stormwater Utility Commission.
2. Appeals under this section must be filed with the Town Clerk within ten (10) business days from issuance of the notice of violation.
3. Decisions of the Stormwater Utility Commission shall be final unless, within ten (10) days from the date of the Commission's decision, the applicant appeals the decision to the Town Council. An appeal to the Town Council shall be filed in writing with the Town Clerk and scheduled for the next available regular Council meeting.

AA. Charging Cost of Abatement/Liens. Within thirty (30) days after abatement of the nuisance by the Town, the Town Engineer/Public Works Director shall notify the property owner of the cost of abatement plus twenty percent (20%) to cover administrative costs. If the amount due is not paid within sixty (60) days of the notification to pay, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Assessor so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Assessor shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

BB. Urgency Abatement. The Town Engineer/Public Works Director is authorized to require immediate abatement of any violation of this section that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Town Engineer/Public Works Director, the Town is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Town shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the Town from seeking other and further relief authorized under this section.

CC. Penalties and Corrective Actions.

1. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. The remedies provided in this subsection are cumulative and the Town may seek one (1) or more such remedies as described in subsections (V), (W), (X), and (Y) of this section.

2. Any person violating this section shall be liable to the Town for all damages, costs, fines, and penalties incurred by the Town.

3. Upon finding that any person has violated this section, the Court may issue an order or, in the case of a criminal conviction, terms of probation, requiring the violator to perform any of the remediation activities listed in subsection (V) of this section.

4. If more than one person is identified as the owner of record, all persons will be presumed to be jointly and severally in lawful possession and control of the property and/or activity. The transfer of ownership, possession, or control of real property to another person does not relieve the transferor of the responsibility for violations of this title that occurred before the transfer.

((O)08-20, Amended, 10/01/08; (O)08-15, Added, 09/03/08)