

**\*\*NOTE: This is an unofficial document incorporating the changes to the Stormwater Management Bylaw that were adopted at the June 2020 Annual Town Meeting.**

**Please refer to the most recently revised copy of the Millbury Municipal Code and the Town Clerk-attested copy of the June 2020 Annual Town Meeting approved changes for an official record.\*\***

Changes from the June 2020 Annual Town Meeting are noted in green.

## **Chapter 13.15**

### **POST-CONSTRUCTION STORM WATER MANAGEMENT OF NEW DEVELOPMENTS AND REDEVELOPMENTS**

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#### **13.15.010 Purpose.**

(a) Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of the town of Millbury's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated storm water runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of:

- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
- (2) Contamination of drinking water supplies;
- (3) Erosion of stream channels;
- (4) Alteration or destruction of aquatic and wildlife habitat; and
- (5) Flooding.

Therefore, this chapter establishes storm water management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts off site and downstream which would be borne by abutters, townspeople and the general public.

(b) The objectives of this chapter are:

- (1) To require practices to prevent increased storm water and groundwater flow from new and redeveloped sites from impacting abutters;

- (2) To require practices to control the flow of storm water from new and redeveloped sites into the town of Millbury storm drainage system in order to prevent flooding and erosion;
- (3) To protect groundwater and surface water from degradation;
- (4) To promote groundwater recharge;
- (5) To prevent pollutants from entering the town's municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
- (6) To ensure adequate long-term operation and maintenance of structural storm water best management practices so that they work as designed;
- (7) To comply with state and federal statutes and regulations relating to storm water discharges; and
- (8) To establish the town of Millbury's legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring, and enforcement.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 1.]

### **13.15.020 Definitions.**

"Alteration of drainage characteristics" means any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

"Best management practice (BMP)" means an activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff.

"Board" means the town of Millbury planning board.

"Clearing" means any activity that removes the vegetative surface cover.

"Development" means the modification of land to accommodate a new use or expansion of use, usually involving construction.

"Disturbance of land" means any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

"Grading" means changing the level or shape of the ground surface.

"Grubbing" means the act of clearing land surface by digging up roots and stumps.

"Impervious surface" means any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

"Low Impact Development (LID)" includes the use of innovative stormwater management systems that are modelled after natural hydrologic features. Rainfall is managed at the source using small, cost-effective landscape features located at the lot level.

"Massachusetts Stormwater Handbook" means the guidebook last revised by the Department of Environmental Protection in February 2008, as amended, that coordinates the requirements prescribed by revisions to the Wetlands regulations, 310 CMR 10.00, and the Water Quality Regulations, 314 CMR 9.00, relating to stormwater.

"Massachusetts Stormwater Standards" means those standards outlined in Chapter 1, Volume 1 of the Massachusetts Stormwater Handbook.

"Municipal separate storm sewer system (MS4)" or "municipal storm drain system" means the system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the town of Millbury.

"New development" is defined as any construction activities or land alteration on an area that has not previously been developed to include impervious cover.

"Normal maintenance" includes activities generally recognized as tasks relating to the use of fertilizers, compost materials and other soil amendments; mowing and brush cutting; maintenance and repair of existing fences; and the cleaning, clearing, repairing or restoring of existing manmade or natural water management systems, such as ditches, channels, or other waterways. In all cases, normal maintenance does not include placing fill, or dredging water bodies.

"Offsite Mitigation" is defined as the approach in which stormwater treatment structures or practices for redevelopment or retrofit sites are implemented at another location, approved by the MS4, in the same USGS HUC101 watershed and achieves the same pollutant removal equivalents specified in this bylaw and other regulations pertaining to stormwater.

"Operation and maintenance plan" means a plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a storm water management system to ensure that it continues to function as designed.

"Outfall" means the point at which storm water flows out from a point source discernible, confined and discrete conveyance into waters of the commonwealth.

"Outstanding resource waters (ORWs)" means waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Storm Water Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

"Owner" means a person with a legal or equitable interest in property.

"Person" means an individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

"Redevelopment" means development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

"Runoff" means rainfall, snowmelt, or irrigation water flowing over the ground surface.

“Storm water” means storm water runoff, snow melt runoff, and surface water runoff and drainage.

“Storm water management plan” means a plan required as part of the application for a storm water management permit. See MMC 13.15.070.

“TSS” means total suspended solids.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 2.]

### **13.15.030 Authority.**

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 3.]

### **13.15.040 Applicability.**

(a) No person may undertake a construction activity, including clearing, grading and excavation, that results in a land disturbance which would exceed the following thresholds without a permit from the planning board:

- (1) Any activity that will result in soil disturbance of 5,000 square feet or more, or more than 25 percent of the parcel or lot, whichever is less;
- (2) Any land disturbance activity greater than 5,000 square feet which would result in an increased amount of storm water runoff from the property to public/private property or resource areas;
- (3) Any activity which would increase the flow to the municipal storm or sanitary sewer systems;
- (4) Any activity which would alter or modify an existing drainage system; and
- (5) Any activity that will disturb land with 15 percent or greater slope and where the land disturbance is greater than or equal to 2,000 square feet within the sloped area.

Activities will be classified as major and minor projects. Major projects are defined as projects which have activities that result in the land disturbance of one acre or more or projects with disturbances of less than one acre if the disturbance is part of a larger common plan of development or sale that would disturb one acre or more. All other activities will be considered minor projects (see MMC 13.15.070(b)). Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or the original purpose of the site.

(b) *Exemptions.*

- (1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
- (2) Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling;
- (3) The construction of fencing that will not substantially alter existing terrain or drainage patterns;
- (4) Construction of utilities other than drainage (gas, water, sewer, electric, telephone, etc.) which will not alter terrain or drainage patterns;
- (5) Construction of a project approved in accordance with Section 5.3 of Millbury Rules and Regulations Governing the Subdivision of Land.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 4.]

### **13.15.050 Administration.**

(a) The planning board, hereinafter “the board,” shall administer, implement and enforce this chapter. Any powers granted to or duties imposed upon the board may be delegated in writing by the board to its employees or agents.

(b) *Rules and Regulations.* The planning board may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this storm water management chapter, by majority vote of the board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven days prior to the hearing date. [Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 5.]

### **13.15.060 Permits and procedure.**

(a) *Application.* The site owner or his agent shall file with the board 12 copies of a completed application package for a storm water management permit (SMP) with the board and one original application form, the storm water management plan, the operation and maintenance plan, and the list of abutters application package with the town clerk. Permit issuance is required prior to any site-altering activity. While the applicant can be a representative, the permittee must be the owner of the site.

The SMP application package shall include:

- (1) Completed application form with original signatures of all owners;
- (2) List of abutters, certified by the assessor’s office;
- (3) One copy of the storm water management plan and project description as specified in MMC 13.15.070(a);
- (4) One copy of the operation and maintenance plan as required by MMC 13.15.080;
- (5) Application and technical review fees.

(b) *Entry.* Filing an application for a permit grants the board, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting permit.

(c) *Other Boards.* The board shall give one copy of the application package to each of the other relevant boards, including the conservation commission, department of public works, board of health, and building department.

(d) *Fee Structure.* The board shall obtain with each submission an application fee established by the board to cover expenses connected with the public hearing and application review of the storm water management permit and a technical review fee sufficient to cover professional review. The Board is authorized to retain a registered professional engineer and other professional consultant to advise the board on any or all aspects of a project to ensure compliance with all relevant laws, bylaws and regulations. Professional review may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the board’s decision, or inspecting a project during construction or implementation. Applicants must pay review fees before the review process may begin.

(e) *Public Hearing.* The board shall hold a public hearing within 45 days of the receipt of a complete application and shall take final action within 21 days from the close of the hearing unless such time is extended by agreement between the applicant and the planning board. Notice of the public hearing shall be given by publication in a local paper of general circulation, by posting and by first-class mailings to abutters at least seven days prior to the hearing.

(f) *Actions.* The board's action, rendered in writing, shall consist of either:

- (1) Approval of the storm water management permit application based upon determination that the proposed plan meets the standards in MMC 13.15.070 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this chapter;
- (2) Approval of the storm water management permit application subject to any conditions, modifications or restrictions required by the board which will ensure that the project meets the standards in MMC 13.15.070 and adequately protect water resources, set forth in this chapter;
- (3) Disapproval of the storm water management permit application based upon a determination that the proposed plan, as submitted, does not meet the standards in MMC 13.15.070 or adequately protect water resources, as set forth in this chapter.

(g) Failure of the board to take final action upon an application within the time specified above shall be deemed to be approval of said application. Upon certification by the town clerk that the allowed time has passed without board action, the board must issue a storm water management permit.

(h) The permittee, or their agent, shall notify the board in writing of any change or alteration of a land-disturbing activity authorized in a storm water management permit before any change or alteration occurs. If the board determines that the change or alteration is significant, based on the design requirements listed in MMC 13.15.070(a) and accepted construction practices, the board may require that an amended storm water management permit application be filed and a public hearing held. If any change or deviation from the storm water management permit occurs during a project, the board may require the installation of interim measures before approving the change.

(i) *Project Completion.* At completion of the project, the permittee shall submit as-built record drawings of all structural storm water controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a registered professional engineer.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 6.]

### **13.15.070 Storm water management plan.**

(a) The application for a storm water management permit shall consist of submittal of a storm water management plan at a scale of one inch equals 20 feet or such other scale as may be approved by the planning board. This storm water management plan shall contain sufficient information for the board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from storm water. The plan shall be designed to meet the Massachusetts Storm Water Management Standards as set forth in subsection (b) of this section and DEP Storm Water Management Handbook Volumes I and II. The storm water management plan shall fully describe the project in drawings and narrative. It shall include:

- (1) Names, addresses and telephone numbers of the owner, applicant and person(s) or firm(s) preparing the plan;
- (2) Name of project, property address, assessor's map and lot number, the date, north arrow, names of abutters, and scale;
- (3) A locus map;
- (4) The existing zoning, and land use at the site;
- (5) The proposed land use;
- (6) The location(s) of existing and proposed easements;
- (7) The location of existing and proposed utilities;
- (8) The site's existing and proposed topography with contours at one-foot intervals;

- (9) The existing site hydrology;
- (10) A description and delineation of existing storm water conveyances, impoundments, and wetlands on or adjacent to the site or into which storm water flows;
- (11) A delineation of 100-year flood plains, if applicable;
- (12) Estimated seasonal high groundwater elevation (November to April) in areas to be used for storm water retention, detention, or infiltration;
- (13) The existing and proposed vegetation and ground surfaces with runoff coefficient for each;
- (14) A drainage area map showing pre- and post-construction watershed boundaries, drainage area and storm water flow paths;
- (15) A description and drawings of all components of the proposed drainage system including:
  - (A) Locations, cross-sections, and profiles of all brooks, streams, drainage swales and their method of stabilization;
  - (B) All measures for the detention, retention or infiltration of water;
  - (C) All measures for the protection of water quality;
  - (D) The structural details for all components of the proposed drainage systems and storm water management facilities;
  - (E) Notes on drawings specifying materials to be used, construction specifications, and typicals;
  - (F) Expected hydrology with supporting calculations. Storms of 2, 10, 25, and 100-year frequency events shall be analyzed for existing (pre-development) and proposed (post-development) site conditions based on proposed site plans. The rainfall amounts used shall be based on the 1998 Cornell University Study, NOAA Atlas 14 Volume 10 Point Precipitation Frequency. Estimates for Millbury, or other studies approved by the Massachusetts Department of Environmental Protection:

Values to be used for 24-hour rainfall calculations (Cornell, 1998)	
Storm Frequency	24 Hour Rainfall
2 Year Storm	3.2 Inches
10 Year Storm	4.9 Inches
25 Year Storm	6.1 Inches
50 Year Storm	7.3 Inches
100 Year Storm	8.5 Inches

- (16) Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable;
- (17) Timing, schedules, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization;
- (18) A plan to control wastes that lists the construction and waste materials expected to be generated or stored on the construction site. These wastes include, but are not limited to, discarded building materials, concrete truck washout, chemicals, litter, sanitary waste and material stockpiles. An applicant must also describe in narrative form the Best Management Practices that will be utilized to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater.
- (19) A maintenance schedule for the period of construction; and
- (20) A description of all low impact development best management practices used to preserve environmentally sensitive areas, such as wetlands, native vegetation, mature trees, slopes, natural drainage courses, permeable soils, floodplains, woodlands, and soils;
- (21) Any other information requested by the board.

(b) *Design Standards.* All projects shall meet the storm water runoff control standards of the Massachusetts [Stormwater Handbook](#) and [additional requirements](#), which are as follows:

- (1) No new storm water conveyances (e.g., outfalls) may discharge untreated storm water directly to or cause erosion in wetlands or water of the commonwealth.
- (2) Storm water management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- (3) Low impact design practices shall be implemented to the maximum extent feasible.

Applicants shall address each of the following LID principles in the project narrative:

- (A) Preservation of Natural Areas
- (B) Tree Protection
- (C) Vegetation and Landscaping
- (D) Riparian Buffer Protection
- (E) Limit Land Disturbance during Construction
- (F) Limit New Impervious Surfaces
- (G) Promote the Use of Vegetative (Green Infrastructure) Stormwater Controls
- (H) Disconnect Flow Paths
- (I) Promote Infiltration
- (J) Capture and Reuse Stormwater

Applicants not incorporating low impact development practices into their plans must indicate why LID is not feasible at the site.

(4) Loss of annual recharge to groundwater shall be eliminated or minimized through the use of infiltration measures including environmentally sensitive site design, low impact development techniques, stormwater best management practices, and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from pre-development conditions based on soil type. The Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.

(5) Stormwater management systems for Major Projects on new development sites shall be designed to meet an average annual pollutant removal equivalent to 90% of the average annual load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 60% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site.<sup>2</sup>

(a) Average annual pollutant removal requirements are achieved through one of the following methods:

- (i) Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016)<sup>3</sup> or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or state-approved BMP design guidance or performance standards (e.g., the MA Stormwater Management Handbook)<sup>4</sup> may be used to calculate BMP performance; or
- (ii) Retaining the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the new development site; or
- (iii) Meeting a combination of retention and treatment that achieves the above standards; or
- (iv) Utilizing offsite mitigation that meets the above standards within the same USGS HUCI 2 as the new development site.

(6) Stormwater management systems for Major Projects on redevelopment sites shall be designed to meet an average annual pollutant removal equivalent to 80% of the average annual post-construction load of Total Suspended Solids related to the total post-construction impervious area



on the site AND 50% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site<sup>5</sup>

(a) Average annual pollutant removal requirements are achieved through one of the following methods:

- (i) Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016)<sup>6</sup> or other BMP performance evaluation tool provided by EPA Region I, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or state-approved BMP design guidance or performance standards (e.g., the MA Stormwater Management Handbook)<sup>7</sup> may be used to calculate BMP performance; or
- (ii) Retaining the volume of runoff equivalent to, or greater than, 0.80 inch multiplied by the total post-construction impervious surface area on the new development site; or
- (iii) Meeting a combination of retention and treatment that achieves the above standards; or
- (iv) Utilizing offsite mitigation that meets the above standards within the same USGS HUCJ 2 as the new development site.

(7) Storm water discharges from areas with higher potential pollutant loads require the use of specific storm water management BMPs (see *Massachusetts Stormwater Handbook Volume I: Stormwater Management Standards*). The use of infiltration practices without pretreatment is prohibited.

(8) Storm water discharges to critical areas must utilize certain storm water management BMPs approved for critical areas (see *Massachusetts Stormwater Handbook Volume I: Stormwater Management Standards*). Critical areas are outstanding resource waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.

(9) Redevelopment of previously developed sites must meet the storm water management standards to the maximum extent practicable. However, if it is not practicable to meet all the standards, new (retrofitted or expanded) storm water management systems must be designed to improve existing conditions.

(10) Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities. The developer shall control erosion and sedimentation during construction according to the objectives, principles and design considerations set forth in the latest edition of the 'Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Area: A Guide for Planners, Designers, and Municipal Officials,' as maintained by the MassDEP.

(11) All storm water management systems must have an operation and maintenance plan to ensure that systems function as designed.

(12) All stormwater management best management practices employed within a watershed for a water body impaired for phosphorus shall be shown to be optimized for phosphorus removal by the standards set forth by the MA Stormwater Management Handbook or the approved TMDL, if it exists, whichever is more strict. Infiltration BMPs, bioretention areas, constructed stormwater wetlands, and filter systems are recommended tools for reducing the concentration of nutrients in stormwater discharges.

(13) To support compliance with the Town's MS4 Permit, all new development and redevelopment stormwater management BMPs located on commercial or industrial land must incorporate designs that allow for shutdown and containment to isolate the drainage system in the event of an emergency spill or other unexpected event.

(14) Major and Minor Projects. Activities will be classified as major and minor projects. "Major projects" are defined as projects which have activities resulting in the land disturbance of one acre or more. All other activities will be considered minor projects. Major projects must either

meet the requirements listed above, or demonstrate that an equivalent level of environmental protection is provided in the event that one or more of the standards are not met. Minor projects must meet the standards above; however, at the discretion of the planning board, certain aspects of the storm water management plan may be waived. In general, projects which fall into this category will not require the submission of an operation and maintenance plan.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 7.]

### **13.15.080     Operation and maintenance plans.**

An operation and maintenance plan (O&M plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the permit, this chapter and that the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, are met in all seasons and throughout the life of the system. The board shall make the final decision of what maintenance option is appropriate in a given situation. The board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of storm water management structures, and potential need for ongoing maintenance activities when making this decision. The operation and maintenance plan shall remain on file with the board and shall be an ongoing requirement. The O&M plan shall include:

- (a) The name(s) of the owner(s) for all components of the system.
- (b) Maintenance agreements that specify:
  - (1) The names and addresses of the person(s) responsible for operation and maintenance.
  - (2) The person(s) responsible for financing maintenance and emergency repairs.
  - (3) A maintenance schedule for all drainage structures, including swales and ponds.
  - (4) A list of easements with the purpose and location of each.
  - (5) The signature(s) of the owner(s).
- (c) Storm Water Management Easement(s).
  - (1) Storm water management easements shall be provided by the property owner(s) as necessary for:
    - (A) Access for facility inspections and maintenance.
    - (B) Preservation of storm water runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
    - (C) Direct maintenance access by heavy equipment to structures requiring regular cleanout.
  - (2) The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
  - (3) Storm water management easements are required for all areas used for off-site storm water control, unless a waiver is granted by the board.
  - (4) Easements shall be recorded with the Worcester County registry of deeds prior to issuance of a certificate of completion by the board.
- (d) *Changes to Operation and Maintenance Plans.*
  - (1) The owner(s) of the storm water management system must notify the board of changes in ownership or assignment of financial responsibility.
  - (2) The maintenance schedule in the maintenance agreement may be amended to achieve the purposes of this chapter by mutual agreement of the board and the responsible parties. Amendments must be in writing and signed by all responsible parties. Responsible parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 8.]

### **13.15.090 Surety.**

The board shall require the permittee to post, before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the board to ensure that the work will be completed in accordance with the permit. If the project is phased, the board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the board has received the final inspection report as required by MMC 13.15.100 and issued a certificate of completion.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 9.]

### **13.15.100 Inspections.**

The board, or its agent, shall inspect the project site at the following stages:

- (a) Initial site inspection prior to approval of any plan.
- (b) Erosion control inspection to ensure erosion control practices are in accord with the filed plan.
- (c) Bury inspection prior to backfilling of any underground drainage or storm water conveyance structures.
- (d) *Final Inspection.* After the storm water management system has been constructed and before the surety has been released, the applicant must submit a record plan detailing the actual storm water management system as installed. The board, or its agent, shall inspect the system to confirm its “as-built” features. The inspector(s) shall also evaluate the effectiveness of the system in an actual storm. If the inspector finds the system to be adequate he shall so report to the board which will issue a certificate of completion.

All site inspections shall be conducted in accordance with the Millbury Standard Operating Procedure for Site Plan Review, Site Inspection, and Enforcement, dated June 2019. Inspections and enforcement actions shall be tracked by the developer and/or the Town and be able to be furnished to the Board at any time.

If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the storm water management plan, it shall be corrected by the permittee before the performance guarantee is released. If the permittee fails to act, the town of Millbury may use the surety bond to complete the work. Examples of inadequacy shall be limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 10.]

### **13.15.110 Waivers.**

(a) The board may waive strict compliance with any requirement of this chapter or the rules and regulations promulgated hereunder, where:

- (1) Such action is allowed by federal, state and local statutes and/or regulations;
- (2) Is in the public interest; and
- (3) Is not inconsistent with the purpose and intent of this chapter.

(b) Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this chapter does not further the purposes or objectives of this chapter.

(c) All waiver requests shall be discussed and voted on at the close of the public hearing for the project.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 11.]

### **13.15.120 Certificate of completion.**

The board will issue a letter certifying completion upon receipt and approval of the final inspection reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this chapter. [Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 12.]

### **13.15.130 Enforcement.**

(a) The board or an authorized agent of the board shall enforce this chapter, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

(b) *Orders.*

(1) The board or an authorized agent of the board may issue a written order to enforce the provisions of this chapter or the regulations thereunder, which may include requirements to:

- (A) Cease and desist from construction or land-disturbing activity until there is compliance with this chapter and the storm water management permit;
- (B) Repair, maintain, or replace the storm water management system or portions thereof in accordance with the operation and maintenance plan;
- (C) Perform monitoring, analyses, and reporting;
- (D) Remediate adverse impact resulting directly or indirectly from malfunction of the storm water management system.

(2) If the enforcing person determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the town may, at its option, undertake such work, and the property owner shall reimburse the town's expenses.

(3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the board within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. ch. 59, § 57, after the thirty-first day at which the costs first become due.

(c) *Criminal Penalty.* Any person who violates any provision of this chapter, or regulation, order or permit issued thereunder, by indictment or complaint brought to the Superior Court, Housing Court or Worcester District Court, shall be punished by a fine of not more than \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(d) *Noncriminal Disposition.* As an alternative to criminal prosecution or civil action, the town may elect to utilize the noncriminal disposition procedure set forth in M.G.L. ch. 40, § 21D and MMC 1.05.070, in which case the planning board or its designee shall be the enforcing person. The penalty for the first violation and each subsequent violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(e) *Appeals.* The decisions or orders of the board shall be final. Further relief shall be to a court of competent jurisdiction.

(f) *Remedies Not Exclusive.* The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law.

[Bylaws Art. 53, 5-1-2007; Code of Bylaws, § 16-3, § 13.]