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County

City

Town of South Floral Park

Village

Bill No.    of 202  

Local Law    of the year   

*(Insert Title):*

A local law to adopt a new Chapter 173, entitled “**Stormwater Management and Erosion and Sediment Control; Illicit Discharges, Activities and Connections to Separate Storm Sewer System,**” to the Code of the Incorporated Village of South Floral Park.

**BE IT ENACTED** by the Board of Trustees of the Incorporated Village of South Floral Park as follows:

Section 1.

The Code of the Incorporated Village of South Floral Park is hereby amended to include a new Chapter 173, to read in its entirety as follows:

## “CHAPTER 173

### **STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL; ILLICIT DISCHARGES, ACTIVITIES AND CONNECTIONS TO SEPARATE STORM SEWER SYSTEM**

#### **ARTICLE I**

##### **GENERAL PROVISIONS**

**§ 173-1. Intent.**

A. It is the intent of the Board of Trustees, in Articles I through V of this Chapter, to establish stormwater management and erosion and sediment controls that will satisfy the relevant part of the Phase II stormwater regulations adopted by DEC. The purpose of Articles I through V of this Chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Village and to address the relevant findings of fact of the DEC set forth in this Article I.

B. The objectives of Articles I through V of this Chapter are the following:

1. Meet the requirements of minimum measures 4 and 5 of the DEC's SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, including as amended or revised;
2. Require land development activities to conform to the substantive requirements of SPDES General Permit for Construction Activities GP-02-01, including as amended or revised;
3. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels, water courses and waterways;
4. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
5. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
6. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

**§ 173-2. Findings of fact.**

It has been determined by the DEC that:

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and/or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;

- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

**§ 173-3. Definitions.**

- A. For the purposes of Articles I through V of this Chapter, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the word "shall" is mandatory. Notwithstanding some references for definitional purposes to other Chapters of the Village Code, the omission of such references in other instances shall not be taken as an intent not to use such definitions for specific terms that are not defined in this section and are defined in other Chapters of said Code when it is deemed by the SMO, the Building Inspector or any other official, board, or committee of the Village to be appropriate to do so.
- B. As used in Articles I through V of this Chapter, the following terms shall have the meanings indicated.

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

**APPLICANT** - A property owner or agent of a property owner who has filed an application for a land development activity.

**BUILDING** - Any structure, either temporary or permanent, having walls and a roof, designed for or used as a shelter of any person, animal, or property, and occupying more than 100 square feet of area.

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

CLEARING - Any activity that removes any vegetative surface cover.

COUNTY CLERK – The County Clerk of the County of Nassau, State of New York.

DEC - The State Department of Environmental Conservation.

DEDICATION - The deliberate appropriation of property by its owner for general public use.

DESIGN MANUAL - The version of the State Stormwater Management Design Manual, in effect from time to time, including applicable updates, which serves as the official State guide for stormwater management principles, methods and practices.

DEVELOPER - A person who undertakes land development activities.

EPA - The United States Environmental Protection Agency.

EROSION – The removal of soil particles by the action of water, wind, ice or other geological agents.

EROSION CONTROL MANUAL - The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book".

GRADING - Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER - Those surfaces, improvements, and structures that cannot effectively infiltrate rainfall, snow melt, and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

INDUSTRIAL STORMWATER PERMIT - A SPDES permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION - The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND - An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY - Construction activity including, but not limited to, clearing, grading, excavating, soil disturbance, and placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER - The legal and/or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

LICENSED/CERTIFIED PROFESSIONAL – A person licensed to practice engineering in the State or a Certified Professional in Erosion and Sediment Control.

MAINTENANCE AGREEMENT - A document legally recorded in the Office of the Nassau County Clerk that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

MS4s - Municipal Separate Stormwater Sewer Systems.

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

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

POLLUTANT – Any of the following which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the pertinent standards promulgated by the federal government, the State, the Village, or any other municipality or department thereof, having legal jurisdiction to impose such standards: dredged spoil; filter backwash; solid waste; incinerator residue; treated or untreated sewage, garbage, and sewage sludge; munitions; chemical wastes; biological, radioactive, and hazardous materials; heat; wrecked or discarded equipment; industrial, municipal, and agricultural waste; ballast discharged into water; paints, varnishes, and solvents; oil and other automotive fluids; hazardous and non-hazardous liquid and solid wastes; yard wastes, including branches, grass clippings, and leaves; refuse, rubbish, garbage, litter, and other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; discharges of soaps, detergents, and floatables; pesticides, herbicides, and fertilizers; sewage, fecal coliforms, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building, structure, or site improvements; cement, rock, gravel, sand, silt, mud, other soils; and all other noxious or offensive matter of any kind.

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

PROJECT - Land development activity.

RECHARGE - The replenishment of underground water reserves.

SEDIMENT CONTROL - Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS - Cold water fisheries, shellfish beds; swimming beaches, groundwater recharge areas, water supply reservoirs, and/or other habitats for threatened, endangered, or special concern species.

SMO - The Stormwater Management Officer.

SMPs - Stormwater Management Practices.

SPDES - State Pollutant Discharge Elimination System.

SPDES General Permit for Construction Activities GP-02-01 - A DEC SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02 - A DEC SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA and/or DEC established water quality standards and/or to specify stormwater control standards.

STABILIZATION - The use of practices that prevent exposed soil from eroding.

STATE - The State of New York.

STOP WORK ORDER - An order issued which requires that all, or a specified portion of, construction activity on a site be stopped.

STORMWATER - Rainwater, surface runoff, snowmelt, and drainage.

STORMWATER HOTSPOT - A land use or activity that generates higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical stormwater runoff.

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

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

STORMWATER MANAGEMENT OFFICER - The Building Inspector, or his designee or such other person appointed by the Board of Trustees, as the designated officer of the Village to accept and review stormwater pollution prevention plans, forward the plans to the applicable Village board or committee and inspect stormwater management practices.

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

STORMWATER POLLUTION PREVENTION PLAN - A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF - Flow on the surface of the ground, resulting from precipitation.

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

STRUCTURE - As defined in the Zoning Chapter of the Village Code.

SURFACE WATERS OF THE STATE - Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the State and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the State or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not surface waters of the State. The said exclusion applies only to manmade bodies of water which neither were originally

created in waters of the State (such as a disposal area in wetlands), nor resulted from impoundment of waters of the State.

SWPPP - Stormwater Pollution Prevention Plan.

VILLAGE - Incorporated Village of South Floral Park.

WATERCOURSE - A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

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

#### **§ 173-4. Statutory authority.**

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Board of Trustees has the authority to enact and amend rules, regulations and/or local laws for the purpose of promoting the health, safety or general welfare of the Village and for the protection and enhancement of its physical environment. The Board of Trustees may include in any such rules, regulations and/or local laws provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer, and enforce such rules, regulations and/or local laws.

#### **§ 173-5. Applicability.**

- A. Articles I through V of this Chapter shall be applicable to all land development activities, as defined in this Article.
- B. The Village shall designate a SMO who shall accept all stormwater pollution prevention plans and notify the applicable Village board. The SMO may either:
  - (1) review the plans;
  - (2) upon approval by the Board of Trustees engage the services of a registered professional engineer to review the plans, specifications, and related documents, at a cost borne by the applicant; or
  - (3) accept the certification of a licensed/certified professional, retained and paid by the applicant, that the plans conform to the requirements of Articles I through V of this Chapter.
- C. All land development activities subject to review and approval by any board of the Village shall be reviewed by such board consistent with the standards contained in Articles I through V of this Chapter.
- D. All land development activities not subject to review as stated in the preceding subsection C shall be required to submit a SWPPP to the SMO who shall review and approve the SWPPP if the SMO determines that it complies with the requirements of Articles I through V of this Chapter.

**§ 173-6. Exemptions.**

- A. Agricultural activity as defined in this Article.
- B. Routine maintenance activities that disturb less than 250 square feet and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- C. Repairs to any SMP or facility deemed necessary by the SMO.
- D. Any part of a subdivision if a plat for the subdivision has been approved by the Village Planning Board on or before the effective date of this Chapter, except where the Planning Board has reserved site plan review or other continuing jurisdiction.
- E. Land development activities for which a building permit has been approved on or before the effective date of this Chapter.
- F. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- G. Emergency activity immediately necessary to protect life, property or natural resources.
- H. Activities of an individual engaging in home gardening by growing flowers, vegetable and/or other plants primarily for use by that person and his or her family.
- I. Landscaping and horticultural activities in connection with an existing structure.

**ARTICLE II  
STORMWATER POLLUTION PREVENTION PLANS**

**§ 173-7. Stormwater pollution prevention plans.**

- A. Stormwater pollution prevention plan requirement.

No application for approval of a land development activity shall be reviewed until the appropriate board has received a SWPPP prepared in accordance with the specifications in this Chapter.

- B. Contents of stormwater pollution prevention plans.

All SWPPPs shall provide the following background information and erosion and sediment controls:

- (1) Background information about the scope of the project, including location, type and size of project.
- (2) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the



construction activity; existing and final slopes; locations of off-site material, waste, borrow, or equipment storage areas; and location(s) of the stormwater discharges(s). The site map shall be at a scale no smaller than 1 inch=100 feet.

- (3) Description of the soil(s) present at the site;
- (4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation, and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than one acre shall be disturbed at any one time unless pursuant to an approved SWPPP.
- (5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (6) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
- (7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
- (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (10) Temporary practices that will be converted to permanent control measures;
- (11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (13) Name(s) of the receiving water(s);
- (14) Delineation of SWPPP implementation responsibilities for each part of the site;
- (15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
- (16) Any existing data that describes the stormwater runoff at the site.
- (17) The name, address, telephone and fax numbers, and email address, if any, of the applicant's representative who will be in charge of monitoring compliance with

Articles I through V of this Chapter on a daily basis.

C. Land development activities meeting Condition "A" or "B" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below, as applicable:

- (1) Condition A - Stormwater runoff from land development activities discharging a pollutant of concern to either impaired water identified on the DEC's 303(d) list of impaired waters, or such superseding list as may be prepared by DEC, or a Total Maximum Daily Load designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
- (2) Condition B - Stormwater runoff from land development activities disturbing 250 square feet or more.

D. SWPPP requirements for Conditions A and B:

- (1) All information in subsection B of this Section.
- (2) Description of each post-construction SMP.
- (3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction SMP.
- (4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
- (5) Comparison of post-development stormwater runoff conditions with pre-development conditions.
- (6) Dimensions, material specifications, and installation details for each post-construction SMP.
- (7) Maintenance schedule to ensure continuous and effective operation of each post-construction SMP.
- (8) Maintenance easements to ensure access to all SMP's at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- (9) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Articles I through V of this Chapter.

E. Plan certification.

The SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control, or professional engineer and must be signed by the licensed professional preparing the plan, who shall certify that the design of all SMPs meet the requirements in Articles I through V of this Chapter.

F. Other environmental permits.

The applicant shall demonstrate that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final storm water design plan.

G. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or SMP installation shall sign and date a copy of the following certification statement before undertaking any land development activity:

"I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards. "

- (2) The certification must include the name and title of the person providing the signature, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall become part of the SWPPP for the land development activity.

- H. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

**§ 173-8. Performance and design criteria for stormwater management and erosion and sediment control.**

All land development activities shall be subject to the following performance and design criteria:

A. Technical standards.

For the purposes of Articles I through V of this Chapter, the following documents shall serve as the official guides and specifications for stormwater management. SMPs that are designed and constructed in accordance with those technical documents shall be presumed to meet the standards imposed by Articles I through V of this Chapter:

- (1) The Design Manual.
- (2) The Erosion Control Manual.

B. Equivalence to technical standards

Where SMPs are not in accordance with the technical standards, the applicant or developer must demonstrate equivalence to the technical standards in Part A of this Section, and the SWPPP shall be prepared by a licensed/certified professional.

C. Water quality standards.

No land development activity shall cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State.

**§ 173-9. Maintenance, inspection and repair of stormwater facilities.**

A. Maintenance and inspection during construction.

- (1) The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of Articles I through V of this Chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty percent.
- (2) For land development activities that meet Conditions A or B of Section 173-7(c), the applicant or developer shall have a licensed/certified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in a site log book.

B. Maintenance easement(s).

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by Articles I through V of this Chapter. The easement shall be recorded by the grantor in the office of the County Clerk after approval of the form and substance thereof by counsel for the Village. The requirement established hereunder for a maintenance easement agreement may be waived by the village board having jurisdiction over the land development activity or the SMO if, in the reasonable determination of the SMO or such village board, said obligation is deemed not necessary for the purposes of Articles I through V of this Chapter.

C. Maintenance after construction.

The owner or operator of permanent SMPs installed in accordance with Articles I through V of this Chapter shall be responsible for ensuring that they are operated and maintained to achieve the goals of Articles I through V of this Chapter. Proper operation and maintenance also includes, as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of Articles I through V of this Chapter.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Section 173-8 of this Chapter.

D. Maintenance agreements.

The Village shall approve a formal maintenance agreement for storm water management facilities binding on all subsequent landowners or benefited landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Articles I through V of this Chapter. The Village, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of Articles I through V of this Chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

### ARTICLE III

#### SUBDIVISION REGULATION

##### § 173-10. Subdivision Regulation.

In addition to any and all State and Village laws, rules and regulations governing the subdivision or partitioning of land within the Village, the following requirements shall apply to the subdivision or partitioning of land within the Village:

- A. A SWPPP consistent with the requirements of Articles I through V of this Chapter shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards of Articles I through V of this Chapter. The approved preliminary subdivision plat shall be consistent with the provisions of Articles I through V of this Chapter.
- B. A SWPPP consistent with the requirements of Articles I through V of this Chapter and with the terms of preliminary plan approval shall be required for final subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards of Articles I through V of this Chapter. The approved final subdivision plat shall be consistent with the provisions of Articles I through V of this Chapter.

## ARTICLE IV

### SITE PLAN REGULATION

#### § 173-11. Site Plan Regulation.

In addition to any and all State and Village laws, rules and regulations governing Site Plan Review in the Village, a stormwater pollution prevention plan consistent with the requirements of Articles I through V of this Chapter shall be required with respect to all applications for Site Plan review of properties within the Village. The SWPPP shall meet the performance and design criteria and standards of Articles I through V of this Chapter. The approved Site Plan shall be consistent with the provisions of Articles I through V of this Chapter.

## ARTICLE V

### ADMINISTRATION AND ENFORCEMENT

#### § 173-12. Construction inspection.

##### A. Erosion and sediment control inspection.

The SMO may require such inspections as she or he deems necessary to determine compliance with Articles I through V of this Chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of Articles I through V of this Chapter and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, and/or as otherwise required by the SMO:

- (1) Start of construction.
- (2) Installation of sediment and erosion control measures.
- (3) Completion of site clearing.
- (4) Completion of rough grading.
- (5) Completion of final grading.
- (6) Close of the construction season.
- (7) Completion of final landscaping.
- (8) Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until all violations are corrected and all work previously completed has received approval by the SMO.

##### B. Stormwater management practice inspections.

The SMO is responsible for conducting inspections of SMPs. The SMO may fulfill the responsibility through a licensed/certified professional retained by the Village for such purpose, who

shall report his or her findings to the SMO. All applicants are required to submit "as built" plans for any SMPs located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

C. Inspection of stormwater facilities after project completion.

Inspection programs shall be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of State or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other SMPs. The inspection must be made by a licensed professional engineer or a Certified Professional in Erosion and Sediment Control.

D. Submission of reports.

The SMO may require monitoring and reporting from entities subject to Articles I through V of this Chapter as necessary to determine compliance with Articles I through V of this Chapter.

E. Right-of-entry for inspection.

To the maximum extent permitted by law, when any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Village the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in subsection B of this Section.

**§ 173-13. Guarantees and record keeping.**

A. Construction Completion Guarantee.

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village in its approval of the SWPP, the Village may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit, in its discretion, in form satisfactory to the Village from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Village as the beneficiary. The security shall be in an amount to be determined by Village based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Village provided that such period shall not be less than one year from the date of

final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the Village. Per annum interest on cash escrow deposits, if any, shall be reinvested in the account until the surety is released from liability.

B. Maintenance guarantee.

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Village with security in the form of a cash escrow, a maintenance bond, or an irrevocable letter of credit, in form satisfactory to the Village, from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Village may draw upon the escrow, bond, or account, from time to time, to cover the costs of proper operation and maintenance, including engineering and inspection costs. To the extent that such escrow, bond, or letter of credit, because of such draw, is no longer sufficient to ensure the proper operation and maintenance of the facilities, the Village may require an additional escrow, bond, or letter of credit.

C. Record keeping.

The Village may require entities subject to Articles I through V of this Chapter to maintain records demonstrating compliance with Articles I through V of this Chapter.

**§ 173-14. Fees for services.**

The Village requires any person undertaking land development activities regulated by this Chapter to reimburse the Village for costs of review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village.

**§ 173-15. Enforcement and penalties.**

A. Notice of violation.

When the SMO, his or her designee, or other designee of the Board of Trustees determines that a land development activity is not being carried out in accordance with the requirements of Articles I through V of this Chapter, the SMO or Village Clerk may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (1) The name and address of the landowner, developer or applicant, if any.
- (2) The address when available or a description of the building, structure, or land upon which the violation is occurring.



- (3) A statement specifying the nature of the violation.
- (4) A description of the remedial measures necessary to bring the land development activity into compliance with Articles I through V of this Chapter and a time schedule for the completion of such remedial action.
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.
- (6) A statement that the determination of violation may be appealed to the Village Board of Trustees by filing a written notice of appeal within fifteen days of service of notice of violation.
- (7) If abatement of a violation and/or restoration of affected premises are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, if the violator fails to remediate or restore within the established deadline, the work may be performed by the Village and the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the premises at which the violation exists, and collected in the same manner as Village real property taxes.

#### B. Stop work orders.

The Building Inspector or the Village Clerk, upon recommendation of the SMO, his designee, or other designee of the Board of Trustees, may issue a stop work order for violations of Articles I through V of this Chapter. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Village confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in Articles I through V of this Chapter.

#### C. Injunctive Relief.

Any land development activity that is commenced or is conducted contrary to Articles I through V of this Chapter, may be restrained by injunction or otherwise abated in a manner provided by law.

#### D. Penalties.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates any provision of Articles I through V of this Chapter shall be guilty of a violation punishable by a fine not exceeding Five Hundred Dollars (\$500) or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than One Thousand Dollars (\$1,000) nor

more than Three Thousand Dollars (\$3,000) or imprisonment for a period not to exceed 15 days, or both. Violations of Articles I through V of this Chapter shall be deemed offenses, and not misdemeanors. Each week's continued violation shall constitute a separate violation.

E. Withholding of certificate of occupancy.

If any building or land development activity is installed or conducted in violation of Articles I through V of this Chapter, the Building Inspector or the Village Clerk, upon recommendation of the SMO, may prohibit the occupancy of said building or land.

F. Abatement and Restoration of lands.

Any violator of any provision of Articles I through V of this Chapter may be required to abate a violation and/or restore land to its undisturbed condition or to such other condition as shall best protect the property and the adjacent properties from the problems of erosion and sediment deposits off the land that may be required as the result of actions of the violator, all in the discretion of the SMO. In the event that abatement and/or restoration is not undertaken within a reasonable time after notice, the SMO or the Building Inspector or the Village Clerk, upon recommendation of the SMO, may either:

- (1) direct that the remediation and/or restoration work be performed with Village personnel and/or third party contractors and the cost thereof shall constitute a lien, charge, and levy upon the real property in, on or upon which the violation exists until it is paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer. Such charge shall include, among other things, administrative, legal, and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent taxes; or
- (2) seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property, at the cost and expense, including those of the litigation and the fees of witnesses and attorneys, of the violator.

**§ 173-16. Appeal of Notice of Violation.**

Any person or entity receiving a Notice of Violation with respect to any provision of Articles I through V of this Chapter may appeal same within seven calendar days of the date of issuance of such notice, by submitting a written Notice of Appeal to the Board of Trustees. The appealing party shall be entitled to a hearing before the Board of Trustees or such other officer or employee or board of the Village designated by the Board of Trustees to conduct such hearing. The Board of Trustees or its designee shall consider such appeal within thirty (30) days after the Village receives such Notice of Appeal, and shall render a decision with respect to such appeal within five business days after the close of the hearing conducted with respect to such appeal. A written decision shall be mailed to the appellant by the Village. At the hearing, the appellant shall have the right to present testimony and evidence relevant to the matter.

**§ 173-17. Municipal search warrant available if access to premises is denied.**

If the SMO or his or her designees are refused access to premises at which a violation of Articles I through V of this Chapter is suspected, the SMO, the Building Inspector or the Village Clerk, upon recommendation of the SMO, may seek a municipal search warrant in the Village Justice Court or other court of competent jurisdiction, for authority to enter upon such premises to determine whether a violation of Articles I through V of this Chapter is occurring or is reasonably likely to occur if immediate action is not taken. Upon any determination that a violation has occurred, exists, or is reasonably likely to occur if immediate action is not taken, the Village may seek a court order permitting the Village to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring or continuing, and/or to restore the premises. The cost of implementing and maintaining such measures shall be the sole responsibility, jointly and severally, of the property owner, the developer and the applicant, if any. In any such action, the Village shall be entitled to its legal costs and expenses, including the fees of attorneys and witnesses, as may be awarded by the court, and, if such fees, costs and expenses are not paid to the Village within 30 days of demand therefore, such fees, costs and expenses shall become a lien upon the premises in, on or upon which such violation has occurred and shall be collected in the same manner as Village property taxes are collected.

**§ 173-18. Violations deemed a public nuisance.**

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

**§ 173-19. Remedies not exclusive.**

The remedies listed in Articles I through V of this Chapter are not exclusive of any other remedies available under any applicable federal, state, or local law, rule or regulation, and it is within the discretion of the Village to seek cumulative remedies.

**ARTICLE VI**

**ILLICIT DISCHARGES, ACTIVITIES, AND  
CONNECTIONS TO SEPARATE STORM SEWER SYSTEM**

**§ 173-20. Intent.**

A. It is the intent of the Board of Trustees in Article VI of this Chapter 173 to prohibit illicit discharges, activities, and connections to the Village's separate storm sewer system in order to satisfy the relevant part of the Phase II stormwater management requirements of the National Pollutant Discharge Elimination System regulations, administered by the State through the State Pollutant Discharge Elimination System (SPDES) regulations and to provide for the health, safety, and general welfare of the citizens of the Village through the regulation of non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4) to the maximum extent practicable as required by federal and state law. This Article VI establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for MS4s.

B. The objectives of this Article VI are:

- (1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, including as amended or revised;
- (2) To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process, or discharge non-stormwater wastes;
- (3) To prohibit unauthorized and illicit connections, activities, and discharges to the Village's MS4;
- (4) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Article VI; and
- (5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, and other pollutants into the MS4.

#### § 173-21. Definitions.

A. For the purposes of this Article VI, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the word "shall" is mandatory.

B. As used in this Article VI, the following terms shall have the meanings indicated.

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

BMPs - Best Management Practices.

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

CONSTRUCTION ACTIVITY - An activity requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended or revised, or covered by the Village's erosion and sediment control or pollution prevention plan laws, rules or regulations. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

COUNTY – The County of Nassau, State of New York.

DEC - The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL - A professional engineer or registered architect licensed by the State.

EPA - The federal Environmental Protection Agency.

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

ILLCIT ACTIVITY – Any action of condition, active or passive, which results in non-stormwater entering the Village's MS4, or into an MS4 that tributaries into the Village's MS4.

ILLCIT CONNECTIONS - Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the Village's MS4, or into an MS4 that tributaries into the Village's MS4, including but not limited to:

- A. Any conveyances which allow any non-stormwater discharge including, but not limited to, treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the Village's MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency; or
- C. Any building or other structure's floor drain or trench drain; or
- D. Any unauthorized connection as defined elsewhere in this Article VI.

ILLCIT DISCHARGE - Any discharge through an authorized connection, and any direct or indirect non-stormwater discharge to the Village's MS4, or into an MS4 that tributaries into the Village's MS4, except as exempted in this Article VI.

INDUSTRIAL ACTIVITY - An activity requiring a SPDES permit for discharges from industrial activities except construction, GP-98-03, including as amended or revised.

MS4 - Municipal Separate Storm Sewer System.

MUNICIPAL SEPARATE STORM SEWER SYSTEM - A conveyance or system of conveyances and retention and infiltration facilities (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), that is:

- A. owned or operated by the Village or another municipal entity;
- B. designed or used for collecting, conveying, storing, infiltrating and/or managing stormwater;
- C. which is not a combined sewer; and
- D. which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2.

NYCRR - New York Code, Rules, and Regulations.

NON-STORMWATER DISCHARGE - Any discharge to an MS4 that is not composed entirely of stormwater.

PERSON - Any individual, association, organization, partnership, firm, limited liability company, corporation or other entity recognized by law.

POLLUTANT – shall have the same meaning ascribed to such word in Section 173-3 of this Chapter.

PREMISES - Any lot, parcel of land, or portion of land, whether improved or unimproved and all buildings and structures thereon, including adjacent sidewalks and parking strips.

SMO - The Stormwater Management Officer.

#### SPECIAL CONDITIONS

- A. Discharge Compliance with Water Quality Standards - A condition that applies when the Village has been notified that the discharge of stormwater authorized under its MS4 SPDES permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the Village must take necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) Listed Waters - A condition in the Village's MS4 SPDES permit that applies when the MS4 discharges to a DEC 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total Maximum Daily Load Strategy - A condition in the Village's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a

waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the Village shall be required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

- D. A condition in the Village's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under such condition the Village must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the Village must, within six (6) months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

SPDES – State Pollutant Discharge Elimination System.

STATE – The State of New York.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 - A DEC SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 - A DEC SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

SPDES STORMWATER DISCHARGE PERMIT - A permit issued by DEC that authorizes the discharge of pollutants to waters of the State.

STORMWATER - Rainwater, surface runoff, subsurface drainage and snowmelt.

STORMWATER MANAGEMENT OFFICER - The Building Inspector, or his designee, as the designated officer of the Village to enforce this Article VI.

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

TMDL - Total Maximum Daily Load.

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

UNAUTHORIZED CONNECTION - A permanent or temporary unapproved direct or indirect conveyance to the Village's MS4. Any connection, pipe, hose, or other conveyance, whether permanent or temporary, that is not documented on plans, maps, or equivalent records signed by the Superintendent, or that is not approved by a permit issued by the Superintendent, is considered unauthorized regardless of whether the discharge is otherwise allowed by this chapter.

UNCONTAMINATED – Not having any pollutants.

VILLAGE - The Incorporated Village of South Floral Park.

WASTEWATER - Water that is not stormwater, is contaminated with pollutants, and is or will be discarded.

**§ 173-22. Applicability.**

This Article VI of Chapter 173 of the Village Code shall apply to all discharge connections to the Village's MS4, including all activities that result in discharge, seepage or deposition into the Village's MS4, and all water entering the Village's MS4 generated on any developed and undeveloped premises unless explicitly exempted by an authorized enforcement agency and allowed by a discharge or connection permit or other document approved by the SMO. This Article VI shall also apply to discharges and connections entering any other MS4 that is tributary to the Village's MS4.

**§ 173-23. Responsibility for administration.**

The SMO, or the Village Clerk upon advice from the SMO, shall administer, implement, and enforce the provisions of this Article VI. All references herein to actions that may be taken by the SMO shall be deemed also to refer to actions that may be taken by the Village Clerk upon advice from the SMO.

**§ 173-24. Discharge and illicit connection prohibitions.**

A. Prohibition of Illegal Discharges.

No person shall discharge, cause or allow to be discharged into the Village's MS4 any illicit discharge or any other materials other than stormwater. The commencement, conduct, or continuance of any illegal discharge to the MS4 is prohibited, except as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Article VI, unless DEC or the Village at any time determines them to be substantial contributors of pollutants: water line flushing or other potable water source flushing, uncontaminated landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water from foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, uncontaminated irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from firefighting activities, and any other water source not containing pollutants.
- (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws, rules and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as



the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Article VI.

- (3) Dye testing in compliance with applicable State, County and Village regulations is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.
- (4) Any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws, rules and regulations, and provided that written approval has been granted for any discharge to the Village's MS4 by the SMO.

#### B. Prohibition of Illicit Connections.

- (1) The construction, use, maintenance, and continued existence of illicit connections to the MS4 are prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this Article VI if the person connects a line conveying sewage to the Village's MS4, or causes or allows such a connection to continue.
- (4) No person shall, or shall cause another, to construct, use, maintain or continue to use or maintain any unauthorized connection to the Village's MS4.
- (5) No person shall permit, tolerate or allow any unauthorized connection from such person's premises to the Village's MS4.

#### **§ 173-25. Prohibition against failing individual sewage treatment systems.**

No person shall operate a failing individual sewage treatment system in areas tributary to the Village's MS4. An individual sewage treatment system is failing if it has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Contamination of off-site groundwater.
- F. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.

**§ 173-26. Prohibition against activities contaminating stormwater.**

- A. The following activities are prohibited:
1. Those types of activities that cause or contribute to:
    - (a) a violation of the Village's MS4 SPDES permit; and/or
    - (b) the Village being subject to Special Conditions.
  2. Failing individual sewage treatment systems;
  3. Improper management of pet waste; and
  4. Any other activity that causes or contributes to a violation of the Village's MS4 SPDES permit authorization.
- B. Upon notification to a person that such person is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, such person shall immediately commence and continue thereafter with all due diligence to take all reasonable actions to correct such activities such that such person no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization, or causes or contributes to pollutants to be discharged or deposited into the Village's MS4.

**§ 173-27. Requirement to prevent, control, and reduce stormwater pollutants by the use of BMPs.**

- A. Best Management Practices.
- (1) Where the SMO has identified illicit discharges or activities contaminating stormwater, the Village may require implementation of BMPs to control those illicit discharges and activities.
  - (2) The owner, lessee or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from discharge, accidental or otherwise, of pollutants or other prohibited materials or wastes into the Village's MS4 through the use of structural and non-structural BMPs.
  - (3) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the Village's MS4.
  - (4) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.
- B. Individual Sewage Treatment Systems - Response to Special Conditions Requiring No Increase of Pollutants or Requiring a Reduction of Pollutants.
- (1) Where individual sewage treatment systems are contributing to the Village's MS4 being subject to Special Conditions, the owner, lessee and operator of the premises upon which

such individual sewage treatment systems is located, or which are being serviced by such individual sewage treatment system, shall be required to:

(a) Maintain and operate individual sewage treatment systems as follows:

- [1] Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within ten inches of the bottom of the outlet baffle or sanitary tee.
- [2] Avoid the use of septic tank additives.
- [3] Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and
- [4] Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash, and other such items.

(b) Repair or replace individual sewage treatment systems as follows:

- [1] In accordance with 10 NYCRR Appendix 75A, or, if applicable, the Nassau County Department of Health Manual of On-Site Sewage Disposal, as the same may be amended or superseded from time to time, to the maximum extent practicable.
- [2] A design professional shall prepare design plans for any type of absorption field that involves:
  - a) Relocating or extending an absorption area to a location not previously approved for such.
  - b) Installation of a new subsurface treatment system at the same location.
  - c) Use of alternate system or innovative system design or technology.
- [3] A written certificate of compliance shall be submitted by the design professional to the Village at the completion of construction of the repair or replacement system.

## **§ 173-28. Emergency situations.**

### **A. Suspension of access to MS4.**

The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the Village's MS4. The SMO shall notify the person in writing within a reasonable time thereafter, as to the suspension and the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the Village may take such steps as the SMO deems

necessary to prevent or minimize damage to the Village's MS4 or to minimize danger to persons or property.

**B. Suspension due to the detection of illicit discharge.**

Any person discharging to the Village's MS4 in violation of this Article VI may have its MS4 access terminated if such termination would abate or reduce an illicit discharge or remediate an unauthorized connection. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if the SMO finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. Any person who reinstates MS4 access to premises terminated pursuant to this subsection, without the prior approval of the SMO, shall be deemed in violation of this Article VI.

**§ 173-29. Industrial or construction activity discharges.**

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

**§ 173-30. Connection permits.**

A. General. Any connection to the Village's MS4 requires a permit issued by the SMO. Applications for permits shall be made on forms provided by the Village. Permit applications shall be supplemented by any plans, specifications, analyses, calculations, or other information considered pertinent by the SMO. The Village considers connection to the Village's MS4 as a last resort to solve flooding problems. Before approving a connection, the Village may require that applicants use on-site BMPs to handle stormwater and other authorized non-stormwater discharges to the maximum extent practicable. The SMO may assess the adequacy of the applicant's on-site stormwater disposal BMPs and require additional practices if he/she deems it advisable.

**B. Permit Types.**

(1) General Permit. An authorization for a connection permit and the discharge of stormwater, or authorized non-stormwater, pursuant to § 173-24.A. of this Article VI, from properties occupied by private dwellings.

(2) Connection Permit. An authorization for a connection and a discharge, pursuant to § 173-24.A. of this Article VI. A connection permit may be subject to special terms and conditions by the SMO. The permit will expire on, or before the expiration of the DEC SPDES permit, waiver, or order, or upon a change of ownership or use of the premises.

C. Permit Fees. Permit fees shall be set from time to time by resolution of the Board of Trustees.

- D. Inspection. All connections to the Village's MS4 shall be subject to the approval and inspection by the SMO. The applicant must notify the SMO at least 48 hours prior to commencing work and at least 48 hours prior to final restoration.
- E. Indemnification.
- (1) To the fullest extent permitted by law, the owner and the applicant, if different from the owner, shall, jointly and severally, indemnify and hold harmless the Village, the Mayor, the Board of Trustees and all of the Village's other elected and appointed officials, employees, agents, representatives, and volunteers (collectively, the "Indemnitees") from and against all claims, damages, losses, costs, and expenses, including, but not limited to, attorneys and expert witnesses' fees, arising out of or resulting from its installation and connection to the Village's MS4. Such obligation shall not be construed to negate, abridge, or to otherwise reduce any other right or obligation of indemnity to which such Indemnitee would otherwise be subject.
  - (2) Nothing in this section shall be deemed to provide indemnification which is otherwise prohibited by Article 5 of the General Obligations Law.
  - (3) In any and all claims against the Indemnitees by any employee of the owner or the applicant, if different from the owner, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation pursuant to this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the owner or the applicant, if different from the owner, under any workers compensation acts, disability acts, or other employee benefit acts.
- F. Acknowledgement. The owner and the applicant, if different from the owner, in making their application, acknowledge that the Village makes no guarantee that the Village's MS4 will not become surcharged or otherwise overburdened and that water from the Village's MS4 will not back-up through the connection onto the owner's premises. By making a connection, the owner and the applicant, if different from the owner, assume all of the risk and liability to their premises that may arise from their connection to the Village's MS4.
- G. Permit Transfers. General permits may be transferred with the sale of residential premises, provided the use does not change. The new owner of the premises shall comply with the terms and conditions of the transferred permit. Special permits are not transferable without the approval of the Superintendent.
- H. Work within Village Roads. Any connection made within or involving work within a Village road must also comply with and be subject to any and all applicable laws, rules, and regulations pertaining to permits for work on and within Village roads. A permit under this Article VI shall not relieve the applicant from the obligation to obtain all necessary permits under the foregoing laws, rules, and regulations.

- I. Other Permits Required. A connection permit issued pursuant to this Article VI does not relieve the applicant from obtaining any and all other applicable permits and permissions, nor from compliance with all other applicable laws, rules, and regulations.
- J. Permit Rules and Regulations. The Superintendent may promulgate rules and regulations for the permitting process set forth within, and subject to the constraints of, this Article VI.

**§ 173-31. Access and monitoring of discharges.**

A. Applicability.

This section applies to all facilities that the SMO must inspect to enforce any provision of this Article VI or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article VI.

B. Access to Facilities.

- (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Article VI as often as may be necessary to determine compliance with this Article VI. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
- (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records as may be required to implement this Article VI.
- (3) The Village shall have the right to set up on any facility subject to this Article VI such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The Village has the right to require the facilities subject to this Article VI to install monitoring equipment as is reasonably necessary to determine compliance with this Article VI.
- (5) The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (6) Unreasonable delays in allowing the Village access to a facility subject to this Article VI is a violation of this Article VI. Any person who is the operator of a facility subject to this Article VI who denies the Village reasonable access to the facility for the purpose of

conducting any activity authorized or required by this Article VI, shall be deemed in violation of this Article VI.

- (7) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and the SMO is able to demonstrate probable cause to believe that there may be a violation of this Article VI, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article VI or any order issued hereunder, then the Village may seek issuance of a search warrant from the Village Court or, at its option, any other court of competent jurisdiction.

### **§ 173-32. Notification of spills.**

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the Village's MS4, said person shall take necessary steps to ensure the discovery, containment, and cleanup of such release.
- B. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and, immediately thereafter, shall notify the SMO and the Village Clerk.
- C. In the event of a release of non-hazardous materials, said person shall notify the Village in person or by telephone or facsimile no later than the next business day.
- D. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Village within three business days of the telephone notice.
- E. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an onsite written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### **§ 173-33. Enforcement and penalties.**

- A. Notice of violation.

When the SMO, his or her designee, or other designee of the Board of Trustees determines that a person has violated a prohibition or failed to meet a requirement of this Article VI, the SMO, Village Clerk or such designee may order compliance by written notice of violation to the responsible person. Such notice may require the violator, without limitation, to take any or all of the actions listed below, and/or such other action as the SMO, in his discretion, may deem appropriate:

- (1) The obtaining of any required permit;

- (2) The elimination of illicit or unauthorized connections or discharges;
- (3) The issuance of an order to cease and desist all violating discharges, practices, operations, activities or connections;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected premises;
- (5) The performance of monitoring, analyses, and reporting;
- (6) Payment of a fine and/or restitution for the damages that have occurred as a result of the violation or failure;
- (7) The implementation of source control or treatment BMPs.
- (8) 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 Village may perform or have independent contractors perform the remediation or restoration and the cost thereof shall become a lien upon the premises until paid, and if not paid, at the option of the Village, may be added to the current tax bill for the subject premises and collected in the same manner as, and with, the annual Village real estate taxes.

#### B. Injunctive Relief.

Any activity that is commenced or is conducted contrary to this Article VI may be restrained by injunction or otherwise abated in a manner provided by law.

#### C. Penalties.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Article VI shall be guilty of a violation punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) or imprisonment for a period not to exceed 15 days, or both. Violations of this Article VI shall be deemed offenses, and not misdemeanors. Each week's continued violation shall constitute a separate violation.

#### **§ 173-34. Appeal of notice of violation.**

Any person receiving a notice of violation with respect to any provision of this Article VI may appeal the determination of the SMO to the Board of Trustees within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five business days of making its decision,



file its decision in the office of the Village Clerk and mail a copy of its decision by certified mail to the appellant.

**§ 173-35. Corrective measures after appeal.**

- A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 5 business days of the decision of the Board of Trustees upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject premises to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- B. If refused access to the subject premises, the SMO may seek a warrant in the Village Court or, at the discretion of the SMO, in any other court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred.
- C. Upon determination that a violation has occurred, or is reasonably likely to occur if immediate action is not taken, the SMO may either:
  - (1) direct that the remediation and/or restoration work be performed with Village personnel and/or third party contractors and the cost thereof shall constitute a lien, charge, and levy upon the real property in, on or upon the violation exists until it is paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer. Such charge shall include, among other things, administrative, legal, and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent taxes; or
  - (2) seek a court order to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring, and/or to restore the premises, at the cost and expense of the discharger. In any such action, the Village shall be entitled to payment from the violator of all of the legal fees, costs and expenses, including fees of attorneys and witnesses, as may be awarded by the Court. The amount thereof shall constitute a lien, charge, and levy upon the real property in, on or upon which the violation exists until it is paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer.

**§ 173-36. Public Nuisance and Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article VI. Any condition caused or permitted to exist in violation of any requirement of this Article VI constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. If a person has violated or continues to violate the provisions of this Article VI, the Village may petition for a temporary restraining order, preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**§ 173-37. Alternative remedies.**

A. Where a person has violated a provision of this Article VI, such person may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Attorney for the Village and concurrence of the SMO, where:

- (1) the violation was unintentional;
- (2) the violator has no history of previous violations of this Article VI;
- (3) environmental damage was minimal;
- (4) the violator acted quickly to remedy violation;
- (5) the violator cooperated in investigation and resolution; and

B. Alternative remedies may consist of one or more of the following, or similar environmentally related activities:

- (1) Attendance at compliance workshops.
- (2) Storm drain stenciling or storm drain marking.
- (3) River, stream, or creek cleanup activities
- (4) Such other appropriate remedy to which the Village's prosecuting attorney, the SMO, the violator and the court may agree.

#### **§ 173-38. 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 and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

#### **§ 173-39. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Article VI shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this Article VI.”

Section 2. Effective Date. This law shall take effect immediately upon filing with the Secretary of State.