

**CHAPTER 145    STORMWATER MANAGEMENT**

[HISTORY: Adopted by the Common Council of the City of Rensselaer as indicated in article histories. Amendments noted where applicable.]

**GENERAL REFERENCES**

Environmental quality review — See Ch. [93](#).

Uniform Fire Prevention and Building Code — See Ch. [101](#).

Flood damage prevention — See Ch. [105](#).

Sewers — See Ch. [143](#).

Zoning — See Ch. [179](#).

**ARTICLE I        Erosion and Sediment Control (§ 145-1 — § 145-7)**

Editor's Note: For additional stormwater management provisions, see also Ch. [179](#), Zoning, Art. [XV](#), Stormwater Control.

[Adopted 12-19-2007 by L.L. No. 4-2007

Editor's Note: This local law originally adopted this article as Art. I of Ch. [95](#), which chapter numbering was changed to maintain the organizational structure of the Code.

]

**§ 145-1        Findings of fact.**

It is hereby determined that:

**A.**

Uncontrolled drainage and runoff associated with land development has a significant impact upon the health, safety and welfare of the community.

**B.**

Eroded soil endangers water resources by reducing water quality and causing the silting of streams, lakes and other water bodies adversely affecting aquatic life.

**C.**

Stormwater runoff and sediment transports pollutants such as heavy metals, hydrocarbons, nutrients and bacteria to water resources, degrading water quality.

**D.**

Eroded soil necessitates repair and accelerates the maintenance needs of stormwater management facilities.

**E.**

Clearing, grading and altering natural topography during construction tends to increase erosion.

**F.**

Improper design and construction of drainage facilities can increase the velocity of runoff, thereby increasing streambank erosion and sedimentation.

**G.**

Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow.

**H.**

Improperly managed stormwater runoff can increase the incidence of flooding and the severity of floods that occur, endangering property and human life.

**I.**

Substantial economic losses can result from these adverse impacts.

**J.**

Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the

regulation of land development activities.

**§ 145-2**            **Purpose.**

The purpose of this article is to safeguard persons, protect property, and prevent damage to the environment in the City of Rensselaer, New York. This article will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any land development activity as it relates to erosion and sedimentation control and stormwater management. This article seeks to meet these purposes by achieving the following objectives:

**A.**

Meet the requirements of minimum control measures 4 (construction site stormwater runoff control) and 5 (postconstruction stormwater management) of the State Pollution Discharge Elimination System (SPDES) general permit for stormwater discharges from municipal separate stormwater sewer systems (MS4s), Permit GP-02-02 or as amended or revised.

**B.**

Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation (SPDES) general permit for construction activities GP-02-01 or as amended or revised.

**C.**

Minimize soil erosion and sedimentation impacts on streams, water bodies, and neighboring properties.

**D.**

Avoid excessive and/or unnecessary tree and vegetation removal.

**E.**

Minimize windblown soil associated with properties being cleared and graded for development.

**F.**

Maintain the integrity of watercourses and sustain their hydrologic functions.

**G.**

Minimize increases in the magnitude and frequency of stormwater runoff to prevent an increase in flood flows and the hazards and costs associated with flooding.

**H.**

Minimize decreases in groundwater recharge and stream base flow to maintain aquatic life, assimilative capacity, and water supplies.

**I.**

Facilitate the removal of pollutants in stormwater runoff to perpetuate the natural biological function of water bodies.

**§ 145-3**            **Statutory authority.**

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the governing board of the City of Rensselaer has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the City of Rensselaer and for the protection and enhancement of its physical environment. The City of Rensselaer Common Council may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

**§ 145-4**            **Applicability.**

**A.**

Except as otherwise provided herein, no person shall commence or perform any land development activity, as defined herein, without the approval of a stormwater pollution prevention plan (SWPPP).

**B.**

Applicants shall also obtain all other permits required by state, federal, and local laws. Whenever the particular

circumstances of proposed land development activity require compliance with special use, site plan, or subdivision procedures of the City of Rensselaer, the responsible board shall integrate the requirements prescribed herein as appropriate and determine the adequacy of the SWPPP.

C.

Redevelopment projects. Redevelopment projects, as defined herein, provide an opportunity to reduce pollutant discharges and the rate, the amount and quality of stormwater runoff leaving the redevelopment site. However, the nature of the site, particularly in an urban location, may impose constraints that prevent implementation of full postconstruction compliance. Chapter 9 of the New York State Stormwater Management Design Manual sets forth the standards for compliance with water quantity and quality standards and specifications. Consideration shall be given to using alternative stormwater management practices such as rain gardens, pervious pavers, green roofs and other low-impact development techniques to reduce stormwater impacts.

D.

No SWPPP is required for the following exempt activities:

(1)

Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

(2)

Agricultural operations conducted as a permitted principal or accessory use, including the construction of structures where the land disturbance is less than one acre.

(3)

Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a stormwater management facility.

(4)

Mining as defined herein.

(5)

The renovation/replacement of a septic system serving an existing dwelling or structure.

(6)

Normal lawn and landscaping activities/maintenance.

(7)

Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.

(8)

Selective cutting of trees as defined herein, except log haul roads and landing areas are subject to this article. ("Landing areas" are cleared areas to which trees are hauled for their storage before being transferred off site.)

(9)

Repairs and maintenance of any stormwater management practice or facility.

**§ 145-5                    Performance guarantee; recordkeeping.**

A.

Construction completion guarantee. The applicant or developer may be required to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit, from an appropriate financial or surety institution, which guarantees satisfactory completion of the project and names the City of Rensselaer as the beneficiary. The security shall be in an amount determined by the City of Rensselaer 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 City of Rensselaer, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facilities 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 City of Rensselaer. Per annum interest on cash escrow deposits 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 City of Rensselaer with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion control facilities, the City of Rensselaer may, upon notification, draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

C.

Recordkeeping. The City of Rensselaer may require entities subject to this article to maintain records demonstrating compliance with this article.

**§ 145-6                    Retention of licensed/certified professional; payment.**

A.

The responsible board or municipal official is hereby authorized to retain licensed/certified professionals as are determined to be necessary to carry out the review of an SWPPP or to make regular or final inspections of all control measures, lands, structures, and/or appurtenances, to be dedicated to the City of Rensselaer in accordance with the approved plan.

B.

Payment for the services of such professionals is to be made from funds deposited by the applicant with the City of Rensselaer in escrow accounts for such purposes.

C.

It shall be the responsibility of the applicant to submit to the City of Rensselaer certified check(s) in amounts equal to the estimate of the licensed/certified professional for the cost of services to be rendered. Estimates shall reflect reasonable costs at prevailing rates. The City of Rensselaer shall make payments to said professional for services rendered to it upon acceptance by the City of Rensselaer of said service.

**§ 145-7                    Enforcement; penalties for offenses.**

A.

Notice of violation.

(1)

The operator and all contractors and subcontractors must comply with all conditions of an SWPPP submitted pursuant to this article. In the event that the City of Rensselaer determines that a land development activity is not being carried out in accordance with the requirements of this article, the Building and Zoning Administrator may issue a written notice of violation to the operator/landowner, applicant and all contractors/subcontractors subject to the provisions of this article. The notice of violation shall contain:

(a)

The name and address of the operator/landowner, developer, or applicant.

(b)

The address of the site or a description of the building, structure or land upon which the violation is occurring.

(c)

A statement specifying the nature of the violation.

(d)

A description of the remedial measures necessary to bring the land development activity into compliance with this article, and a time schedule for the completion of such remedial action.

(e)

A statement of the penalty or penalties that can be assessed against the person to whom the notice of violation is directed.

(2)

Within 15 days of notification of violation (or as otherwise provided by the City of Rensselaer), the violator shall

take the remedial measures necessary to bring the land development activity into compliance with this article.

B.

Stop-work order. The City of Rensselaer Building and Zoning Administrator may issue a stop-work order for violation of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violation(s) identified in the stop-work order. The stop-work order shall be in effect until the City of Rensselaer 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, and/or monetary penalties in accordance with this article.

C.

Recordkeeping. The City of Rensselaer may require entities subject to this article to maintain records demonstrating compliance with this article.

D.

Penalties. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and each day during which any violation of any of the provisions of this article is committed, continued, or permitted shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more than \$250 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this article shall be required to bear the expense of such restoration. To the extent that the noncompliance with this article constitutes a violation of the Clean Water Act or the Environmental Conservation Law, there may be substantial criminal, civil, and administrative penalties depending upon the nature and degree of the offense.

E.

Withholding certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the City of Rensselaer Building and Zoning Administrator may prevent the occupancy of said building or land.

F.

Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Rensselaer may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

**ARTICLE II      Illicit Discharges, Activities and Connections to Storm Sewer System (§ 145-8 — § 145-25)**

[Adopted 12-19-2007 by L.L. No. 3-2007

Editor's Note: This local law originally adopted this article as Art. II of Ch. 95, which chapter numbering was changed to maintain the organizational structure of the Code.

]

**§ 145-8              Purpose and intent.**

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the City of Rensselaer through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES general permit for municipal separate storm sewer systems. The objectives of this article are:

A.

To meet the requirements of the SPDES general permit for stormwater discharges from MS4s, Permit No. GP-02-02 or as amended or revised;

B.

To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;

C.

To prohibit illicit connections, activities and discharges to the MS4;

D.

To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to

ensure compliance with this article; and

E.

To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

**§ 145-9**                    **Definitions.**

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

**BEST MANAGEMENT PRACTICES (BMPs)**

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

**CLEAN WATER ACT**

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

**CONSTRUCTION ACTIVITY**

Activity requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**DEPARTMENT**

The New York State Department of Environmental Conservation.

**DESIGN PROFESSIONAL**

New York State licensed professional engineer or licensed architect.

**HAZARDOUS MATERIAL**

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 CONNECTIONS**

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

**A.**

Any conveyances which allow any nonstormwater discharge, including treated or untreated sewage, process wastewater, and wash water, to enter the MS4, and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

**B.**

Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**ILLCIT DISCHARGE**

Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § [145-12](#) of this article.

**INDUSTRIAL ACTIVITY**

Activity requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

#### MS4

Municipal separate storm sewer system.

#### MUNICIPALITY

The City of Rensselaer.

#### MUNICIPAL SEPARATE STORM SEWER SYSTEM

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

##### A.

Owned or operated by the City of Rensselaer;

##### B.

Designed or used for collecting or conveying stormwater;

##### C.

Which is not a combined sewer; and

##### D.

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

#### NONSTORMWATER DISCHARGE

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

#### PERSON

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

#### POLLUTANT

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

#### PREMISES

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

#### SPECIAL CONDITIONS

##### A.

Discharge compliance with water quality standards: the condition that applies where a municipality has been notified that the discharge of stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

##### B.

#### LISTED WATERS

WATERS — The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d)-listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d)-listed water.

##### C.

Total Maximum Daily Load (TMDL) Strategy: the condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by the

EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

D.

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

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

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

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO)

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

303(d) LIST

A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. Section 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.

WASTEWATER

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

**§ 145-10            Applicability.**

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

**§ 145-11            Responsibility for administration.**

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

**§ 145-12            Discharge prohibitions; exemptions.**

A.

Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Subsection A(1). The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited, except as described as follows:

(1)

The following discharges are exempt from discharge prohibitions established by this article, unless the Department or the municipality has determined them to be substantial contributors of pollutants: waterline flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

(2)

Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.

(3)

Dye testing in compliance with applicable state and local laws is an allowable discharge but requires a written notification to the SMO prior to the time of the test.

(4)

The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B.

Prohibition of illicit connections.

(1)

The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(2)

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3)

A person is considered to be in violation of this article if the person connects a line conveying sewage to the municipality's MS4 or allows such a connection to continue.

**§ 145-13            Prohibition against activities contaminating stormwater.**

A.

Activities that are subject to the requirements of this section are those types of activities that:

(1)

Cause or contribute to a violation of the municipality's MS4 SPDES permit.

(2)

Cause or contribute to the municipality being subject to the special conditions as defined in § [145-9](#), Definitions, of this article.

B.

Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

**§ 145-14            Prevention, control, and reduction of stormwater pollutants by use of best management practices.**

Best management practices. Where the SMO has identified illicit discharges as defined in § [145-9](#) or activities contaminating stormwater as defined in § [145-13](#), the municipality may require implementation of best management practices (BMPs) to control those illicit discharges and activities.

[A.](#)

The owner or operator of a commercial or industrial establishment shall provide, at his own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.

[B.](#)

Any person responsible for a property or premises which is, or may be, the source of an illicit discharge as defined in § [145-9](#) or an activity contaminating stormwater as defined in § [145-13](#) may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

[C.](#)

Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

**§ 145-15                    Suspension of access to MS4; illicit discharges in emergency situations.**

[A.](#)

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

[B.](#)

Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines, in writing, that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

**§ 145-16                    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 municipality prior to the allowing of discharges to the MS4.

**§ 145-17                    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 or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this article.

[B.](#)

Access to facilities.

[\(1\)](#)

The SMO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2)

Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.

(3)

The municipality shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4)

The municipality has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5)

Unreasonable delay in allowing the municipality access to a facility subject to this article is a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.

(6)

If the SMO has been refused access to any part of the premises from which stormwater is discharged and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

#### **§ 145-18            Notification of spills.**

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

#### **§ 145-19            Enforcement; penalties for offenses.**

A.

Notice of violation.

(1)

When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this article, he/she may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

(a)

The elimination of illicit connections or discharges;

(b)

That violating discharges, practices, or operations shall cease and desist;

(c)

The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(d)

The performance of monitoring, analyses, and reporting;

(e)

Payment of a fine; and

(f)

The implementation of source control or treatment BMPs.

(2)

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B.

Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

#### **§ 145-20            Appeal of notice of violation.**

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

#### **§ 145-21            Corrective measures after appeal.**

A.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of an appeal, within five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

B.

If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

#### **§ 145-22            Injunctive relief.**

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

#### **§ 145-23            Alternative remedies.**

A.

Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Municipal Code

Enforcement Officer, where:

(1)

The violation was unintentional.

(2)

The violator has no history of pervious violations of this article.

(3)

Environmental damage was minimal.

(4)

The violator acted quickly to remedy violation.

(5)

The violator cooperated in investigation and resolution.

B.

Alternative remedies may consist of one or more of the following:

(1)

Attendance at compliance workshops.

(2)

Storm drain stenciling or storm drain marking.

(3)

River, stream or creek cleanup activities.

**§ 145-24            Violations deemed a public nuisance.**

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

**§ 145-25            Remedies not exclusive.**

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