

**Council Member** introduced the following:

**LOCAL LAW H – 2008**

**A LOCAL LAW AMENDING CHAPTER 133 (BUILDING CONSTRUCTION) OF THE CODE OF THE CITY OF ALBANY BY ADDING THERETO A NEW ARTICLE XIV TO BE ENTITLED: “STORMWATER MANAGEMENT AND EROSION CONTROL”**

**BE IT ENACTED, by the Common Council of the City of Albany as follows:**

**Section 1. Chapter 133 (Building Construction) of the Code of the City of Albany is hereby amended by adding thereto a new Article XIV entitled “Stormwater Management and Erosion Control” to read as follows:**

**ARTICLE XIV Stormwater Management and Erosion Control**

**§ 133-100. Findings of fact.**

- A. Development of real property 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, or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of waterborne 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. Improper clearing of vegetation and burial of vegetative and other wastes can result in unstable soil conditions and the production of noxious gases through decomposition of said wastes;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- E. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- F. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development activities;
- G. The regulation of stormwater runoff discharges from real property 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;

H. Regulation of 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.

**§ 133-101. Purpose.**

The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact above. This article seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 (construction runoff) and 5 (postconstruction maintenance) of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02 or as amended or revised;
- B. Require work on real property to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
- C. Minimize increases in stormwater runoff from activities on real property in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;
- D. Minimize or decrease pollution caused by stormwater runoff from activities on real property which would otherwise degrade local water quality;
- E. Minimize or decrease the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable;
- F. Reduce or decrease 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. Specific consideration of stormwater runoff shall be provided to critical watersheds;
- G. Eliminate unstable soil conditions and the production of noxious gases which result from improper stormwater practices, improper grading practices, improper clearing of vegetation and the burial of vegetative and other wastes.

**§ 133-102. Definitions.**

The terms used in this article or in documents prepared or reviewed under this article shall have the meaning as set forth in this section. Any conflict between a definition provided elsewhere in the City Code and this article shall be resolved in favor of the definition provided below.

**AGRICULTURAL ACTIVITY** — The activity of an active farm, including grazing and watering 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.

**BUILDING** — Any structure, either temporary or permanent, having walls and a roof, designed for the 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 the vegetative surface cover.

**D.E.C.** — The New York State Department of Environmental Conservation.

**DESIGN MANUAL** — The New York State Stormwater Management Design Manual, as amended. This manual serves as the official guide for stormwater management principles, methods and practices.

**EROSION CONTROL MANUAL** — The New York Standards and Specifications for Erosion and Sediment Control manual, as amended. This is commonly known as the "Blue Book."

**IMPERVIOUS COVER** — Surfaces, improvements and structures that cannot effectively be infiltrated by rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT** — A State Pollutant Discharge Elimination System 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** — An activity, including clearing, grading, excavating, soil disturbance or placement of fill, that results in land disturbance of equal to or greater than

one acre, or an activity 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 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.

**MAINTENANCE AGREEMENT** — A document which provides for long-term maintenance of stormwater management practices. It is anticipated this document will be recorded in the Albany County Clerk's office and will act as a property deed restriction or encumbrance.

**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 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** — Any construction or development activity upon real property.

**RECHARGE** — The replenishment of underground water reserves.

**SEDIMENT CONTROL** — Measures that prevent sediment from leaving the site.

**SENSITIVE AREAS** — Cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

**SMP** — See stormwater management practices.

**SPDES** — the New York State Pollutant Discharge Elimination System.

**SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01** — A 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 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.

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

**STOP-WORK ORDER** — An order issued which requires that all 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, based on monitoring studies.

**STORMWATER MANAGEMENT** — The use of structural or nonstructural 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 Zoning Officer of the City of Albany as designated in this chapter shall act as the Stormwater Management Officer, and as such, and together with the City Engineer and Code Enforcement Director, shall accept and review stormwater pollution prevention plans, forward the plans to the applicable department, inspect stormwater management practices, and enforce this article.

**STORMWATER MANAGEMENT PRACTICES (SMPs)** — Measures, either structural or nonstructural, 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 (SWPPP)** — 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.

**SURFACE WATERS OF THE STATE OF NEW YORK** — 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 of New York 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 waters of the state. This exclusion applies only to man-made 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 (AKA "SWIPP") — See stormwater pollution prevention plan.

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

**§ 133-103. Applicability.**

- A. This article shall be applicable to all real property within the City of Albany.
- B. All land development activities subject to subdivision and/or site plan review and approval under this chapter shall be reviewed subject to the standards contained in this article. In this instance, the SWPPP shall be submitted along with the subdivision and/or site plan application.
- C. All land development activities not subject to subdivision and/or site plan review shall be required to submit a SWPPP to the Stormwater Management Officer who shall review the SWPPP for compliance with the requirements of this article. Regardless of the size of the land development activity at a minimum an erosion and sediment control plan must be filed (and approved), if fill is deposited within 100 feet of a stream, surface water or wetland. A plan is also needed if fill is going to be deposited on a slope of 15° or more; or if filling in excess of 30 cubic yards at any one time on a parcel.

**§ 133-104. Exemptions.**

The following activities are exempt from the permit requirements under this article. However, even those projects which are exempt from the permit requirements must meet the standards set forth in this article.

- A. Agricultural activity as defined in this article.
- B. 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.
- C. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- D. Cemetery graves.
- E. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- F. Emergency activities immediately necessary to protect life, property or natural resources.
- G. 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.

- H. Landscaping and horticultural activities in connection with an existing structure that does not change the drainage patterns.
- I. Creation or restoration of wetlands pursuant to a state or federal wetlands permit.

**§ 133-105. Stormwater pollution prevention plans.**

- A. No approval of a land development activity shall be issued until a stormwater pollution prevention plan (SWPPP) has been accepted in accordance with the specifications in this article.
- B. All SWPPPs shall, at a minimum, have a sediment and erosion control plan which shall provide the following background information and erosion and sediment controls. Development within impaired watersheds or where a five-acre variance request is submitted to DEC may require additional data.
  - 1. Background information about the scope of the project, including location, type and size of project, and preconstruction photographs of the site and immediate downstream conditions (digital preferred);
  - 2. Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale no smaller than one inch equals 100 feet (e.g., one inch equals 500 feet is smaller than one inch equals 100 feet). At a minimum, the site map should 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);
  - 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 New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP and DEC variance approval;
  - 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. Information regarding the location of disposal of any material to be removed from the site. Off-site disposal areas may not be within regulated wetlands, buffer zones, protected watercourse areas, or other environmentally sensitive areas unless applicable permits are obtained. The proposed method of any on-site processing and reuse of organic materials shall be specified and may require certification by a New York state registered professional engineer or landscape architect as a safe and effective means of disposal;
8. 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;
9. A site map/construction drawing specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
10. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
11. Temporary practices that will be converted to permanent control measures;
12. 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;
13. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
14. Name(s) of the receiving water(s);
15. Delineation of SWPPP implementation responsibilities for each part of the site;
16. 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;
17. Any existing data that describes the stormwater runoff at the site;
18. A slope stability analysis, if requested by the City Engineer, where grading is proposed on steep or slippage-prone slopes;



19. A stormwater management report in accordance with the "Standard Format For Stormwater Management Plans and Reports" which is available at the office of the Stormwater Management Officer;
  20. A stormwater maintenance escrow agreement if the stormwater facilities are being conveyed to the City once they are installed and approved, or a stormwater control facility maintenance agreement if the stormwater facilities will remain privately owned. Either of these agreements can be obtained from the Stormwater Management Officer.
- C. In addition to the SWPPP described above, land development activities meeting any of the three conditions below shall also be required to provide a report as to water quantity and water quality controls (post construction stormwater runoff controls):
1. Stormwater runoff from project activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties; or
  2. Stormwater runoff from land development activities disturbing five or more acres; or
  3. Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
- D. The additional report to be provided for post construction stormwater controls shall include:
1. Description of each post construction stormwater management practice;
  2. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post construction stormwater management practice;
  3. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  4. Comparison of post development stormwater runoff conditions with predevelopment conditions;
  5. Dimensions, material specifications and installation details for each post construction stormwater management practice;
  6. Maintenance schedule to ensure continuous and effective operation of each post construction stormwater management practice;

7. Maintenance easements to ensure access to all stormwater management practices 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;
  8. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this article.
- E. If the land development activity meets either of the conditions described in Subsection C(2) or (3) of this section (activity disturbs five acres or more, or runoff discharges a pollutant of concern to either an impaired water or a TMDL designated watershed), then the SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control (CPESC), soil scientist, or professional engineer, and must be signed by the professional preparing the plan who shall certify that the design of all stormwater management practices meet the requirements in this article.
- F. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- G. Contractor certification.
1. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice 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.
  4. 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.

**§ 133-106. Performance and design criteria.**

Every soil disturbance shall meet the criteria set forth in the New York Standards for Erosion and Sediment Control (aka "The Blue Book"). Also, all land development activities shall be subject to all of the following performance and design criteria:

- A. **Technical standards.** For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article:
  - 1. New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual or the Blue Book);
  - 2. The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual);
  - 3. The City of Albany Standard Format for Stormwater Management Plans and Reports.
  
- B. **Equivalence to technical standards.** Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in the Design Manual and the SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control (CPESC), soil scientist or professional engineer.
  
- C. **Water quality standards.** Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.
  
- D. **Permitting process; additional standards.**
  - 1. Applications shall be made on forms prescribed by the City, which shall be accompanied by the required fee, if any, established by the City.
  - 2. The Stormwater Management Officer shall review the application and act to approve, approve with modification, or deny the requested SWPPP.
  - 3. In the event that the submittal is denied, the applicant may have the decision reviewed by the Board of Zoning Appeals.
  - 4. The smallest practical area of land shall be exposed at any one time during the project.

5. When land is exposed during development, the exposure shall be kept to the shortest practical period of time.
  6. To protect areas in excess of one acre exposed for a period over two weeks during development, the following controls shall be applied:
    - a. Temporary vegetation, mulch, geotextiles, and/or emulsion shall be provided as needed to prevent soil erosion. Application of these materials shall be by approved equipment.
    - b. On areas that will be exposed for short periods of time (daily), where weather conditions are conducive to airborne soil particles, a construction fence shall be installed, as directed by the SMO.
    - c. On areas such as temporary roadways, when dry conditions prevail, the contractor shall be required to apply water or take other measures as required to prevent dust during daily construction activities.
  7. Sediment basins, debris basins, silting basins, silt fencing, or silt traps shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.
  8. Permanent final vegetation and structures shall be installed as soon as practical in the development.
  9. The development plan should be fitted to the type of topography and soils so as to create the least erosion potentials.
  10. Wherever feasible, natural vegetation should be retained and protected.
  11. In areas of proposed fill, all existing vegetation and other organic material, including the root mat, shall be removed prior to placement of fill. The material shall be disposed of in an appropriate off-site facility, or processed for reuse on site in a manner that will not be conducive to adverse effects of decomposition, such as the production of odors or of concentrations of noxious or explosive gases, or the creation of unstable subsurface conditions. The proposed method of on-site processing and reuse shall be specified in the permit application and may require certification by a licensed professional engineer as a safe and effective means of disposal.
  12. No vegetation or other waste materials shall be buried on the site.
  13. All fill placed on the site shall be as free of organic material as is practicable.
- E. Deposit, performance of site work; inspection.

1. To ensure that the site work is performed in accordance with the controls of this article, before obtaining approval the applicant shall deposit with the Chief Fiscal Officer of the City of Albany, a cash escrow as set forth in the fee schedule promulgated by the City.
2. Said site work shall be performed and completed in accordance with the approved plan and schedule of vegetation removal and disposal, grading, construction operation and erosion control methods on file with the Stormwater Management Officer at the time of issuance of the approval.
3. Upon completion of the site work set forth in the plan, the applicant will request the City Engineer or his/her designee to inspect the work; upon approval of the site work, the Engineer will direct the Chief Fiscal Officer to release all of the applicant's money deposited pursuant to Subsection E(1) above.
4. Upon the failure of the applicant to perform the site work in accordance with the site plan submitted as aforesaid, the City of Albany and/or its agents shall be permitted to enter upon the premises and complete the necessary site work and charge the cost of the site work to the funds on deposit with the Chief Fiscal Officer pursuant to Subsection E(1) above, and the Chief Fiscal Officer shall be authorized to pay any charge or charges approved by the City Engineer without further approval of the applicant. If the City should undertake completion of any site work upon the applicant's failure to do so, any sums remaining on deposit with the Chief Fiscal Officer after completion of said site work shall be returned to the applicant.

**§ 133-107. Maintenance, inspection and repair of stormwater facilities.**

**A. Maintenance and inspection during construction.**

1. The City Engineer or his/her designee shall have the power to make necessary inspections. The Engineer may employ, at his/her discretion, a construction inspector to act as its agent for the purpose of assuring satisfactory completion of permit requirements. The inspection provided may include, but not necessarily be limited to, all grading, drainage, stormwater management systems and erosion control measures, and may include soil testing as necessary to determine compliance with the provisions of this article and the conditions of the approval.
2. The City Engineer will determine an amount sufficient to defray the costs of such inspection. The applicant shall deposit said amount of moneys with the Chief Fiscal Officer in an escrow account prior to the issuance of the approval. The City Engineer shall be authorized to pay the costs of inspection by its construction inspector from the moneys on deposit in said account and shall return to the applicant any such moneys, including interest, on balance in the account at the time of completion of the permitted site work, provided that all inspection costs

have been paid. If the moneys on deposit prove to be insufficient for the costs of required inspections, the City Engineer shall require that the applicant deposit additional moneys in an amount sufficient to satisfy the costs of such additional inspections as may be required. If applicant fails to deposit additional moneys in a timely manner, any costs incurred by the City shall be charged to the applicant.

3. The applicant or developer of the land development activity or their representative 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 this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
  4. For land development activities meeting any of the conditions set forth in § 133-105C (project activity of between one and five acres of land during course of job, exclusive of one-family residences and construction activities at agricultural properties, or stormwater runoff from land development activities disturbing five or more acres, or stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water or a TMDL designated watershed), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.
- B. **Maintenance easement.** 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 City of Albany to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded in the office of the Albany County Clerk after approval by the Corporation Counsel.
- C. **Maintenance after construction.** The owner or operator of permanent Stormwater Management Practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. 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 this article.
  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 § 133-106C (water quality standards).
- D. Maintenance agreements. The City of Albany shall promulgate a formal maintenance agreement for Stormwater Management Facilities which are going to be privately owned after construction. The agreement shall be binding on all subsequent landowners and recorded in the office of the Albany County Clerk as a deed restriction on the property prior to final plan approval. The standard maintenance agreement shall be on file in the office of the Stormwater Management Officer. The City of Albany Water Board, 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 this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**§ 133-108. Administration and enforcement; penalties for offenses.**

- A. Inspection.
1. In addition to the DEC inspections required to be performed by the applicant, the City of Albany Stormwater Management Officer, or her designee, may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the stormwater pollution prevention plan (SWPPP) as approved. In addition, a preconstruction meeting is necessary and shall be held as directed by the Stormwater Management Officer. To obtain inspections, the applicant shall notify the City Engineer at least 48 hours before any of the following, as required by the Stormwater Management Officer:
    - a. Start of construction.
    - b. Installation of sediment and erosion control measures.
    - c. Completion of site clearing.
    - d. Completion of rough grading.
    - e. Completion of final grading.
    - f. Close of the construction season.
    - g. Completion of final landscaping.
    - h. Successful establishment of landscaping in public areas.

2. 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 any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.
- B. 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; inspection 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 Stormwater Management Practices.
  - C. Submission of reports and record plans. The City of Albany Stormwater Management Officer may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article. All applicants are required to submit record plans for any Stormwater Management Practices 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 licensed professional.
  - D. Right-of-entry for inspection. When any new Stormwater Management Facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the City of Albany the right, and it shall be the right of the Stormwater Management Officer or his/her designee, to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.
  - E. 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 City of Albany in its approval of the stormwater pollution prevention plan, the City may require the applicant or developer 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 Albany as the beneficiary. The security shall be in an amount to be determined by the City 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 Albany, 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 City. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

- F. **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 Albany 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 and sediment control facilities, the City of Albany may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- G. **Recordkeeping.** The City of Albany may require entities subject to this article to maintain records demonstrating compliance with this portion of the City Code. Upon request, such records shall be made available to the Stormwater Management Officer for inspection or copying.
- H. **Notice of violation.**
  - 1. When the City of Albany determines that a project is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
    - a. The name and address of the landowner, developer, and/or applicant;
    - b. The address when available 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 project 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 shall or may be assessed against the person to whom the notice of violation is directed;
    - f. A statement that the determination of violation may be appealed to the Board of Zoning Appeals by filing a written notice of appeal within 10 days of service of notice of violation by personal delivery or by certified

mail to the last known address of the landowner, developer, and/or applicant.

2. If it is certified by the Stormwater Management Officer that a bonafide emergency exists, the City shall have the right to cause any necessary remediation or repairs to be made to protect the public interests, and the costs assessed to the landowner, developer, and/or applicant pursuant to this article, upon notice and an opportunity to be heard. Where access to the property is denied by the landowner, a warrant shall be obtained from a court of competent jurisdiction.
- I. **Stop-work orders.** The City of Albany may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all work of any nature on the site, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the City of Albany confirms that the project 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 this article or otherwise pursuant to law.
  - J. **Violations.** Any land development activity that is commenced or is conducted contrary to this article, may be restrained by injunction or otherwise abated in a manner provided by law.
  - K. **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 \$250 or imprisonment for a period not to exceed 15 days, or both, for a first offense; upon a conviction of a second or subsequent violation of this article within five years, a person shall be guilty of a misdemeanor punishable by a fine not less than \$350 nor more than \$5,000 or imprisonment for a period not to exceed six months, or both. Each five-day period of a continued violation shall constitute a separate violation and may be charged as such.
  - L. **Withholding of certificate of occupancy.** If any building or land development activity is installed or conducted in violation of this article, the Stormwater Management Officer may prevent the occupancy of said building or land.
  - M. **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 Albany may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

**§ 133-109. Fees for services.**

The City of Albany may require any person undertaking activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections or SMP maintenance performed by City personnel or performed by a third party for the City of Albany.

**Section 2. This local law shall take effect 60 days after final passage, public hearing and filing with the Secretary of State.**

**To: John Marsolais, City Clerk**  
**From: Patrick K. Jordan, Assistant Corporation Counsel**  
**Re: Request for Common Council Legislation**  
**Supporting Memorandum**  
**Date: June 27, 2008**

**Local Law H – 2008**

**TITLE**

**A LOCAL LAW AMENDING CHAPTER 133 (BUILDING CONSTRUCTION) OF THE CODE OF THE CITY OF ALBANY BY ADDING THERETO A NEW ARTICLE XIV TO BE ENTITLED: "STORMWATER MANAGEMENT AND EROSION CONTROL"**

**GENERAL PURPOSE OF LEGISLATION**

**TO ESTABLISH MINIMUM STORMWATER MANAGEMENT REQUIREMENTS AND CONTROLS FOR NEW CONSTRUCTION AND/OR GRADING TO PROTECT AND SAFEGUARD THE GENERAL HEALTH, SAFETY AND WELFARE OF THE PUBLIC AND WATERWAYS.**

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**  
**THESE REGULATIONS ARE MANDATED BY THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION.**

**EXPLANATION OF DEADLINE OR REQUESTED TIME FRAME FOR PASSAGE**

**N/A**

**SPECIFICS OF BIDDING OR OTHER PROCUREMENT PROCESS (if applicable)**

**N/A**

**SPECIFICS OF REAL PROPERTY SALE OR ACQUISITION (if applicable)**

**N/A**

**FISCAL IMPACT(S)**

**UNKNOWN.**