

Town of Clyde Stormwater Ordinance

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ARTICLE 1: Water Quality Protection

100 Statutory Authorization

The Town of Clyde is authorized to adopt the requirements of this Article pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

101 Findings of Fact

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

Further, the Federal Water Pollution Control Act of 1972 “Clean Water Act” and Federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to Federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this Section.

Therefore, the Town of Clyde establishes this set of water quality and quantity requirements to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

102 Statement of Purpose

- A. The purpose of these requirements is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment, as well as illicit discharges into the Town of Clyde’s municipal stormwater systems. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety and general welfare; and protect water and aquatic resources. These requirements establish storm water management requirements and controls to prevent surface water quality degradation to the extent

practicable in the streams and lakes within the Town Limits and Extraterritorial Jurisdiction of Clyde. This Section seeks to meet this purpose by fulfilling the following objectives:

1. Minimize increases in storm water runoff from new development or redevelopment to the maximum extent practicable for the applicable design storm in order to reduce flooding, siltation, streambank erosion, increases in stream temperature and to maintain the integrity of stream channels and aquatic habitats.
2. Minimize increases in non-point and point source pollution caused by storm water runoff from development or redevelopment that would otherwise degrade local water quality. Minimize the total volume of surface water runoff that flows from any specific site during and following development in order to replicate pre-development hydrology to the maximum extent practicable through the use of structural and nonstructural stormwater management Best Management Practices (BMPs).
3. Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
4. Establish design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards.
5. Ensure that structural and nonstructural stormwater BMPs are properly maintained and pose no threat to public health or safety.
6. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately and pose no threat to public safety.
7. Meet the requirements of the National Pollution Discharge Elimination System (NPDES) Storm Water Permit and other requirements as established by the Clean Water Act.

103 Applicability and Jurisdiction

A. Applicable Lands

Beginning with and subsequent to its effective date, these requirements are applicable to all development and redevelopment located within the Town Limits and Extraterritorial Jurisdiction of Clyde, including, but not limited to, site plan

applications, subdivision applications and grading applications, unless exempt pursuant to Section B of this Section.

No building, structure or land shall be used, occupied or altered, and no building, structure or part thereof shall be erected, constructed, reconstructed, moved, enlarged or structurally altered unless in conformity with all the provisions of this ordinance and all other applicable regulations, except as otherwise provided in this ordinance.

B. Exemptions to Applicability

All development and redevelopment are subject to these requirements, except those which, as of the effective date of September 12, 2007, fit into one of the following categories:

1. Cumulatively disturbs less than (1) one acre and is not part of a *larger common plan of development or sale*.
 - a. Development and redevelopment that disturb less than (1) one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
2. Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily ongoing farming and forestry activities) are exempt from the provisions of this Section.
3. Have been issued a Certificate of Building Code Compliance.
4. Have a valid building permit.
5. Are included on a valid preliminary subdivision plan.

C. No Development or Redevelopment Until Compliance and Permit

No development or redevelopment shall occur except in compliance with the requirements of this Section or unless exempted. No development for which a permit is required pursuant to this Section shall occur except in compliance with the provisions, conditions, and limitations of the permit.

D. Conflict of Laws

This Section is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this Section are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this Section imposes restrictions different from those imposed by any other ordinance, rule, regulation or other

provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety and welfare shall control.

ARTICLE 2: DEFINITIONS

200 Terms Defined

A. BMP (Structural)

A physical device designed to trap, settle out or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment system" and similar terms used in this ordinance.

B. Development

Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration or precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

C. Larger common plan of development or sale

Anywhere multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes or surveyor markings) indicating that construction activities may occur on a specific plot.

D. 1-year, 1-hour storm

The surface runoff resulting from a one (1)-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in twelve (12) months and with a duration of one (1) hour.

E. Owner

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants, management entities, such as those charged with or

engaged in the management of properties for profit, and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner unless the secured lender is included within the meaning of “owner” under another description in this definition, such as management entity.

F. Redevelopment

Any rebuilding activity is considered redevelopment unless the rebuilding activity results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

ARTICLE 3: ADMINISTRATION AND PROCEDURES**300 General**

The Town of Clyde will administer this Section. The Town Board will designate a Stormwater Administrator. In addition to the powers and duties that may be conferred, the Stormwater Administrator shall have the following powers and duties under this Section:

- A. To review and approve or disapprove applications for approval of plans pursuant to the requirements of this Section.
- B. To make determinations and render interpretations of the requirements of this Section.
- C. To establish application requirements and schedules for submittal and review of applications and appeals and to review and approve applications.
- D. To enforce the provisions of this Section in accordance with its enforcement provisions.
- E. To make records, maps and official materials as relate to the adoption, amendment, enforcement or administration of this Section.
- F. To provide expertise and technical assistance to the Town of Clyde.
 - a. To carry out the technical duties outlined in this Section, the Stormwater Administrator may contract such services to another local government or private entity.
- G. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- H. To take necessary actions to administer the provisions of this Section.

ARTICLE 4: STANDARDS

400 General

Design standards are established for the purpose of promoting sound development practices with respect to minimizing water quality impacts and are not intended to prohibit the use of innovative and alternative techniques that demonstrate the ability to successfully achieve the objectives of this Section. Land development activities shall be performed in such a manner as to minimize the degradation of water quality conditions through compliance with the Standards listed below.

- A. Required for all development and redevelopment which disturbs (1) one-acre or more.
- B. The stormwater control measures must control and treat the runoff from the 1-year, 1-hour storm event.
- C. All storm water treatment measures used to meet the requirements of this Section shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).
- D. Areas designated as open space that are not or will not be disturbed or developed do not require storm water runoff treatment.
- E. Where any storm water treatment measure utilizes a temporary water quality storage pool as a part of its treatment system, the drawdown time shall be a minimum of 48-hours and a maximum of 120-hours. The minimum draw down orifice size shall be 2-inches or equivalent, even if this results in a drawdown time faster than 48-hours.
- F. All built-upon area shall be at a minimum of 30-feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when site-specific determination made using NC Division of Water Quality-approved methodology.

401 Water Quality Design Manual

The Town of Clyde shall utilize the latest edition of the North Carolina Department of Environment and Natural Resources (DENR) Division of Water Quality (DWQ) Stormwater Best Management Practices Design Manual as the Stormwater Design Manual. The manual can be viewed at:

http://h2o.enr.state.nc.us/su/Manuals_Factsheets.htm

Stormwater management practices that are designed, constructed or maintained in accordance with the Stormwater Design Manual are presumed to comply with these requirements. However, the Stormwater Administrator shall have the right to consult other engineers and duly qualified professionals and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent and requirements of this Section.

402 Stormwater Permit, Plan Submittal and Review

A. Stormwater Permit

A stormwater permit is required for all development and redevelopment which disturbs (1) one acre or more unless exempt pursuant to this Section. For all activities which are subject to this Section, no person shall initiate, proceed or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit.

All other required applications must be received and permits must be obtained prior to the start of the work. These may include, but are not limited to, Soil Erosion and Sedimentation Control, Flood Damage Prevention, Subdivision, Building Permits and Inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers and NC DENR-Dam Safety.

A stormwater permit shall govern the design, installation and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this Section, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this Section.

B. Stormwater Permit Application

1. Content

The Stormwater Administrator shall establish requirements for the content and form of all Stormwater Permit Applications and establish submittal checklist.

At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices and how the proposed project will meet the requirements of this Section.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator.

2. Preparer

The stormwater permit application and plans pursuant to this Section shall be prepared by a qualified registered North Carolina professional engineer or landscape architect and the engineer or landscape architect shall perform services only in their area of competence and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual and that the designs and plans ensure compliance with the requirements of this Section.

C. Fees

The Stormwater Administrator shall establish permit review fees applicable to the specific development or redevelopment. Additional permit reviews fees shall be required for permit reviews that are contracted to another local government or private entity.

D. Schedule

The Stormwater Administrator shall establish a submission and review schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications and that the various stages in the review process are accommodated.

E. Submittal

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this subsection.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this Section, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the

submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

F. Review

The Stormwater Administrator shall review the application for completeness and determine whether the application complies with the requirements of this Section.

1. Approval

If the Stormwater Administrator finds that the application complies with the requirements of this Section, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this Section. The conditions shall be included as part of the approval.

2. Failure to Comply

If the Stormwater Administrator finds that the application fails to comply with the requirements of this Section, the Stormwater Administrator shall notify the applicant in writing and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

3. Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

4. Concept Plan and Pre-submittal Meeting

Before a Stormwater Permit Application is deemed complete, the Stormwater Administrator or developer may request a pre-submittal meeting on a concept plan for the post-construction stormwater management system to be utilized in the proposed development or redevelopment project. This pre-submittal meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- a. Existing conditions / proposed site plans.
- b. Natural resources inventory.
- c. Stormwater management system concept plan.

403 Variances

A. Conditions

The Town of Clyde may impose reasonable and appropriate conditions and safeguards upon any variance it grants. Additional fees shall be required for the technical evaluation of variances that are contracted to another local government or private entity.

B. Applicability

Any person may petition the Town of Clyde for a variance granting permission to use the person's land in a manner otherwise prohibited by this Section. To qualify for a variance, the petitioner must show all of the following:

1. Unnecessary hardships would result from strict application of the requirements of this Section.
2. The hardships result from conditions that are peculiar to the property, such as the location, size or topography of the property.
3. The hardships did not result from actions taken by the petitioner.
4. The requested variance is consistent with the spirit, purpose and intent of this Section will secure public safety and welfare and will preserve substantial justice.

C. Statutory Exceptions

Notwithstanding the Exemptions to Applicability of this Section, exceptions from the 30-foot landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility or utility crossing as long as it is located, designed, constructed and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat and protect water quality to the maximum extent practicable through the use of BMPs.

2. When there is a lack of practical alternatives for a stormwater treatment measures.
 - a. These measures shall be located, designed, constructed and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat and protect water quality to the maximum extent practicable.
 - b. The implementation of the stormwater treatment measures shall not disturb existing vegetation.
 - c. Minor understory may be disturbed in order to accommodate these measures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.
3. When there is a lack of practical alternatives for utilities including, but not limited to, water, sewer or gas construction and maintenance corridor, as long as it is located, designed, constructed and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat and protect water quality to the maximum extent practicable through the use of BMPs.
4. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

404 As-Built and Final Plat Requirements

A. As-Built Requirements

Upon completion of a project and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs and shall submit actual “as built” plans for all stormwater management measures after final construction is completed.

The “as built” plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth and planted vegetation of all measures, controls and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this Section. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

B. Final Plat Requirements

The exact boundary of all stormwater management BMPs shall be shown on final plats prepared by a registered surveyor. These plats shall contain the following statement: “This lot contains a stormwater management measure that must be maintained in accordance with the recorded Operations and Maintenance Agreement.”

ARTICLE 5: MAINTENANCE AND INSPECTIONS**500 Operations and Maintenance Agreement****A. Private Development**

Prior to the conveyance or transfer of any private lot or building site to be served by a structural BMP pursuant to this Section, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this Section, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site and lots or parcels served by the structural BMP. Until the transference of all property, sites or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

B. Public Development

BMPs that are constructed on public land within public rights-of-way and/ or within public easements shall be maintained by the public body with ownership/ jurisdiction of the subject property.

C. Agreement Requirements

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP and shall state the terms, conditions and schedule of maintenance for the structural BMP. In addition, it shall grant The Town of Clyde a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on The Town of Clyde to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and it shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator following its recordation.

D. Construction of Stormwater Management Measures

Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant/ property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.

Inspections which may be performed by the Town of Clyde during construction will not relieve the developer of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.

Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

501 Inspections

A. Function of BMP as Intended

The owner of each structural BMP installed pursuant to this Section shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

B. Right of Entry for Inspection

When any new BMP is installed on private property, the property owner shall grant to the Stormwater Administrator the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.

Inspections may be conducted by the Stormwater Administrator 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 dischargers of contaminants or pollutants; inspections of discharges of a type which are more likely than the typical discharge to cause violations of state or federal water quality standards or the NPDES Storm Water Permit; and joint inspections with other agencies inspecting under environmental and 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 BMPs; and evaluating the condition of BMPs and storm water management practices.

C. Annual Maintenance Inspections

Inspections shall be conducted as prescribed by the Operations and Maintenance Agreement. The person responsible for maintenance of any structural BMP installed pursuant to this Section shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer; a landscape architect; or person certified by the North Carolina

Cooperative Extension Service for stormwater treatment practice inspection and maintenance.

The inspection report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each structural BMP;
3. A statement that an inspection was made of all structural BMPs;
4. The date the inspection was made;
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
6. Signature and seal of a registered engineer, landscape architect or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

ARTICLE 6: Enforcement and Violations

600 General

A. Authority to Enforce

The requirements of this Section shall be enforced by the Stormwater Administrator, his or her designee or any authorized agent of the Town of Clyde.

601 Civil Penalties

Civil penalties may be imposed as follows:

- A. Violation of this ordinance may subject the violator to a civil penalty. Civil penalties may be assessed up to the full amount of penalty to which the Town of Clyde is subject for violations of its Phase II Stormwater permit.

Each day of a continuing violation shall constitute a separate violation. Additional fees may be charged for remedies and enforcement of this Section.

- B. No penalty shall be assessed until the applicant has been notified of the violation by registered or certified mail, return receipt requested or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.
- C. If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- D. Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.
- E. The Stormwater Administrator or other authorized agent may implement the following enforcement actions until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein:
1. Issue a stop work order to the person(s) violating the requirements of this Section. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

2. Refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater practices.
 3. Disapprove or withhold subsequent permits and development applications.
 4. Institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of the requirements of this Section. Any person violating this Section shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- F. It is unlawful for a property owner to fail to meet the requirements of the Operations and Maintenance Agreement. Any person or association that fails to meet the requirements of the Operations and Maintenance Agreement shall be subject to a civil penalty assessed up to the full amount of penalty to which the Town of Clyde is subject for violations of its Phase II Stormwater permit.

ARTICLE 7: ILLICIT DISCHARGES

700 General

A. Prohibited Discharges

No person shall cause or allow the discharge, emission, disposal, pouring or pumping directly or indirectly to any stormwater conveyance, the waters of the State or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES Permit. Prohibited substances and discharges include, but are not limited to:

1. **Wastewater lines (such as from washing machines)**
2. **Sanitary sewer lines**
3. **Food waste**
4. **Oil**
5. **Grease**
6. **Household, industrial and chemical waste**
7. **Anti-freeze**
8. **Animal waste**
9. **Paints**
10. **Paint wash water**
11. **Garbage**
12. **Litter**
13. **Swimming pool discharges**
14. **Leaves**
15. **Grass clippings**
16. **Dead plants.**

B. Allowable Discharges

Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

1. **Drinking water line flushing**
2. **Discharge from emergency fire fighting activities**
3. **Irrigation water**
4. **Diverted stream flows**
5. **Uncontaminated ground water**
6. **Uncontaminated pumped ground water**
7. **Discharges from potable water sources**
8. **Residential foundation/footing drains**
9. **Air conditioning condensation**
10. **Uncontaminated Springs**
11. **Water from crawl space pumps**
12. **Individual non-commercial car washing operations**

13. **Flows from riparian habitats and wetlands**
14. **Street wash water**
15. **Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina, provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town of Clyde.**

C. Illicit Connections

Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in this Section, are unlawful.

Prohibited connections include, but are not limited to, industrial/commercial floor drains, waste water or sanitary sewers, wash water from commercial vehicle washing or steam cleaning and waste water from septic systems.

D. Grace Period

Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within (1) one-year following the effective date of this ordinance.

However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat. Where it is determined that said connection:

1. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat, or
2. Was made in violation of any applicable regulation or code, other than this Section.

E. Time Period of Removal

The Stormwater Administrator shall designate the time period within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

1. The quantity and complexity of the work;
2. The consequences of delay;

3. The potential harm to the environment, to the public health and to public and private property; and
4. The cost of remedying the damage.

F. Spills/ Accidental Discharges

In the case of accidental discharges, the responsible party shall immediately begin to collect and remove the discharge and restore all affected areas to their original condition. The responsible party shall immediately notify the Town of Clyde of the accidental discharge including the location of the discharge, type of pollutant, volume or quantity discharges, time of discharge and the corrective actions taken.

Notification shall not relieve any person of any expenses related to the restoration, loss, damage or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

G. Notice of Violation

When the Town Administrator, Stormwater Administrator or authorized representative finds that a discharge or disposal violates any provisions of this Section, the Town Administrator, Stormwater Administrator or authorized representative may issue a Notice of Violation. The Notice of Violation shall identify the nature of the violation, amount of penalty (if applicable), set forth the measures necessary to comply with this Section and provide a specific time period for compliance.

The Notice may be served by registered or certified mail, hand delivery or any other means determined to give actual notice. Refusal to accept the notice shall not relieve the violator's obligation to comply with this Section or to pay such penalty.

701 Enforcement and Penalties

Any person that violates the provisions of this Section is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.

- A. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.
- B. Civil penalties may be assessed up to the full amount of penalty to which the Town of Clyde is subject for violations of its Phase II Stormwater permit.
- C. Each day of violation shall constitute a separate violation.
- D. The Town Administrator, Stormwater Administrator or authorized representative shall determine the amount of the civil penalty assessment. In determining the

amount of a civil penalty, all relevant mitigating and aggravating factors shall be considered including, but not limited to, the following:

1. Degree and extent of harm caused by the violation;
 2. Cost of rectifying the damage;
 3. Whether the violator saved money through noncompliance;
 4. Whether the violator took reasonable measures to comply with this Ordinance ;
 5. Whether the violator voluntarily took reasonable measures to restore any areas damages by the violation;
 6. Whether the violation was committed willfully;
 7. The violator reported the violation; and
 8. Prior record of the violator in complying or failing to comply with this Code or any other local or State water pollution control rule or regulation.
- D. In addition to the civil penalty, penalties for costs to restore damaged property may be assessed based on restoration costs, which include, but are not limited to, clean up costs, devaluation of the property and value of animal and plant life damaged.
- E. If an alleged violator does not pay a civil penalty assessed within 30 days after it is due, or does not appeal a civil penalty assessment as provided in the Appeals Process of this Section, the Director shall request the Division of Water Quality to administer the penalty.
- F. Violation of this ordinance shall not constitute a misdemeanor or infraction punishable under the criminal laws of North Carolina.

702 Appeals Process

Any person who desires to appeal a demand for payment of the civil penalty shall have thirty (30) days from said demand of payment to appeal in writing to the Town Administrator, Stormwater Administrator or authorized representative.

- A. The Town of Clyde shall then grant an appeal hearing before the Town Board within thirty (30) days after receipt of the appeal.
- B. The Town of Clyde shall provide the appellant a minimum of ten (10) days notice of the time and place of the hearing.
- C. Thereafter, the appellant shall have thirty (30) days to comply with the final decision of the appeal hearing.