

DIVISION 3. STORMWATER MANAGEMENT

This division shall be known and may be cited as the "City of Henderson Stormwater Management Ordinance", except as referred to herein, where it shall be known as "this division".

Sec. 16-37.1. Purpose and authority.

A. *Purpose.* The purpose of this division is to establish minimum criteria to control and minimize quantitative and qualitative impacts of stormwater runoff from development within the entire City limits (regardless of watershed basin) to meet the Tar-Pamlico River Basin nutrient program in accordance with 15A NCAC 02B.0258 Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements and Phase II Stormwater Management Legislation S.L. 2006-246.

Further, prudent site planning should include special consideration or the purposes of preserving natural drainage ways, maximize infiltration, and slowing stormwater runoff from individual sites in route to streams and rivers by use of effective runoff management, structural and non-structural best management practices, drainage structures and stormwater facilities.

B. *Applicability.*

1. The provisions of this division shall apply to all territory within the City limits.
2. All land development activity meeting the criteria listed below must comply with the requirements of this section:
 - a. Any activity that disturbs greater than one acre of land to establish, expand, or replace a single family or duplex residential development or recreational facility. For individual single family residential lots of record that are not presently part of a larger common plan of development or sale by the lot owner, the activity must also result in greater than ten (10) percent built-upon area.
 - b. Any activity that disturbs more than one-half (1/2) acre of land in order to establish, expand or modify a multi-family residential development or a commercial, industrial, institutional or any other non-residential facility.

C. *Exception to applicability.* The following are exceptions to this division:

1. Developers/property owners that can demonstrate that they have vested rights shall be exempt from the nutrient management and peak flow attenuation requirements.
2. Projects meeting the criteria listed in 16-37.1.B that replace or expand existing structures or improvements and that do not result in a net increase in built-upon area are not required to comply with the provisions of this division.
3. Projects meeting the criteria listed in 16-37.1.B that are located within an area that the City Council has designated as a redevelopment area will not be required to

achieve nutrient reductions provided the City has a specific redevelopment strategy in place for the area that addresses the following:

- a. The redevelopment area is a historic community center, traditional central business district, historical district, educational center or other existing developed area specifically designated by the City Council.
 - b. The City has an established strategy for reinvestment in the area as appropriate including one or more of the following:
 - 1) A "fix it first" policy that reserves public funds for repair of existing infrastructure in these areas before investing in new infrastructure of the same type in new growth areas.
 - 2) Mixed use/mixed density zoning provisions.
 - 3) Retrofits that are consistent with NC DOT definition for pedestrian scale in traditional neighborhood developments.
 - 4) Parking maximums or shared parking ratios.
 - 5) Residential density bonuses where parking maximums, pedestrian scale, or "fix it first" are considered.
 - 6) The redevelopment plan is conducive to the goals of the Tar Pamlico Nutrient Management Strategy.
4. Projects that replace or expand existing structures or improvements resulting in a net increase in built upon area shall achieve a thirty (30) percent reduction in nitrogen loading and no increase in phosphorus loading relative to the previous development. Such projects may achieve these loads through onsite or offsite measures or some combination thereof. The existing development must be considered high density having more than 24% built upon area or as allowable by the Stormwater Administrator.
5. Phased residential or commercial projects with multiple lots that propose shared stormwater facilities may be permitted as "on-site" facilities not subject to the pretreatment limitations defined in section 16-37.4.D, provided the shared facility is designed and constructed to meet the nutrient reduction and attenuation requirements for the entire project.

D. *Exemptions.* Agriculture, mining or forestry activities are not subject to this division.

E. *Interpretation.* In interpreting and applying this division, the requirements are intended to be minimum requirements, which are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements.

This division shall not be deemed to interfere with or annul or otherwise affect in any manner whatsoever any ordinance, rules, regulation, permits, or easements, covenants, or other agreements between parties, provided, however, that where this chapter imposes greater restrictions and controls with respect to stormwater management, the provisions of this chapter shall prevail.

F. *Administration of the Stormwater Management Ordinance.* The Director of Engineering of the City, or his designee, is hereby appointed to serve as Stormwater Administrator and it shall be his or her duty to administer and enforce the provisions of this division.

G. *Variances and appeals.*

The appeal of a disapproval or approval with modifications of a plan or requests for variance shall be heard by the Board of Adjustments and accompanied by the payment of any applicable fees, shall be governed in accordance with the Zoning Ordinance, Section 802, Zoning Board of Adjustments and by the following provisions provided the appeal is made in writing and delivered to the City Clerk within fifty (50) days after the receipt of written notice of disapproval or modifications. Hearings pursuant to this section shall be conducted by the City Board of Adjustments within fifty (50) days after the date of the appeal or request for a variance.

1. Anyone requesting a variance shall file such with the Stormwater Administrator on a form provided by the Stormwater Administrator. Applications shall be filed at least fifty (50) days prior to the Board of Adjustment meeting at which it is proposed to be heard.
2. The Board of Adjustment, in considering an application for a variance, shall not consider the following as grounds for granting a variance:
 - a. The use of land or structures within the City's jurisdiction that are not in compliance with the requirements of this division.
 - b. The fact that property may be used more profitably.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.2. Definitions.

For the purpose of this division, the following terms, phrases and words, and their derivatives, shall have the meaning herein:

Applicant means a property owner or agent of a property owner who has filed an application for a stormwater permit.

Best management practices (BMPs) means a wide range of practices both structural and non-structural that have been demonstrated to effectively manage the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

Channel bank means the location of the upper edge of the active channel above which the water spreads into the overbanks on either side of the channel or the elevation of the two-year frequency storm. Where the channel bank is not well defined, the channel bank shall be considered the edge of the water line.

Design storm means the specific frequency and, if necessary, duration of the rainfall event to be used in design to meet the criteria established in the City's Tar-Pamlico River Basin. Stormwater Best Management Practices Manual and the City's storm drainage standard specifications.

Development means any of the following actions taken by a public or private individual or entity:

1. The division of a lot, tract or parcel of land into two (2) or more lots, plots, sites, tracts, parcels or other divisions by plat or deed, or
2. Any land change, including, without limitation, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land.
3. Any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Drainage structures shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts and other structures designed to convey stormwater.

Existing development means an individual residential/non-residential site with site plan approval by the planning department or a residential/nonresidential subdivision with preliminary subdivision approval from the planning board.

Illegal discharges mean any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, or other discharge of any substance other than stormwater into a stormwater conveyance system, the waters of the state or upon the land such that the substance is likely to reach a stormwater conveyance system or waters of the state.

Impervious surface means a surface composed of any material that impedes or prevents natural infiltration of water in to the soil. Gravel areas shall be considered impervious.

Land disturbing activity means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock, involves the diversion or piping of any natural or manmade watercourse, or the establishment of new impervious surface. The term "land disturbing" shall also include the term "land disturbance."

Natural drainage way shall mean a channel with a defined channel bed and banks that are part of the natural topography. Construction channels such as drainage ditches shall not be considered a natural drainage way unless the constructed channel was a natural drainage way that has been relocated, widened, or otherwise improved.

Nutrient(s) means nitrogen and phosphorous, which if present in excessive amounts within a water body, can lead to large growths of algae, low dissolved oxygen concentrations, and other water quality problems.

Redevelopment means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

Riparian buffer means an area of trees, shrubs, or other forest vegetation, that is adjacent to surface waters. For purposes of this chapter, surface water shall be present if the feature is approximately shown on either the most recent version of the county soil survey report prepared by the Natural Resources Conservation Service or the most recent version of the 1:24,000 scale (7.5 min) quadrangle topographic maps prepared by the United States Geological Survey. Riparian buffers adjacent to features that do not appear on either of these maps shall not be subject to this chapter, except those areas determined by the Stormwater Administrator to be environmentally sensitive, shall be subject to this division.

Stormwater means flow resulting from and occurring after any form of precipitation.

Stormwater Administrator means the Director of Engineering or his designee, who has the designated authority to review and approve stormwater permits and stormwater management plans.

Stormwater Best Management Practices (BMP) Manual means the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Water Quality (DWQ), Stormwater Best Management Practices Manual, 1999, and all amendments and revisions thereto. The Stormwater BMP Manual is hereby adopted by reference as fully as though set forth. If any standard, requirement, or procedure as set forth in the manual is in conflict with any standard, requirement, or procedure as set forth in this division then the most stringent shall prevail. A copy of this manual shall be available for public review in the office of the Stormwater Administrator.

Stormwater conveyance systems or structure means any feature, natural or manmade, that collects and transports stormwater, including but not limited to roadways with collection systems, catch basins, man-made and natural channels, streams, pipe and culverts, and any other structure or system designed to transport runoff.

Vegetative buffer means an area that has a dense ground cover of herbaceous or woody species, which provided for diffusion and infiltration of runoff and filtering of pollutants.

Vested rights, based upon new development projects that have received approval from the City for a site-specific or phased development plan by September 14, 2004, shall be exempt from the stormwater management requirements of this chapter. Any plats associated with such development must be recorded within a maximum of five (5) years from the date of development approval. All new development projects that have not received such approval by September 14, 2004 or recorded any plats associated with such development within five (5) years of the development's approval, shall be subject to the requirements of this chapter. Projects that require

a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities shall be considered exempt if a state permit was issued prior to September 1, 2004.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.3. Protecting riparian buffers.

A. *Riparian buffers within Tar-Pamlico River Basin.* As required by 15A NCAC 02B.0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), a 50-foot wide riparian buffer shall be maintained directly adjacent to all perennial and intermittent streams, including lakes, ponds, and other bodies of water, excluding wetlands. Where obvious conflicts exist between actual field conditions and USGS and county soil survey maps, appeals may be made to the DWQ. The City will not approve any development plans that include land area within the fifty (50) feet of the banks of a protected surface water feature except where one of the following apply:

1. The development plans does not propose to impact the riparian buffer or,
2. The property owner has received approval from DWQ. Approval by the DWQ may be in the form of the following:
 - a. An on-site determination by the DWQ in writing that the feature in question is not a protected surface water feature.
 - b. A permit for the proposed construction activity.
 - c. An authorization certificate and approval on a mitigation plan for a use designated as allowable with mitigation.
 - d. A variance from DWQ and/or the Environmental Management Commission.

B. *Riparian buffers within Roanoke River Basin.* A 30-foot wide riparian buffer shall be maintained directly adjacent to all perennial and intermittent streams, including lakes, ponds, and other bodies of water, excluding wetlands. Where obvious conflicts exist between actual field conditions and USGS and county soil survey maps, appeals may be made to the Stormwater Administrator.

1. No development shall take place within the riparian buffer without City permission.
2. The Table of Uses in 15A NCAC 02B.0259 (6) shall be utilized as a guide for determining the exempt, allowable, allowable with mitigation or prohibited activity within the buffer.
3. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
 - a. Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer.

- b. Periodic corrective action to restore diffuse flow shall be taken as necessary to impede the formation of erosion gullies.

C. *Delineation of buffers.*

1. For streams: The buffer shall begin from the top of bank or the rooted herbaceous vegetation and extend landward the total distance as stated in Sections 16-37.3.A and B, measured horizontally on a line perpendicular to the stream on both sides of the stream.
2. For lakes, ponds, and reservoirs: The buffer shall extend out landward the total distance from the normal water mark of the surface water or rooted herbaceous vegetation, measured horizontally on a line perpendicular to the surface water.

D. The buffers must be shown on all development plans, preliminary plats and final plats that contain land area within the protected surface waters.
(Ord. of 9-13-04(4), § 1)

Sec. 16-37.4. Development standards.

A. A minimum of 85% average annual removal for Total Suspended Solids (TSS) through the use of any combination of structural or non-structural BMPs.

B. *Nutrient reduction requirements.*

1. Nitrogen and Phosphorus export standards: All development that meets the requirements of this division must limit nitrogen export to 4.0 pounds per acre per year (lbs/ac/yr) and phosphorus export to 0.4 pounds per acre per year (lbs/ac/yr) through some combination of the following:
 - a. Construction of allowable onsite or offsite stormwater management facilities. Use of offsite facilities is subject to sections 16-37.4.C and D.
 - b. Participation in an approved “regional” or “jurisdictional-wide” facility or strategy.
 - c. Dedication of “open space” and/or “conservation” easements. Easements may be onsite or offsite subject to the sections 16-37.4.C, D and E of this division. Offsite land conservation offsets that drain to the same classified water as the development and meet the criteria specified in 16-37.4.D may be approved by the Stormwater Administrator.
 - d. Pay a one-time offset payment using the latest nitrogen and phosphorus offset payment calculations and fee as specified in the Nutrient Offset Payments Rule (15A NCAC 02B.0240, latest revisions). Use of offset payment option is subject to the following and provisions in section 16-37.4.D.
2. Calculation of nitrogen and phosphorus export and removal efficiencies.

- a. The nitrogen and phosphorus export from all development meeting the criteria listed in section 16-37.1.B must be calculated in lb/ac/yr. The export values for various types of land use, BMP removal efficiencies and the methodologies to be used in calculating the nitrogen and phosphorus export from the development are specified in the Stormwater BMP Manual.
 - 3. Allowable BMP practices.
 - a. All stormwater management facilities must be designed in accordance with this division and the Stormwater BMP Manual.
 - b. Allowable BMPs for nutrient reduction for use within the City are listed in the Stormwater BMP Manual.
 - c. Specific use of any particular device or strategy is subject to the approval by the Stormwater Administrator.
- C. Peak runoff control.
 - 1. *No net increase in peak stormwater runoff.*
 - a. Development shall not result in an increase in peak stormwater runoff leaving the site from the pre-development conditions for the one-year 24 hour storm event.
 - b. Runoff volume drawdown time shall be a minimum of 24 hours, but no more than 120 hours depending on the type of BMP used.
 - 2. Calculation methods shall be in accordance with the standards specified in the Stormwater BMP Manual.
 - 3. *Exceptions to the peak flow requirements.* Peak flow control is not required for developments that met items a and b or item c of the following:
 - a. The overall impervious surface area is less than fifteen (15) percent of the total site and the remaining pervious portions of the site are utilized to the maximum extent practical to convey and control the stormwater runoff, and
 - b. The increase in peak flow between the pre-development and post-development conditions does not exceed ten (10) percent, or
 - c. The Director of Engineering makes a determination that stormwater detention at this particular location will increase flooding, accelerate erosion or negatively impact existing drainage problems in the area. In such cases, an alternate method of peak attenuation management may be required.
- D. *Offsite partial offset option.*

In accordance with the Environmental Management Commission and its amended Nutrient Offset Payment Rule (15A NCAC 02B.0240), developers of residential, commercial, and

industrial projects may partially offset their nitrogen and phosphorus loads under the following conditions:

1. Except where the project is participating in an approved regional or jurisdiction-wide strategy, as defined in section 16-37-4.E, in order for a project to use the offsite partial offset option or the offset payment option, the development plans must first reduce the nitrogen export to the following limits onsite:
 - a. Single-family or duplex residential meeting the criteria of section 16-37.1.B. must limit nitrogen export to no more than six (6.0) lb/ac/yr.
 - b. All other development meeting the criteria of section 16-37.1.B must limit the nitrogen export to no more than ten (10.0) lb/ac/yr.

2. If the computed nitrogen export is greater than 4.0 lb/ac/yr but less than 6.0 (or 10.0) lb/ac/yr, then the balance of the nitrogen reduction, to 4.0 lb/ac/yr and phosphorus reduction to 0.4 lb/ac/yr may be achieved through one or both of the following options:
 - a. Payment to a one-time offset payment to the North Carolina Ecosystem Enhancement Program (EEP) or to the City using the applicable nutrient calculations and fees.
 - 1) If this option is utilized within the Tar-Pamlico River Basin, the payment will be directed to the EEP's Riparian Buffer Restoration Fund. The applicable process for payment to this fund and the EEP must be followed.
 - 2) If this option is utilized within the Roanoke River Basin, the payment will be directed to the City Stormwater Fund and shall be utilized for Stormwater CIP projects within the Roanoke River Basin.
 - b. Provide treatment of an offsite-developed area through construction or an approved BMP or conversion of an existing developed area to protected wooded pervious area. To qualify, the off-site area or facility must meet the following conditions:
 - 1) The offset area and/or facility must drain to the same classified surface water as the development, as defined in the schedule of Classifications, 15A NCAC 02B.0316 and listed in Table A and B of this division, or be a part of a jurisdiction-wide facility or approach approved by DWQ as defined in section 16-37.4.E.
 - 2) The offsite facility may be used to address only the nutrient requirements, except where the development proposal provides supporting calculations, approved by the Stormwater Administrator, that demonstrate that meeting some or all attenuation requirements offsite will not result in degradation of the classified surface waters to which the development site discharges.
 - 3) The off-site stormwater management and/or BMP facility may serve multiple projects provided the facility is appropriately sized and has a tracking system approved by the Stormwater

- Administrator to allocate nutrient removal and flow attenuation to the participating development sites.
- 4) The development owner and the owner of the offsite facility, if different from the development owner, must provide a recorded enforceable agreement stating that offsite facilities are dedicated to achieving the specified nutrient and flow reductions for the life of the development. The responsibility for maintaining these reductions as well as the provisions of any easements and operation and maintenance agreements required in accordance with this division shall run with the land and be binding upon subsequent owners of both the development and the offsite facility.
 - 5) Operation and maintenance plans and easements must be provided for all onsite and offsite facilities in accordance with the provisions of this division.

Table A:
Roanoke River Basin Classified Surface Waters

TABLE INSET:

Receiving Stream Name	Stream Segment	Water Quality Classification
Nutbush Creek	From source to Crooked Run	C
UT to Crooked Run	From source to Crooked Run	
Crooked Run	From source to Nutbush Creek Arm of John B. Kerr Reservoir	B
Indian Creek	From source to Carolina Power & Light Company Power Line	C

Table B:
Tar-Pamlico River Basin Classified Surface Waters

TABLE INSET:

Receiving Stream Name	Stream Segment	Water Quality Classification
Ruin Creek	From dam to Tabbs Creek	C; NSW
Red Bud Creek	From source to Ruin Creek	C; NSW
UT to Ruin Creek	From source to Ruin Creek	
Joes Branch	From source to Ruin Creek	C; NSW
Sandy Creek	From source to dam at Southerlands Pond	C; NSW; +
Martin Creek	From source to Sandy Creek	C; NSW; +

E. Regional and jurisdictional-wide facilities and strategies. This option will be utilized and undertaken by the City on a project-by-project basis and will be incorporated into the City's comprehensive stormwater management program as they are developed and approved by DWQ.

1. *Regional facilities:*
 - a. Regional facility within the context of this section means a stormwater management facility or approach that provides a portion of the nutrient and/or flow control requirements for multiple developments in a specified area within the City's jurisdiction. Examples of regional facilities may include, but are not limited to, wet detention ponds or constructed wetlands.
 - b. Regional facilities may be publicly or privately owned and operated, but must be approved by DWQ if the facility is proposed to serve more than one classified stormwater basin.

2. *Jurisdiction-wide approach.*
 - a. Jurisdiction-wide approach within the context of this section means a nutrient reducing management measure or strategy implemented under the authority of the City and approved by the DWQ to offset nutrient and/or flow increases throughout the jurisdiction of the Henderson City limits. Examples of nutrient reducing measures may include, but are not limited to, conventional stormwater facilities, constructed wetlands, or land conservation.
 - b. Land conservation offsets are an available option provided the following criteria are met:
 - 1) The conserved land must achieve the net nutrient reductions not achieved by the development that conservation is credited with offsetting.
 - 2) Proposals must quantify the reductions including identification of any actions to be taken to achieve nutrient reductions. Examples include:
 - (a) Removal of existing impervious area,
 - (b) Reforestation of managed open space such as agricultural land, cleared or vacant lots,
 - (c) Restoration of the buffering functions of land adjacent to existing or new development, e.g. converting pipe or ditch flow to dispersed sheet flow through forested land.
 - 3) The conserved land should be no further from estuary than the development and within the same jurisdiction except where there is an interlocal agreement that provides for development and offsetting conservation in different jurisdictions. The agreement shall provide assurance of enforceability between jurisdictions, as well as cross-jurisdictional tracking and monitoring procedures.
 - 4) There must be adequate protection to ensure that the conserved lands will not be credited to other developments.
 - 5) Lands whose nutrient removal functions are established and protected through other regulatory programs, such as wetlands and riparian buffers, would not be eligible for conservation credit.

- 6) Conserved land may be used to offset flow attenuation requirements if adequate measures are provided to ensure diffuse flow and no hydrologic degradation of the conserved features or surface waters.
 - 7) Conserved land must be secured in a recorded permanent conservation easement or equivalent legal mechanism with provisions to prohibit both farming and unapproved logging practices.
- c. Stormwater management facilities must provide the following information to gain DWQ approval as a regional or jurisdiction-wide system:
- 1) Land uses in the contributing area.
 - 2) Type of facility.
 - 3) Expected nitrogen and phosphorus removal efficiency and peak shaving capacity.
 - 4) Worst-case percent impervious of the contributing area at build out.
 - 5) Assumptions for on-lot treatment and attenuation.
 - 6) Calculations of nitrogen and phosphorous reduction needed and demonstration that facility meets needs.
 - 7) Process for tracking expenditure of treatment and attenuation capacity.
 - 8) Easement, restricting land use to protect stormwater management facility and containing adequate access for maintenance where such an instrument would be appropriate.
 - 9) An agreement that demonstrates that (a) developer, (b) a local government, or (c) a private for-profit or non-profit company will operate and maintain the facilities.
 - 10) Maintenance guarantees in conformance with the provisions of this division if the facility is not owned or operated by the City.

Sec. 16-37. 5. Permits.

A. *Stormwater permit.* A Stormwater Permit (permit) is required for all development and redevelopment projects unless exempt pursuant to this division. A permit may only be issued subsequent to a properly submitted and reviewed stormwater permit application in accordance with this division.

1. *Effect of permit.* The 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 will sunset upon the final acceptance of the BMP system in accordance to this division.
2. *Permit application.* The stormwater permit application shall be made by, or on behalf of the owner(s) or developer(s) of the site for which the permit is sought.

The application shall be filed with the City on a form supplied by the City and shall be accompanied with all information as required in the City's stormwater program.

3. A stormwater permit shall not be issued until the following conditions are met:
 - a. Approval of the stormwater management plan and associated calculations by the Stormwater Administrator. The stormwater management plan shall be in accordance with section 16.37-6 of this division.
 - b. Submission and approval of any required easements on a map to be recorded.
 - c. Submission and approval of any required operation and maintenance agreement, or other legal instrument established to ensure long-term maintenance of any structural BMPs.
 - d. Payment of all fees, including a non-refundable permit review fee.
 - e. An approved erosion and sedimentation control plan and permit (if required) from the appropriate authority or approving jurisdiction.
 - f. To provide reasonable assurance that BMPs are completed per permit specifications, a cash bond, letter of credit or other acceptable financial surety shall be required from the applicant to be held by the City until all constructed BMPs have received final approval by the City. The amount of the surety shall be based upon contractor estimates for the construction of the entire BMP system (costs from previous or other projects with similar BMPs within the last 3 years will be acceptable).
4. *Permit Issuance.* When the project has been reviewed and approved by the Stormwater Administrator in accordance to this division, the Zoning Ordinance, the City Code and all state and federal regulations, the Stormwater Administrator shall issue a permit to the owner/developer. A copy of the permit must be kept onsite during construction.

B. *Post-construction Stormwater permit.* This permit is required for all projects that required a stormwater permit.

1. *Effect of permit.* The permit shall replace the Stormwater permit upon final acceptance of the stormwater system for the project. No lapse of permit coverage is allowed. The permit must be maintained for the life of the development or unless significant modifications in the development are made that changes the intent of the permit. Significant changes may include, but are not limited to, increase in the amount of impervious coverage or updates/modifications to the stormwater conveyance system. The developer/owner shall notify the City of the proposed changes and the Stormwater Administrator shall determine if such changes warrant an amendment to the approved permit or issuance of a new permit entirely.
2. The Post-construction stormwater permit shall not be issued until the following conditions are met:

- a. Submission of all requirements and good standing of the Stormwater permit. If the Stormwater permit was revoked for any reason, a post-construction stormwater permit will not be issued until the condition is repaired/met and the stormwater permit reissued or reinstated.
 - b. Final Inspection/walkthrough. Upon notification from the contractor and/or developer, a final inspection and walkthrough of the BMP system must be made and accepted by the Stormwater Administrator.
 - c. An Asbuilt Survey of the BMP per section 16-37.6 of this division.
 - d. A Certificate of Completion per section 16-37.6 of this division.
 - e. Payment of funds as required by the Operation and Maintenance Agreement for each BMP into the escrow account.
 - f. All easements must be recorded and a copy of the recorded easement map submitted to the Stormwater Administrator.
 - g. All agreements must place covenants on the land and be recorded and a copy of the recorded agreement(s) submitted to the Stormwater Administrator.
3. *Permit Issuance.* When the project has been reviewed and approved by the Stormwater Administrator in accordance to this division, the Zoning Ordinance, the City Code and all state and federal regulations, the Stormwater Administrator shall issue a permit to the owner/developer.

C. *Permit review fees.* The City Council shall establish permit review fees and may amend and update the fees and policies from time to time. Fees will be set based on effective schedule of fees and approved by the City Council.

D. Conveyance of the property containing the BMP system shall not terminate the original developer's obligations under this division and shall remain in effect with the future property owner.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.6. Submission requirements.

A. *Stormwater management and plans.*

Stormwater shall be conveyed from developments in an adequately designed drainage system of natural drainage ways, grass swales, storm sewers, culverts, inlets and channels. Drainage systems shall be designed, constructed, and maintained to encourage natural infiltration, control velocity, control flooding, and extend the time of concentration of stormwater runoff. The Stormwater Administrator shall determine adequacy of the stormwater drainage system.

A stormwater management plan shall be prepared by the applicant for all land disturbing activities subject to this chapter. Stormwater management plans shall:

1. Document through accepted engineering practices the impacts of the proposed development. At a minimum, documented impacts of the proposed development shall include:
 - a. Effects on existing upstream and/or downstream drainage systems and property;
 - b. Ability of the natural drainage way to handle additional stormwater runoff; and
 - c. Site specific criteria supporting the analysis of any impacts notes in 1.a. and 1.b. above.
2. Demonstrate through accepted engineering practices that stormwater runoff is adequately conveyed through the development in a drainage system designed to meet the criteria described in the storm drainage standard details.
3. Demonstrate through accepted engineering practices that stormwater facilities required to control the impacts of the development are designed to meet the criteria described in the city's stormwater management program.
4. Demonstrate that the nitrogen and phosphorous loading from the new development does not exceed the limits set forth in this division.
5. Stormwater management plans shall be prepared by, and bear the seal and signature of, a licensed professional engineer, registered landscape architect, or registered architect.
6. Include drawings, maps, and supporting calculations, specifications, and summaries as outlined in the city stormwater program for nutrient control and below:
 - a. The type and design of each proposed stormwater facility. This includes grading, elevations, and other information sufficient for construction of each stormwater facility. Plans and profiles (if required) for each proposed stormwater facility must be included as well with any specific detail and notes required for construction.
 - b. The location, extent, type of use, and impervious areas of the development site conditions. This includes the following, but not limited to:
 - 1) Watershed information (information for specific classified stream per this division).
 - 2) Specific river basin where the project is located (Tar-Pamlico or Roanoke River Basins).
 - 3) Pre-development impervious areas
 - 4) Post-development impervious areas
 - 5) If the development will utilize the offsite option, clear demonstration that the proposed facility drains to the same stream as the proposed development site.

- 6) Flood zone (if applicable).
 - 7) Buffer zone areas (if required per this division)
 - 8) Drainage map for development.
- c. Calculations shall be sealed by the design professional and include, but not limited to, the following:
- 1) Stormwater narrative. This includes a detailed description of the existing site conditions, the proposed site conditions and the stormwater facility required to meet this division.
 - 2) Design calculations for each stormwater facility. This includes any design forms required by DWQ to be utilized in the Stormwater BMP Manual.
 - 3) Pre vs. post-development runoff calculations for 1 yr-24 hour storm for design and an analysis of the 10 yr-24 hour, 25 yr-24 hour and 100 yr-24 hour storms.
 - 4) Drainage calculations for storm sewer and drainage ditches with hydraulic grade lines/capacity, etc. to ensure adequate capacity of proposed and existing downstream infrastructure.
 - 5) Hydrology/hydrographs for BMPs.
 - 6) Nutrient management calculations.
 - 7) Buoyancy calculations (if required).
 - 8) USGS 7.5-minute quadrangle with the project location depicted on the map.
 - 9) NCRS Soils Survey map. The soils survey map must be from the latest, printed map from NRCS for the county. The computer version can be used for determination of soil type, but cannot be used for buffer determination.
 - 10) Drainage map for the development with subdrainage information to each facility.
 - 11) Operation and maintenance plan for each facility.

B. *Certification of completion.*

1. A licensed professional shall certify that the constructed BMP is in substantial compliance with the approved construction document prior to issuance of Post-construction Stormwater Permit.
2. For new construction, the certification will be required prior to issuance of a certificate of occupancy in addition to the Post-construction Stormwater Permit.
3. Asbuilt survey required. Prior to release of a certificate of stormwater compliance, as built surveys shall be required as follows:
 - a. The survey shall include the entire legal lot of record showing all impervious surfaces, building footprints, required buffers and any encroachments therein. Such survey shall include an information block totaling the percent of impervious coverage, the amount of impervious coverage on the site in square feet, building

footprints, required buffers and any encroachments therein, and all constructed BMP's. Such survey shall include topography at two-foot contours.

- b. The survey shall compare acreages of the various land covers as constructed to those permitted. If substantially different, the survey shall provide calculations demonstrating compliance with nutrient export requirements of section 16-37.5. If this is not the case, the owner shall amend the permit and make on-site or off-site adjustments accordingly to achieve the required export.
- c. Stormwater conveyances. Any development that results in the construction or alternation of stormwater conveyance shall submit an as-built survey showing the location, extent, dimension and type of each conveyance.
- d. Submission of the survey shall be in NAVD 1988 and NAD 1983 State Plane Coordinates, North Carolina Datum with the following:
 - 1) One (1) hard copy (mylar or velum) with a signed certificate stating compliance and substantial completion of the stormwater facility to the approved stormwater management plans.
 - 2) One (1) electronic form of the survey in either .dxf or .dwg format.

C. *Operation and maintenance agreements.* A written agreement shall be submitted by the applicant, approved by the Stormwater Administrator, and recorded in the office of the register of deeds of the county prior to the issuance of a post-construction stormwater permit. Such agreement shall:

1. Be legally binding on all current and future parties in interest for all properties served by the BMP as covenants running with the land.
2. Identify the maintenance and monitoring requirements required to ensure the proper function of the BMP. Maintenance activities must meet or exceed the actions and frequencies identified by practice in the Stormwater BMP Manual. Such operations shall be specific to each BMP for the development. The operation and maintenance plan submitted under the stormwater management plan can be attached and utilized for this agreement.
3. A requirement that the owner of the permitted BMP submit an annual maintenance inspection report to the Stormwater Administrator by end of September of each year prepared and sealed by a qualified professional licensed in the state. Such report shall not be required for the first partial year if the initial certificate of stormwater compliance was issued for the BMP within six (6) months of the required deadline for submittal. Subsequent repairs and alternations to the BMP requiring a stormwater permit and certificate of compliance shall not alter the submittal requirements for an annual maintenance inspection report.
4. A requirement for the establishment and maintenance of an escrow account that can be used solely for the routine maintenance, repair, restoration, reconstruction, removal, and/or replacement of a required BMP. In the case of multiple BMPs covered by an escrow account, the specifics for each BMP covered by the account

shall be included. The escrowed amount shall be 100% of the total cost to construct each BMP. The agreement shall include the following:

- a. The amount of the escrow fund.
 - b. A statement that if the City issues a NOV ordering the correction, repair, replacement, or maintenance of the system or structure and the owner fails to take all necessary actions to remove the violation or initiate an appeal within the time prescribed, the City or its contractor may have full access to the property to complete any action necessary to correct the violation.
 - c. A statement that the City may, upon order of other official action of the City Council seize all or part of the escrowed funds to pay for all costs associated with the correction of the violation including administrative costs borne by the City.
 - d. A written commitment that the owner(s) (and his successors in title) will refund the escrow to the original amount prior to utilization by a lump sum or by specified time payments.
5. Records of installation and maintenance. The operation and maintenance agreement shall stipulate that parties responsible for the operation and maintenance of a stormwater management facility shall make and keep records of the installation and of all maintenance and repairs, and shall retain the records indefinitely. Whenever the party(ies) responsible for the operation and maintenance of a facility cease to exist, such records shall be transferred to the City. As long as records are maintained privately, they shall be made available to the City or its agents during inspection of the facility and at other reasonable times upon request.
6. A legal description or reference to the easement for each stormwater facility utilized by the development.

D. *Easement Map.*

1. An easement shall be placed to encompass each entire stormwater facility, allowing access and room for maintenance of each facility. The easement shall further provide access to the nearest convenient public right-of-way and must be accessible by maintenance equipment.
2. The easement map shall be generated by a professionally licensed surveyor, signed by the owner, approved by the City and recorded in the county's Register of Deeds office. A copy of the recorded easement map shall be provided to the Stormwater Administrator for the City's files.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.7. Inspections and enforcement.

A. *Authority to enter.* Agents and officials of the city shall have the right to enter property at all reasonable times to inspect sites subject to the requirements of this division to determine whether the development, BMPs, discharges and/or other activities on the property conform to the standards and requirements as set out herein. No person shall obstruct, delay, hamper, or in

any way interfere with a City or County agent or official while in the process of carrying out their duties under this division.

B. *Inspection of stormwater facilities.* Inspection programs may be established on any reasonable basis, including but not limited to: routine inspection, random inspection; 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 a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or an NPDES 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 treatment packages.

C. *Remedies.* The provisions of this division may be enforced by one, all or a combination of the remedies authorized and prescribed herein including civil penalties, criminal penalties, injunctive relief, stop work orders, permit revocation, restoration and abatement.

D. *Notice of violation/warning citation.*

1. Upon determination that a violation of this division has occurred, the City shall issue a Notice of Violation (NOV) to the owner of the property on which the violation has occurred and/or to the alleged violator if such is believed to be different than the owner. A NOV shall be construed to be a warning citation and shall either:
 - a. Be served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person; or
 - b. Posted in the United States mail service by first class mail addressed to the last know address of the violator as contained in the records of the city or obtained from the violator at the time of issuance of permit. The violator shall be deemed to have been served upon the mailing or delivery of said notice. The NOV shall indicate the nature of the violation, order of any action necessary to correct the violation, state a deadline for compliance, and shall contain an order to immediately cease the violation. The NOV shall state that it may be appealed in a manner set out by this division and it shall state that failure to correct the violation shall subject the violator to any and all penalties prescribed herein. In establishing the deadline for compliance, the city shall take into consideration the quantity and complexity of the work, the public health and environmental consequences of delay, and the effectiveness and timelessness of previous corrective actions taken by the violator but in no case should the deadline for compliance exceed sixty (60) calendar days.

2. A written appeal from a NOV must be taken within ten (10) days from the date of said notice to the Board of Adjustment. The Board of Adjustment in considering appeals of notices of violations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of the ordinance, or both. A violator who fails to file an appeal within the time period prescribed above is deemed to have forfeited his appeal rights for the violation, the NOV, civil citations, and civil penalties, and civil penalties assessed for the violation.
3. Where the Stormwater Administrator determines that the period of time stated in the NOV is not sufficient for abatement based upon the work required or consent agreement, the Stormwater Administrator may amend the NOV to provide for additional time which should not exceed sixty (60) calendar days from the date of the initial notice. The Board of Adjustment shall have the authority to extend this deadline for those cases where such time extension is proven to this board to be required due to the complexity and/or severity of the violation. Such extension shall be granted as a result of an appeal of the deadline established by the Stormwater Administrator. Violations which are an imminent threat to public health, safety, and/or welfare shall not be granted an extension.

E. *Civil penalties in general.*

1. Civil penalties are governed by Section 1-6 (b) of the Henderson City Code.
2. Upon failure of the violator to obey the NOV, a civil notice may be issued by the Stormwater Administrator and shall be either:
 - a. Served directly on the violator, his duly designated agent, or registered agent if a corporation, in person; or
 - b. Posted in the United States mail serve by first class mail addressed to the last known address of the violator as contained in the records of the city or obtained from the violator at the time of the issuance of the NOV. The violator shall be deemed to have been served upon the mailing or delivery of said notice.
3. If a violation is repeated within a two-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this section. A repeat violation is one which is identical to or reasonably similar to a previous violation for which the City has issued a NOV or civil penalty notice.

4. At the discretion of the city manager, civil penalties for first time offenders may be waived provided that the offender demonstrates a good faith effort to correct the violation in a timely manner.

F. *Civil penalty amounts.* Any person who violates any provision of this division, any order issued pursuant to this division, or any condition of an approved permit may be subject to civil penalties as set out below:

TABLE INSET:

(1) Work without a permit:	\$5,000.00 per day
(2) Failure to correct a violation after notice:	\$5,000.00 per day
(3) Failure to obey a stop work order:	\$5,000.00 per day
(4) Submitting false information and/or certifications:	\$3,000.00
(5) Failure to follow an approved permit:	\$3,000.00.
(6) Failure to maintain required BMPs:	\$2,500.00
(7) Failure to file required maintenance inspection report:	\$2,500.00
(8) Failure to submit required certifications:	\$2,500.00
(9) Failure to submit required as-built plans:	\$2,000.00.
(10) Illegal connection/discharge:	(refer to Section 16-37.8)
(11) Any other action or failure to act that constitutes a violation of this division	\$2,000.00.

G. *Criminal penalties.* Any person who violates any provision of this division, any order issued pursuant to this division, or any condition of an approved permit shall be guilty of a misdemeanor punishable by fines and/or imprisonment as determined by the court for City Code violations.

H. *Injunctive relief.* Whenever the city has reasonable cause to believe that any person is violating or threatening to violate any provision of this division, any order issued pursuant to this division, or any condition of an approved permit, the city may initiate a civil action in local superior court to restrain the actions of such person that would constitute a violation. Upon finding that such violation has occurred or is threatened to occur, the court may issue any order of abatement or action necessary to insure compliance with this division. The institution of an action for injunctive relief shall not relieve any party to the proceeding from any civil or criminal penalty prescribed herein.

I. *Stop work order.* Whenever the city has reasonable cause to believe that any person is violating or threatening to violate any provision of this division, any order issued pursuant to this division, or any condition of an approved permit, the city may initiate a civil action in county

superior court to restrain the actions of such person that would constitute a violation. Upon finding that such violation has occurred or is threatened to occur, the court may issue any order of abatement or action necessary to insure compliance with this division. The institution of an action for injunctive relief shall not relieve any party to the proceeding from any civil or criminal penalty prescribed herein.

J. *Revocation of permits.* Any permit issued pursuant to this division may be revoked by the Stormwater Administrator at any time for one (1) or more of the following reasons:

1. Failure to comply with an approved permit.
2. The discovery of false, incomplete, or erroneous information submitted as part of the permit application.
3. Failure to allow reasonable and timely access to the property for any and all inspections deemed by the city to be necessary to insure compliance with this division.
4. The discovery that a permit was mistakenly issued.

K. *Restoration.* Any person who violates any provision of this division, any order issued pursuant to this division, or any approved stormwater permit shall be, in addition to all other remedies, subject to site restoration. The Stormwater Administrator shall take into consideration the nature and extent of the violation, the impact upon the land, public health and safety and any other factors he deems necessary in determining whether or not restoration shall be required. If the Stormwater Administrator determines that restoration is required, the violator shall restore all land, water, and vegetation affected by the violation to its condition prior to the violation except that whenever the prior condition is unknown or disputed the Stormwater Administrator shall determine the extent of the restoration required. Whenever trees are removed in violation of this division, new trees or other landscaping shall be planted in the disturbed area. All replacement trees shall be native woodland species suited to the growing conditions of the planting area. In setting the time limits for restoration, the Stormwater Administrator shall take into account the quantity of work required, planting seasons, and the consequences of delay.

L. *Abatement.* Whenever a violation of this division for which a NOV has been sent remain uncorrected after the appeal rights of the violator have been forfeited or exhausted and such violation has been determine by the Stormwater Administrator to be dangerous or prejudicial to the public health, the city shall have the authority to remove, abate, or remedy the violation. The expense of this action including administrative costs shall be billed to the person in violation of this division, and if not paid, shall be a lien upon the land or premises where the violation occurred and shall be collected as unpaid taxes.

M. *Continuing violations.* Each day of violation shall constitute a separate and distinct violation subject to any and all remedies set forth herein.

N. The listing of the foregoing remedies does not preclude the City from pursuing any and all rights and remedies available to it by law.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.8. Illegal discharge detection and elimination.

A. *Purposes.* This section is adopted for the purpose of:

1. Protecting the public health, safety and welfare by controlling the discharge of pollutants into the stormwater conveyance system;
2. Promoting activities directed toward the maintenance and improvement of surface and ground water quality;
3. Satisfying the requirements imposed upon the City under 15A NCAC 02B.0258 Tar-Pamlico River Basin--Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirement.
4. Establishing administration and enforcement procedures through which these purposes can be fulfilled.

The provisions of this regulation are supplemental to regulations administered by federal and state governments.

B. *Scope and exclusions.* This division shall apply within the city limits, with the following exclusions:

Federal, state and local governments, including their agencies, unless intergovernmental agreements have been established giving the city enforcement authority.

C. *Objectives.* The objective of this section is:

1. Regulate the discharge of substances which may contaminate or cause pollution of stormwater, stormwater conveyances, or waters of the state;
2. Regulate connections to the stormwater conveyance system;
3. Provide for the proper handling of spills; and
4. Provide for the enforcement of same.

D. *Discharges covered and exempted.* No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the water of the state, or upon the land in such proximity to the same (such that the substance is likely to reach a stormwater conveyance or the water of the state), any fluid, solid, gas, or other

substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

1. Filter backwash and draining associated with swimming pools;
2. Filter backwash and draining associated with raw water intake screening and filtering devices;
3. Condensate from residential or commercial air conditioning;
4. Residential vehicle washing;
5. Flushing and hydrostatic testing water associated with utility distribution systems;
6. Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state or local government on scene coordinator;
7. Uncontaminated ground water (including the collection or pumping of springs, wells, or rising ground water and ground water generated by well construction or other construction activities);
8. Collected infiltrated stormwater from foundation or footing drains;
9. Collected ground water and infiltrated stormwater from basement or crawl space pumps;
10. Irrigation water;
11. Street wash water;
12. Flows from firefighting;
13. Discharges for the pumping or draining of natural watercourse or waterbodies;
14. Flushing and cleaning of stormwater conveyances with unmodified potable water;
15. Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat; and
16. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by DEM, and provided that any such discharges to the municipal separate storm sewer system shall also be authorized by the city.

E. *Discharges prohibited.* No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, pollutants, waters, or other

substance containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. Examples of illegal discharges include, but shall not be limited to:

1. Dumping of oil, anti-freeze, paint or cleaning fluids;
2. Commercial car wash washwater;
3. Industrial discharges;
4. Contaminated fountain drains;
5. Cooling waters, unless no chemicals added and has valid NPDES permit;
6. Wash waters from commercial and industrial activities;
7. Chlorinated backwash and drainage associated with swimming pools;
8. Domestic wastewater;
9. Septic system effluent;
10. Washing machine discharges; and
11. Sanitary sewer discharges;

F. *Illegal connections.*

1. Connections to a stormwater conveyance or stormwater conveyance system which allows the discharge of non-stormwater, other than the exclusions described in section D. above, are unlawful. Prohibited connections include, but are not limited to: floor drains, wastewater from washing machines or sanitary sewer, wash water from commercial vehicle washing or steam cleaning, and waste water from septic system.
2. Where such connection exist in violation of existing ordinances and said connection was made prior to the adoption of this ordinance or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following application of this regulation; provided that, this grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which possess 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.
3. Where it is determined that said connection:
 - a. 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
 - b. Was made in violation of any applicable regulation ordinance; The City Manager or his designee shall designate the time within which the connection shall be removed. in setting the time limit for compliance, the city 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.

Permits are issued by the engineering department for connection to or modifications of storm sewers located in city owned rights-of-way.

G. *Spills.* Spills or leaks of polluting substances discharged to, or having the potential to be indirectly transported to the stormwater conveyance system, shall be contained, controlled, collected, and removed promptly. All affected areas shall be restored to their preexisting condition.

Persons associated with the spill or leak shall immediately notify the city fire chief or his designee of all spills or leaks of polluting substances. 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.

H. *Removal abatement and prevention required.*

1. The City shall review each change of use, or other permits for land disturbing activity (where a stormwater permit application is not routinely required) for uses and/or activities known or suspected to have potential discharges prohibited by this division. In the event such uses and/or activities occur, the applicant shall be required to obtain a stormwater permit from the Stormwater Administrator. Such permit shall include any and all conditions necessary to prevent illegal discharges.
2. The City may adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S.
3. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes in to the stormwater collection system or watercourses through the use of structural and/or non-structural BMPs.
4. Any person responsible for a property or premise, which is, or may be, the source of illegal discharge, may be required by the City to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater collection system or watercourses.

Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

(Ord. of 9-13-04(4), § 1)

Sec. 16-37.9. Civil penalties for illegal discharges and connections.

A. *Illegal discharges.* Any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this chapter shall be subject to civil penalties as follows:

1. For the first time offenders, if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said person can be assessed a civil penalty not to exceed one hundred dollars (\$100.00) per violation or per day for any continuing violations, and
2. If the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances, including but not limited to process waste water or if said person cannot provide clean and convincing evidence of the volume and nature of the substance discharge said person can be assessed a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation or per day for any continuing violation.

B. For repeat offenders, the amount of the penalty shall be double the amount assessed for the previous penalty, not to exceed ten thousand dollars (\$10,000.00) per violation or per day for any continuing violation.

C. In determining the amount of the penalty, the City Manager or his designee shall consider:

1. The degree and extent of harm to the environment, the public health, and public and private property;
2. The cost of remedying the damage;
3. The duration of the violation;
4. Whether the violation was willful;
5. The prior record of the person responsible for the violation in complying or failing to comply with this chapter;
6. The costs of enforcement to the public; and

7. The amount of money saved by the violator through his, her or its noncompliance.

D. *Illegal connections.* Any person found with an illegal connection in violation of this division and any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an illicit connection in violation of this division, may be subject to civil penalties as follows:

1. First time offenders can be subject to a civil penalty not to exceed five hundred dollars (\$500.00) per day of continuing violation.
2. Repeat violators shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per day of continuing violation.
3. In determining the amount of the penalty, the City Manager or his designee shall consider:
 - a. The degree and extent of harm to the environment, the public health, and public and private property;
 - b. The cost of remedying the damage;
 - c. The duration of the violation;
 - d. Whether the violation was willful;
 - e. The prior record of the person responsible for the violation in complying or failing to comply with this division;
 - f. The costs of enforcement to the public; and
 - g. The amount of money saved by the violator through his, her or its noncompliance.

E. *Procedures for assessing penalties pursuant to illegal connections.* Said penalties may be assessed by the City manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested (addressed to the alleged violator's last known address), or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violations with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which such measures must be completed. In setting the time limit for compliance the City shall take into consideration:

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

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

The notice shall warn that failure to correct the violation within the specified time period can result in the assessment of a civil penalty and/or other enforcement action. If after the allotted time period has expired, and the violation has not been corrected, the penalty may be assessed from the date of receipt of NOV and each day of continuing violation thereafter shall constitute a separate violations under this section.

F. *Other violations.* Any person found in violation of other provision of this division not specifically enumerated elsewhere, may be subject to a civil penalty not to exceed one hundred dollars (\$100.00) per violation or per day for any continuing violation.

G. *Payment/collection procedures.* Penalties can be assessed by the City Manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested (mailed to the last known address), or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The City Manager or his designee shall therein make written demand for payment upon the person in violation. If the payment is not received or equitable settlement reached within thirty (30) days after demand for the payment is made, the matter may be referred to the City attorney for institution of a civil action in the name of the City, in the appropriate division of the general court of justice in the county for recovering the penalty.

H. *Injunctive relief.*

1. Whenever the City Manager has a reasonable cause to believe that any person is violating or threatening to violate this division rule, regulation, order duly adopted or issued pursuant to this chapter or making a connection to a stormwater conveyance or stormwater conveyance system other than in accordance with the terms, conditions, and provisions of approval, the City may, either before or after the institution of any other action or proceeding authorized by the Code, institute a civil action in the name of the City for injunctive relief to restrain and abate the violations or threatened violation.
2. The institution of an action for injunctive relief shall not relieve any party to such proceedings from any further civil or criminal penalty prescribed for violations of this Code.

I. *Criminal penalties.* Any person who knowingly or willfully violated any provision of this, rule, regulation, order duly adopted or issued pursuant to this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not longer than thirty (30) days. Each violation shall be a separate offense.
(Ord. of 9-13-04(4), § 1)