

Chapter 13

ENVIRONMENT

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ARTICLE I. IN GENERAL

Secs. 13-1–13-50. Reserved.

ARTICLE II. NOISE CONTROL**Sec. 13-51. Purpose.**

The purpose of this article is to reduce and control any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, convenience, health, peace or safety of others, within the limits of the town.

(Ord. of 4-11-94, § 5.9.1)

Sec. 13-52. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient noise level means an existing level of all-encompassing noise associated with a given environment, usually a composite of sounds from many sources near and far, without inclusion of intruding noises from isolated identifiable sources.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated db(A) or dBA.

Decibel (dB) means a unit for measuring the volume of a sound equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

Equivalent A-weighted sound level (Leg) means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time varying A-weighted sound for a given period of time. For the purpose of this article, "given period of time" is defined as any continuous eight-hour period.

Fixed noise source means a stationary device which creates sounds, including but not limited to agricultural, commercial, industrial, and residential machinery and equipment, pumps, fans, compressors, air conditioners and refrigeration equipment.

Impulsive sound means a short duration sound of one second or less with an abrupt onset and rapid decay, including explosion, drop forge impact, or firearm discharge. Sources generating impulsive noise for an average of more than five seconds per hour over any eight-hour period shall be deemed, and subject to the same maximum noise level limits as a fixed noise source.

Mobile noise source means any noise source other than a fixed source.

Noise sensitive areas means areas within 300 feet of a school, church, hospital, nursing home or funeral home.

Person means any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or entity, public or private.

Private person means any individual, association, partnership or corporation, but excluding municipal or quasimunicipal entities.

Property owner means the person holding title to the real property as evidenced by the records in the county registry of deeds.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, or alley that is maintained by the town.

Real property boundary means the property line along the ground surface, and its vertical extension, that separates the real property owned by one person from that owned by another person, or separates real property from the public right-of-way. For the purpose of enforcing this article, boundary lines as shown on the town's tax maps shall be prima facie evidence of those boundaries.

Renter-occupied dwelling unit means a residential dwelling unit leased by a person from the owners or lessee for monetary consideration.

Sound level meter means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for Type S2A meters in the American National Standards Institute specifications for sound level meters, S1.4-1971, or the most recent revision thereof.

(Ord. of 4-11-94, § 5.9.2)

Cross reference—Definitions generally, § 1-2.

Sec. 13-53. Sound level limits.

(a) It shall be unlawful for any person to operate or cause to be operated any single or combination of fixed source or nonstationary source equipment or machinery or to conduct any other activity or process that individually or collectively constitutes an identifiable sound source, in such a manner as to cause the sound level at any point on the real property boundary of any property to exceed by five decibels or more the sound level limits set forth below:

<i>District</i> (<i>Land Use Ordinance</i>)	<i>Time</i>	<i>Sound Level</i> (<i>A-Weighted Decibels</i>)
Medium density residential	7:00 a.m. to 6:00 p.m.	50
	6:00 p.m. to 10:00 p.m.	45
	10:00 p.m. to 7:00 a.m.	40

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<i>District (Land Use Ordinance)</i>	<i>Time</i>	<i>Sound Level (A-Weighted Decibels)</i>
High density residential Resi-mercial	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50
Commercial Central business Research and development	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50
Industrial Interchange	7:00 a.m. to 6:00 p.m.	70
	6:00 p.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	55
Forestry and agricultural	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50
Noise sensitive areas	7:00 a.m. to 6:00 p.m.	45
	6:00 p.m. to 10:00 p.m.	40
	10:00 p.m. to 7:00 a.m.	35
Public parks and recreation areas	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50

Where the ambient noise from other than identifiable sound sources is determined to be higher than the maximums listed above, the maximum permissible sound level shall be five decibels higher than the ambient noise level.

Where properties in two or more districts join at a common boundary, the maximum noise level shall be the arithmetic mean of the maximum levels for each of the properties affected.

(b) For residential dwelling units contained in a single structure, it shall be unlawful for any person to operate or cause to be operated within a dwelling unit any source of sound or allow the creation of any sound which causes the sound level when measured inside another dwelling unit located in the same structure to exceed the sound level limits set forth below:

<i>Time</i>	<i>Sound Level (A-weighted decibels)</i>
10:00 p.m. to 7:00 a.m.	35
7:00 a.m. to 10:00 p.m.	45

Where the ambient noise from other than identifiable sound sources is determined to be higher than the sound level limits listed above, the maximum permissible interior sound level shall be five decibels higher than the ambient noise level.

(Ord. of 4-11-94, § 5.9.3)

Sec. 13-54. Public nuisance noise.

(a) Notwithstanding the provisions of section 13-53, and in addition thereto, it shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of the town any loud, unnecessary or unusual noise of such character, intensity or duration which unreasonably disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area.

(b) The characteristics and conditions to be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

- (1) The level of the noise.
- (2) Whether the nature of the noise is usual or unusual.
- (3) Whether the origin of the noise is natural or unnatural.
- (4) The level and intensity of the background noise, if any.
- (5) The proximity of the noise to residential area sleeping facilities.
- (6) The nature and zoning of the areas within which the noise emanates.
- (7) The density of the inhabitation of the area within which the noise emanates.
- (8) The time of the day or night the noise occurs.
- (9) The duration of the noise.
- (10) Whether the noise is recurrent, intermittent, or constant.
- (11) Whether the noise creates a noise disturbance across a real property boundary and/or across an apartment unit boundary wall.
- (12) Whether the noise disturbance annoys, disturbs or injures a reasonable person.

(c) The following activities, among others, are hereby declared to be loud, disturbing, unnecessary, excessive or offensive noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- (1) The use of a horn or other signaling device on any vehicle except as an emergency or danger warning signal.
- (2) The use, operation, or permitting to be played, used, or operated, any sound production or reproduction device, radio receiving set, musical instrument, drums, stereo, television set, loudspeakers, sound amplifiers or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of any reasonable person of normal sensitivity in any dwelling, hotel, hospital or other type of residence, or of any person in the vicinity thereof. The operation of any such sound producing device between the hours of 11:00 p.m. and 8:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle from which the sound emanates shall be prima facie evidence of a violation of this section.

- (3) Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises in a public right-of-way, or the making of any such noise at any time or place in such a manner as to disturb the peace, quiet, and comfort of any reasonable person of normal sensitivity in any dwelling, hotel, hospital or other type of residence, or of any person in the vicinity thereof.
- (4) The keeping, or the permitting to be kept, of any animal or bird, except in the forestry and agricultural district, which by any frequent or long continued noise shall cause annoyance or discomfort to a reasonable person of normal sensitivity in the vicinity. The noise of any such animal or bird that disturbs two or more residents who are in general agreement as to the times and durations of the noise, and who reside in separate dwelling units located on property adjacent at any point to the property on which the subject animal or bird is kept, shall be prima facie evidence of a violation of this section.
- (5) The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.

(Ord. of 4-11-94, § 5.9.4)

Cross reference—Animals, ch. 6.

Sec. 13-55. Exemptions.

None of the terms or prohibitions of the previous sections shall apply to or be enforced against:

- (1) *Schools and churches.* Any bell or chime from any building clock, school or church.
- (2) *Emergency vehicles.* Any police or fire vehicle or any ambulance while engaged in necessary emergency business.
- (3) *Highway and utility maintenance and construction.* Necessary excavation in, maintenance (summer/winter) of, or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the town, or any public utility, or any agency of the state.
- (4) *Farming equipment.* Any farming equipment or farming activity performed during daytime hours.
- (5) *Public address.* The reasonable use of amplifiers or loudspeakers for public addresses which are noncommercial in nature.
- (6) *Warning devices.* Any alarm, siren, bell, or whistle required by OSHA or other state or federal safety regulations.
- (7) *Refuse collection.* The operation of refuse collection machinery and equipment, provided that such machinery and equipment is in compliance with all laws applicable thereto.

- (8) *Ambient traffic noise.* Any noise generated by vehicles travelling on federal interstate highways or state defined primary or major secondary highways.
 - (9) *Public events.* Crowd noise generated by scheduled sporting events at publicly-owned arenas, stadiums, or similar facilities, and public concerts, parades, fairs, shows, and celebrations which have been properly permitted and licensed.
 - (10) *Power equipment.* The use of outdoor power equipment, such as chainsaws, lawn mowers, snow removal equipment, garden tractors and the like. Except for snow removal equipment, the use of such equipment shall be limited to the hours between 8:00 a.m. and 8:00 p.m. In addition, this exemption shall only apply to power equipment that has the manufacturer's, or equivalent, noise suppression equipment installed and operational on the power equipment.
 - (11) *Existing commercial/industrial use.* Any commercial or industrial use which is in existence and exceeds the applicable sound level limits from customary operations as of the effective date of this article. Any such use shall have its sound levels measured at its real property boundary by the town within three months from the effective date of this article to establish a baseline sound level for its normal and customary operations. For the purposes of this article, that sound level determination shall be substituted for the applicable sound level limits set forth in section 13-53.
- (Ord. of 4-11-94, § 5.9.5)

Sec. 13-56. Enforcement.

The police department shall be responsible for the administration and enforcement of this article, including but not limited to the following duties and responsibilities:

- (1) Investigation of complaints of unlawful noise;
 - (2) Documentation of violations of this article;
 - (3) Measurement of the offending noise by an approved sound level meter or other measuring device, if appropriate;
 - (4) Issuance of written warnings for violation of this article; and
 - (5) Initiation and prosecution of legal proceedings to enforce the provisions of this article.
- (Ord. of 4-11-94, § 5.9.6)

Sec. 13-57. Penalties.

(a) Any person who violates the provisions of sections 13-53 and 13-54 of this article shall be given a written notification of such violation and a warning to cease such activity.

(b) If any person continues to violate the provisions of sections 13-53 and/or 13-54 subsequent to the written notification and warning, that person shall be liable for a civil penalty in accordance with the following:

- (1) One hundred dollars for the first violation;

- (2) Two hundred dollars for a violation which occurs within 12 months of the date of the first violation; and
- (3) Three hundred dollars for a third or subsequent violation which occurs within 12 months of the date of the last violation.

(c) Each such violation which either continues or is repeated more than 15 minutes after issuance of a written notice and warning of violation of this article shall be a separate offense and shall be subject to a civil penalty as a separate offense.

(d) All civil penalties shall inure to the benefit of the town.

(e) If the violation occurs in a renter-occupied dwelling unit, the town shall provide the owner with written notice of such violation.

(Ord. of 4-11-94, § 5.9.7)

Sec. 13-58. Other remedies.

If the person or persons responsible for any activity which violates sections 13-53 and/or 13-54 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation. The responsible person may be prosecuted under this article, and shall be subject to the civil penalties set forth in section 13-57.

(Ord. of 4-11-94, § 5.9.8)

Sec. 13-59. Reserved.

ARTICLE III. NON-STORMWATER DISCHARGE ORDINANCE

Sec. 13-60. Purpose and objectives.

(a) *Purpose.* The purpose of this non-stormwater discharge ordinance (the "article") is to provide for the health, safety, and general welfare of the citizens of the Town of Orono through the regulation of non-stormwater discharges to the town's storm drainage system as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the town's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.

(b) *Objectives.* The objectives of this article are:

- (1) To prohibit unpermitted or unallowed non-stormwater discharges to the storm drainage system; and
- (2) To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this article.

(Ord. No. 07-71, 5-14-07)

Sec. 13-61. Definitions.

For the purposes of this article, the following shall mean:

Clean water act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. The person(s) or department authorized under section 13-67 to administer and enforce this article.

Exempt person or discharge. Any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally-owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Industrial activity. Activity or activities subject to NPDES industrial permits as defined in 40 CFR, section 122.26 (b)(14).

Municipality. The Town of Orono.

Municipal separate storm sewer system or MS4. Conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Nested municipal separate storm sewer system or Nested MS4. A public body other than the municipality that is located within the larger jurisdiction of the municipality but owns or operates a separate storm water sewer system and is required to have a national permit to

discharge stormwater into surface waters of the state pursuant to the federal Clean Water Act. As of the effective date of this article, the sole nested MS4 in Orono is the University of Maine, which is an exempt person under this article.

Non-stormwater discharge. Any discharge to an MS4 that is not composed entirely of stormwater.

Person. Any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity that creates, initiates, originates or maintains a discharge of stormwater or a non-stormwater discharge.

Pollutant. Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Premises. Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Regulated small MS4. Any small MS4 regulated by the State of Maine "general permit for the discharge of stormwater from small municipal separate storm sewer systems" dated June 3, 2003 ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside a UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

Small municipal separate storm sewer system, or small MS4. Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm drainage system. The municipality's regulated small MS4 and areas outside the UA that drain into the regulated MS4.

Stormwater. Any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "storm water."

Urbanized area ("UA"). The areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.
(Ord. No. 07-71, 5-14-07)

Sec. 13-62. Applicability.

This article shall apply to all persons discharging stormwater and/or non-stormwater from any premises into the storm drainage system.
(Ord. No. 07-71, 5-14-07)

Sec. 13-63. Responsibility for administration.

The code enforcement officer is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 07-71, 5-14-07)

Sec. 13-64. Prohibition of non-stormwater discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-stormwater discharge to the storm drainage system. Such non-stormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowed non-stormwater discharges to the storm drainage system.

(b) *Allowed non-stormwater discharges.* The creation, initiation, origination or maintenance of the following non-stormwater discharges to the storm drainage system are allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and swimming pool water provided that the chlorine level is less than one mg/l and a plan has been submitted to the DEP by the pool owner indicating the discharge procedure and amount, duration, and location of the discharge;
- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety; and
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.*

- (1) This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).
- (2) Recognizing the interrelated nature of the municipality's MS4 and the University of Maine's nested MS4, the municipality will make its best effort to enter into a

memorandum of understanding with the University of Maine by which each will seek to protect unauthorized discharges into the other's storm drainage system and to immediately remedy such discharges when they occur.

(Ord. No. 07-71, 5-14-07)

Sec. 13-65. Suspension of access to the municipality's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-stormwater discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-stormwater discharge to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons; provided, however, that in taking such steps the enforcement authority may only enter upon the premises that is the source of the actual or threatened non-stormwater discharge to the storm drainage system with the consent of the premises' owner, occupant or agent.

(Ord. No. 07-71, 5-14-07)

Sec. 13-66. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system. If consent is withheld, the enforcement authority may seek an administrative inspection warrant pursuant to state law.

(Ord. No. 07-71, 5-14-07)

Sec. 13-67. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (1) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The elimination of non-stormwater discharges to the storm drainage system;

- b. The cessation of discharges, practices, or operations in violation of this article;
- c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
- d. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

- (2) *Penalties/fines/injunctive relief.* Any person who violates this article shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
- (3) *Consent agreement.* The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may take an administrative appeal of the determination of the enforcement authority to the board of appeals in accordance with the provisions of section 18-83 of the municipality's land use ordinance. The notice of appeal must be received within 30 days from the date of the notice of violation or suspension notice. The board of appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The board of appeals may affirm, reverse or modify the decision of the enforcement authority. A suspension under section 13-65 shall remain in effect unless or until lifted by the board of appeals or by a reviewing court. A party aggrieved by the decision of the board of appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the board of appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure. Except as provided herein, the appellant shall follow the procedures and requirements of the land use ordinance applicable to administrative appeals.
- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 45 days of the decision of the board of appeals upholding the decision of the

enforcement authority, then the enforcement authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

- (6) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the municipality, or any agent or employee thereof, for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 07-71, 5-14-07)

Sec. 13-68. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, premises, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 07-71, 5-14-07)

Sec. 13-69. Basis.

The municipality enacts this non-stormwater discharge ordinance (the "ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "general permit for the discharge of stormwater from small municipal separate storm sewer systems" dated June 3, 2003, has listed the municipality as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this article as part of the municipality's stormwater management program.

(Ord. No. 07-71, 5-14-07)

Secs. 13-70—13-80. Reserved.

**ARTICLE IV. POST-CONSTRUCTION STORMWATER MANAGEMENT
MONITORING ORDINANCE**

Sec. 13-81. Purpose.

The purpose of this "Post-Construction Stormwater Management Monitoring Ordinance" (the "Ordinance") is to provide for the health, safety, and general welfare of the citizens of the

Town of Orono through monitoring and enforcement of compliance with stormwater management plans in order to comply with minimum control measures requirements of the Federal Clean Water Act, of federal regulations, and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

(Ord. No. 09-113, § 1, 6-8-09)

Sec. 13-82. Objectives.

This article seeks to ensure that post-construction stormwater management plans are followed and stormwater management facilities are properly maintained and pose no threat to public safety.

(Ord. No. 09-113, § 2, 6-8-09)

Sec. 13-83. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant means a person with requisite right, title or interest or an agent for such person who has filed an application for new development or redevelopment that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Construction activity means construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state". "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Disturbed area means clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed area" does not include routine maintenance but does include redevelopment. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Municipal permitting authority means the municipal official or body that has jurisdiction over the land use approval or permit required for a new development or redevelopment.

Municipal separate storm sewer system, or MS4, means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by the U.S. Environmental Protection Agency ("EPA") or by the Maine Department of Environmental Protection ("DEP") that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New development means any construction activity, as defined herein, on unimproved premises.

Person means any individual, firm, homeowners' or property owners' association, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity.

Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Stormwater management plan means BMPs and stormwater management facilities employed by a new development or redevelopment to meet the stormwater standards of chapter 18, Land Use, of the Town's Code of Ordinances and approved by the Municipal Permitting Authority.

Premises means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within Orono from which discharges into the municipal separated storm sewer system (MS4), as defined herein, are or may be created, initiated, originated or maintained.

Qualified Post-Construction Stormwater Inspector means a person who conducts post-construction inspections of stormwater management facilities and meets the following qualifications:

- (1) Has a working knowledge of Chapter 500, Stormwater Management Rules, and Maine's Stormwater Best Management Practices Manual; and
- (2) Meets the following criteria or is on the Maine Department of Environmental Protection's list of approved post-construction stormwater best management practices inspectors: (a) has a college degree in environmental science, landscape architecture, civil engineering, or comparable field, with demonstrated knowledge of stormwater

hydrology and stormwater management techniques, or (b) has successfully completed the requirements of a Maine Department of Environmental Protection training course on inspecting post-construction stormwater management facilities. Proprietary stormwater management facilities must be inspected by a person approved by the manufacturer.

Redevelopment means construction activity, as defined herein, on premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4 means any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" effective July 1, 2008 ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small municipal separate storm sewer system, or small MS4 means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Stormwater means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "stormwater".

Stormwater management facilities means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the stormwater management plan for a new development or redevelopment.

(Ord. No. 09-113, § 3, 6-8-09)

Sec. 13-84. Applicability.

This article applies to all new development and redevelopment within Orono that discharges stormwater to the municipal separated stormwater sewer system (MS4), whether by direct flow to the system or through the new development's or redevelopment's stormwater management facilities.

(Ord. No. 09-113, § 4, 6-8-09)

Sec. 13-85. Stormwater management plan approval.

(a) *General requirement.* Notwithstanding any ordinance provision to the contrary, no applicant for a building permit, subdivision approval, or site plan approval for new development or redevelopment to which this article applies shall receive such permit or approval unless the municipal permitting authority approves, as part of a written approval of a building

permit, subdivision application, or site plan application, a stormwater management plan and a post-construction stormwater management monitoring program that meets the terms of section 13-86 of this article.

(b) *Description of BMP discharge to MS4.* At the time of application for a building permit, subdivision approval, or site plan approval for new development or redevelopment to which this article applies, the applicant shall show as part of a stormwater management plan all BMP(s) that will discharge to Orono's MS4. The BMP(s) shall be clearly labeled and described, including all proposed dimensions and other information as may be required by the building permit, subdivision, or site plan application.

(c) *As-built drawings.* Within 60 days of the implementation of the stormwater management facilities approved in the stormwater management plan, the permittee shall submit to the code enforcement officer a scaled drawing depicting the exact locations, elevations, and dimensions of the facilities as they were actually built or implemented.

(Ord. No. 09-113, § 5, 6-8-09)

Sec. 13-86. Post-construction stormwater management monitoring program.

(a) *General requirements.* Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved under Orono's Land Use Ordinance shall, following construction or implementation of the facilities, monitor the facilities as follows:

- (1) That person, if qualified by the Maine Department of Environmental Protection as a post-construction stormwater inspector, or a qualified post-construction stormwater inspector hired by that person, shall, at least annually, inspect the stormwater management facilities, including, but not limited to, any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.
- (2) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
- (3) The qualified post-construction inspector shall, on or by May 1 of each year, provide a completed and signed certification to the code enforcement officer in a form provided by the Town of Orono, certifying that he or she has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities and, if the stormwater management facilities require maintenance or repair, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

Applications for new development or redevelopment that include privately owned, leased, or controlled stormwater management facilities shall be accompanied by a maintenance agreement with the town in a format substantially as shown in appendix 1 located at the end of this article.

(b) *Right of entry.* In order to determine compliance with this article and with the stormwater management plan, the Code Enforcement Officer may enter upon property at reasonable hours to inspect the stormwater management facilities.

(Ord. No. 09-113, § 6, 6-8-09)

Sec. 13-87. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the stormwater management plan. Whenever the Code Enforcement Officer believes that a person has violated this article or the stormwater management plan, the Code Enforcement Officer may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (1) *Notice of violation.* Whenever the Code Enforcement Officer believes that a person has violated this article or the stormwater management plan, the Code Enforcement Officer may order compliance with this article or with the stormwater management plan by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The abatement of violations, and the cessation of practices, or operations in violation of this article or of the stormwater management plan;
 - b. At the person's expense, compliance with BMPs required as a condition of approval of the new development or redevelopment, the repair of stormwater management facilities and/or the restoration of any affected property; and/or
 - c. The payment of fines, of the Town's remediation costs and of the Town's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of stormwater management facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

- (2) *Penalties / fines / injunctive relief.* Any person who violates this article or the stormwater management plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article or the stormwater management plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of federal and state environmental laws and regulations caused by or related

to that person's violation of this article or of the stormwater management plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (3) *Consent agreement.* The Code Enforcement Officer may, with the approval of the Municipal Officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article or of the stormwater management plan for the purposes of eliminating violations of this article or of the stormwater management plan and of recovering fines, costs and fees without court action.
- (4) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, the Code Enforcement Officer may recommend to the Town Manager that the municipality's Attorney or Certified Code Enforcement Officer file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 09-113, § 7, 6-8-09)

Sec. 13-88. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 09-113, § 8, 6-8-09)

Sec. 13-89. Basis.

The Town of Orono enacts these "Post-construction stormwater management monitoring regulations" (the "regulations") pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems", has listed the Town of Orono as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this article as part of the municipality's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

(Ord. No. 09-113, § 9, 6-8-09)

APPENDIX 1

**Maintenance Agreement for
Stormwater Management Facilities**

This Maintenance Agreement is made this day of _____ 20__ by and between _____ and the Town/City of _____, Maine.

The project name is _____.

The location is: _____, _____, Maine.

The project's Tax Map and Lot Numbers are Tax Map Lot _____

The project is shown on a plan entitled " _____ " dated _____ and most recently revised on _____, approved by the _____ [Municipal Permitting Board] on _____ and (if a subdivision) recorded in the _____ County Registry of Deeds in Plan Book _____ Page _____ (the "Project").

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town/City of _____ requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town/City and the agreement of _____ to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. _____, for itself, and its successors and assigns, agrees to the following:

(a) To inspect, clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system;

(b) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection;

(c) To provide a summary report on the inspection, maintenance, and repair activities performed annually on the Stormwater Management Facilities to the Town/City Enforcement Authority;

(d) To allow access by Town/City personnel or the Town/City's designee for inspecting the Stormwater Management Facilities for conformance with these requirements.

(e) If a subdivision, to create a homeowners' or property owners' association for the purpose of maintaining the Stormwater Management Facilities.

2. Upon creation of the homeowners' or property owners' association, the homeowners' or property owners' association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and _____ shall reference this Agreement in all deeds to lots and/or units within the Project.

Witness By: _____
Its: _____

TOWN/CITY OF _____

Witness By: _____
Its: _____

STATE OF MAINE

_____, ss. _____, 20__

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Agreement to be said person's free act and deed in said capacity.

Before me,

Notary Public / Attorney at Law

Print Name: _____

(Ord. No. 09-113, 6-8-09)

