

Local Law Gap Analysis Worksheet 4

Sample Local Law for Stormwater Management and Erosion & Sediment Control - Article 6

- *Check Yes if language identical to the provision of the Sample Local Law for Stormwater Management and Erosion & Sediment Control occurs in local land use regulation. Place your checkmark in the box under the type of local that contains the identical language.*
- *Check Equivalence if local land use regulation contains language that you consider equivalent (accomplishing the same intent) to the Sample Local Law. A **Demonstration of Equivalence of Local Law Provisions** worksheet linked to each provision states the intent of the provision, and provides space to show how existing local codes meet that intent.*
- *Check Legislative Agenda if identical or equivalent language is not in the regulation. A check in Legislative Agenda is a reminder to amend the local code to include either identical language or an equivalent provision.*
- *Sections preceded by a star (*) are not required for compliance, but are recommended for program effectiveness and workability.*

<p>Article 6. Administration and Enforcement</p> <p><i>The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review the existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.</i></p>	<p>Yes</p> <p><i>Check the Type of Local Code Where the Identical Provision is Found.</i></p>					<p>Equivalence</p> <p><i>1-Place Checkmark in Box. 2- Explain on Worksheet Linked from Section Number.</i></p>	<p>Legislative Agenda</p> <p><i>Check This Box if Code is to be Developed or Amended.</i></p>
	Zoning	Subdivision	Site Plan	E&SC	Other		
<p><u>Section 1.</u> Construction Inspection 1.1 Erosion and Sediment Control Inspection</p> <p>The ((City/Town/Village) of _____) Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the ((City/Town/Village) of _____) enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:</p> <p><i>* Note: 1.1.1 to 1.1.8 of the Sample Local Law give a suggested inspection schedule; municipalities may devise their own schedule if they wish. These sections are not required for compliance, but are recommended for program effectiveness and workability.</i></p> <p>If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.</p>						√	

<p align="center">Article 6. Administration and Enforcement</p> <p><i>The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review the existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.</i></p>	<p align="center">Yes</p> <p align="center"><i>Check the Type of Local Code Where the Identical Provision is Found.</i></p>					<p align="center">Equivalence</p> <p align="center"><i>1-Place Checkmark in Box.</i></p> <p align="center"><i>2- Explain on Worksheet Linked from Section Number.</i></p>	<p align="center">Legislative Agenda</p> <p align="center"><i>Check This Box if Code is to be Developed or Amended.</i></p>
	Zoning	Subdivision	Site Plan	E&SC	Other		
<p><u>1.2</u> Stormwater Management Practice Inspections</p> <p>The ((City/Town/Village) of _____) Stormwater Management Officer, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.</p>						√	
<p><u>1.3</u> Inspection of Stormwater Facilities After Project Completion</p> <p>Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.</p> <p><i>Note: Inspections may be performed by local government staff or the local government may designate an inspector required to have a Professional Engineer’s (PE) license or Certified Professional in Erosion and Sediment Control (CPESC) certificate, as long as the designated inspector is required to submit a report.</i></p>							√
<p><u>1.4</u> Submission of Reports</p> <p>The ((City/Town/Village) of _____) Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law.</p>							

<p align="center">Article 6. Administration and Enforcement</p> <p><i>The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review the existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.</i></p>	<p align="center">Yes</p> <p align="center"><i>Check the Type of Local Code Where the Identical Provision is Found.</i></p>					<p align="center">Equivalence</p> <p align="center"><i>1-Place Checkmark in Box.</i> <i>2- Explain on Worksheet Linked from Section Number.</i></p>	<p align="center">Legislative Agenda</p> <p align="center"><i>Check This Box if Code is to be Developed or Amended.</i></p>
	Zoning	Subdivision	Site Plan	E&SC	Other		
<p><u>1.5</u> Right-of-Entry for Inspection</p> <p>When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the ((City/Town/Village) of _____) the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.</p>						√	
<p><u>* Section 2.</u> Performance Guarantee 2.1 Construction Completion Guarantee</p> <p>In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the ((City/Town/Village) of _____) in its approval of the Stormwater Pollution Prevention Plan, the ((City/Town/Village) of _____) may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the ((City/Town/Village) of _____) as the beneficiary. The security shall be in an amount to be determined by the ((City/Town/Village) of _____) based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the ((City/Town/Village) of _____), provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the ((City/Town/Village) of _____). Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.</p>						√	

<p align="center">Article 6. Administration and Enforcement</p> <p><i>The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review the existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.</i></p>	<p align="center">Yes</p> <p align="center"><i>Check the Type of Local Code Where the Identical Provision is Found.</i></p>					<p align="center">Equivalence</p> <p align="center"><i>1-Place Checkmark in Box.</i></p> <p align="center"><i>2- Explain on Worksheet Linked from Section Number.</i></p>	<p align="center">Legislative Agenda</p> <p align="center"><i>Check This Box if Code is to be Developed or Amended.</i></p>
	Zoning	Subdivision	Site Plan	E&SC	Other		
<p><u>2.2</u> Maintenance Guarantee</p> <p>Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the ((City/Town/Village) of _____) with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the ((City/Town/Village) of _____) may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.</p> <p><u>2.3</u> Record keeping</p> <p>The ((City/Town/Village) of _____) may require entities subject to this law to maintain records demonstrating compliance with this law.</p>						√	
<p><u>Sections 3.1, 3.2, 3.3</u> Enforcement Procedures</p> <p><i>Note: The MS4 permit requires localities to have procedures for enforcing control measures. Indicate on the checklist whether you already have these provisions in law or are adding them to your Legislative Agenda, and use the Explanation sheet to explain as needed.</i></p>							√
<p><u>Sections 3.4, *3.5, *3.6</u> Penalties</p> <p><i>Note: The MS4 permit requires municipalities to sanctions (penalties) to ensure compliance to the extent allowed by state or local law. Indicate on the checklist whether you already have these provisions in law or are adding them to your Legislative Agenda, and use the Explanation sheet to explain as needed.</i></p>							√

<p align="center">Article 6. Administration and Enforcement</p> <p><i>The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review the existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.</i></p>	<p align="center">Yes</p> <p align="center"><i>Check the Type of Local Code Where the Identical Provision is Found.</i></p>					<p align="center">Equivalence</p> <p align="center"><i>1-Place Checkmark in Box.</i></p> <p align="center"><i>2- Explain on Worksheet Linked from Section Number.</i></p>	<p align="center">Legislative Agenda</p> <p align="center"><i>Check This Box if Code is to be Developed or Amended.</i></p>
	Zoning	Subdivision	Site Plan	E&SC	Other		
<p>* Section 4. Fees for Services</p> <p><i>Note: DEC recommends that localities use fees to fund the review of SWPPPs, but such fees are not required. Indicate on this checklist whether you already have these provisions in law or are adding them to your Legislative Agenda.</i></p>						√	

Demonstration of Equivalence of Local Law Provisions

Municipality: Stormwater Coalition of Monroe County

Date June 2007

By (Name) C. Myers & K. Paris Tuori (Title) Executive Director M.C. Soil and Water Conservation District & Stormwater Coalition staff

Sample Local Law Language - Article 6 '1 Construction Inspection

a. **Erosion and Sediment Control Inspection** B The ((City/Town/Village) of _____) Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the ((City/Town/Village) of _____) enforcement officer at least 48 hours before any of the following as required by the Stormwater Management Officer:

- 1.1.1 Start of construction
- 1.1.2 Installation of sediment and erosion control measures
- 1.1.3 Completion of site clearing
- 1.1.4 Completion of rough grading
- 1.1.5 Completion of final grading
- 1.1.6 Close of the construction season
- 1.1.7 Completion of final landscaping
- 1.1.8 Successful establishment of landscaping in public areas

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

Intent of this Section of the Sample Local Law:

Note: The SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) requires that the provisions of local laws governing stormwater management be as strict as the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

- Article 2, Section 4.1.2 (Maintenance During Construction) of the Sample Local Law contains the required inspection provisions that ensure compliance with the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01. This section contains optional, but recommended inspection procedures.
- The intent of this section is to assign responsibility to the Stormwater Management Officer for conducting inspections of active construction projects for properly installed erosion and sediment control practices. Regular inspections will ensure compliance with the local law.

- Municipalities should review any existing inspection procedures as stated in their municipal code and amend them with the language in the local law as necessary. To be equivalent, the local law must include the required language in Article 2, Section 4.1.2 and a procedure for inspecting construction and development sites for properly installed erosion and sediment control practices.

Local Law Deemed Equivalent (attach extra sheets if necessary)

1. Local Code Citation: Construction Model Ordinance Section X: Inspections

2. Local Code Language: The (*jurisdictional authority*) or designated agent as defined in Section II shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the applicant that the work fails to comply with the SWPPP. In addition, the (*jurisdictional authority*) reserves the right to enter the work site at any reasonable time for purposes of inspection. The SWPPP and the records of any inspections completed by the owner or their agent shall be maintained at the site in the site logbook from the date of initiation of construction activities to the date of final stabilization. To obtain inspections, the applicant shall notify (*jurisdictional authority*) at least forty-eight (48) hours before the following activities occur:

1. Start of construction
2. Erosion and sediment control measures have been installed and stabilized
3. Site clearing has been completed
4. Rough grading has been completed
5. Final grading has been completed
6. Close of the construction Season
7. Final landscaping
8. Closeout inspection

3. How this Language is as Strict as GP-02-01: The language from the model ordinance matches the language from the NYS DEC's sample local law for this requirement.

Demonstration of Equivalence of Local Law Provisions

Municipality: Stormwater Coalition of Monroe County

Date June 2007

By (Name) C. Myers & K. Paris Tuori (Title) Executive Director M.C. Soil and Water Conservation District & Stormwater Coalition staff

Sample Local Law Language - Article 6. '1 Construction Inspection

1.2 Stormwater Management Practice Inspection B The ((City/Town/Village) of _____) Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit As built@ plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

Intent of this Section of the Sample Local Law:

Note: The SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) requires that the provisions of local laws governing stormwater management be as strict as the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

- The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02: IV.C.5 (c)) requires that the local stormwater program include procedures for inspection of newly installed post-construction stormwater management practices (stormwater ponds, wetlands, infiltration, filtering and conveyances).
- The intent of this section is to assign responsibility to the Stormwater Management Officer for conducting inspections of construction projects for properly installed post-construction stormwater management practices. Regular inspections will ensure compliance with the local law.
- Municipalities should review any existing inspection procedures as stated in their municipal code and amend them with the language in the local law as necessary. To be equivalent, the local law must include a procedure for inspecting construction and development sites for properly installed post-construction stormwater management practices.

Local Law Deemed Equivalent (attach extra sheets if necessary)

1. Local Code Citation: Post-Construction Model Ordinance Section XIII. As-Built Plans and Project Closeout

2. Local Code Language: “As Built Plans

All applicants are required to submit actual “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a New York State licensed professional engineer. A final inspection by the (*jurisdictional authority*) is required before the release of any performance securities can occur.”

3. How this Language is as Strict as GP-02-01: The language from the model ordinance matches the language from the NYS DEC's sample local law for this requirement.

Demonstration of Equivalence of Local Law Provisions

Municipality: Stormwater Coalition of Monroe County

Date June 2007

By (Name) C. Myers & K. Paris Tuori (Title) Executive Director M.C. Soil and Water Conservation District & Stormwater Coalition staff

Sample Local Law Language - Article 6 ' 1.5

1.5 Right-of-Entry for Inspection B When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the ((City/Town/Village) of _____) the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.

Intent of this Section of the Sample Local Law:

Note: The SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) requires that the provisions of local laws governing stormwater management be as strict as the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

- The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02: IV.C.5 (a)) requires that the local stormwater program ensure adequate long-term operation and maintenance of stormwater management practices, including monitoring to determine whether practices are working to reduce pollution in stormwater runoff. The SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01:IV.M) requires the permittee to allow an authorized representative of the EPA, of New York State, or of the MS4 receiving the discharge to enter the property for inspection purposes.
- The intent of section 1.5 is to give the municipality the authority to enter upon private property to inspect operating stormwater management practices (stormwater ponds, stormwater wetlands, infiltration, filtering, and conveyances) in order to prevent pollution to local water resources.
- Municipalities should review their municipal code to determine whether there are existing provisions that allow entry upon private property for the purpose of stormwater management practice inspection. Right-of-entry provisions must be carefully worded, so it is recommended that an amendment use the same or very similar language as the Sample Local Law.

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Local Law Deemed Equivalent (attach extra sheets if necessary)

1. Local Code Citation: Post-Construction Model Ordinance Section XII: Inspection and Right of Entry

2. Local Code Language: “Furthermore, when any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, or combined sewer, the property owner shall grant to the (*jurisdictional authority*) the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.”

3. How this Language is as Strict as GP-02-01: The language from the model ordinance matches the language from the NYS DEC’s sample local law for this requirement.

Demonstration of Equivalence of Local Law Provisions

Municipality: Stormwater Coalition of Monroe County

Date June 2007

By (Name) C. Myers & K. Paris Tuori (Title) Executive Director M.C. Soil and Water Conservation District & Stormwater Coalition staff

Sample Local Law Language - Article 6 ' 2.1

2.1 Construction Completion Guarantee B In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the ((City/Town/Village) of _____) in its approval of the Stormwater Pollution Prevention Plan, the ((City/Town/Village) of _____) may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the ((City/Town/Village) of _____) as the beneficiary. The security shall be in an amount to be determined by the ((City/Town/Village) of _____) based upon submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the ((City/Town/Village) of _____), provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the ((City/Town/Village) of _____). Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

Intent of this Section of the Sample Local Law:

Note: The SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) requires that the provisions of local laws governing stormwater management be as strict as the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

- The SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01) requires owners and operators of construction activities to certify that the project will be completed in accordance with the Stormwater Pollution Prevention Plan (SWPPP) that they have prepared for the site.
- Municipalities have found that financial surety tools are a mechanism for ensuring that construction projects are completed. Therefore most municipalities have provisions in their code that allow local boards to require a performance bond, cash escrow, or letter of credit for certain projects such as a new road (road bond) or a proposed subdivision (cash escrow).
- The intent of section 2.1 is to add the erosion and sediment control and stormwater management practices that are described in a Stormwater Pollution Prevention Plan to the list of projects that may require a bond, cash escrow or letter of credit.
- Municipalities should review their municipal codes to determine whether there are existing provisions for performance guarantees, cash escrow or letters of credit. If not broad enough in scope, these provisions should be amended with the language in section 2.1.

Local Law Deemed Equivalent (attach extra sheets if necessary)

1. Local Code Citation: Construction Model ordinance Section VIII: Financial Guarantees and Post-Construction Model Ordinance Section XVII: Fees (optional)

2. Local Code Language: Construction Model Ordinance-“ The (*jurisdictional authority*) may, at its discretion, require the applicant to submit a financial guarantee in a form acceptable to the (*jurisdictional authority*) prior to issuance of site plan approval or a permit in order to insure that the stormwater pollution prevention and erosion and sediment control practices are implemented and maintained by the applicant as required by the approved SWPPP. The amount of the financial guarantee shall be the total estimated construction cost of the stormwater pollution prevention and erosion and sediment control practices approved, plus a contingency. The financial guarantee shall contain forfeiture provisions for failure to complete work specified in the SWPPP. The financial guarantee shall be released in full only upon satisfaction of the requirements listed in Section XI of this ordinance.” **Post-Construction Ordinance-optional language** ““The (*jurisdictional authority*) may, at its discretion, require the submittal of a performance security or bond prior to approval in order to insure that the stormwater practices are installed as required by the approved Stormwater Pollution Prevention Plan. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved by the (*jurisdictional authority*), plus 25%. The performance security shall contain forfeiture provisions for failure to complete work specified in the Stormwater Pollution Prevention Plan. The installation performance security shall be released in full only upon submission of "as built plans" and written certification by a New York State licensed professional engineer that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The (*jurisdictional authority*) will make a final inspection of the stormwater practice to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial pro-rata release of the performance security based on the completion of various development stages can be done at the discretion of the (*jurisdictional authority*).”

3. How this Language is as Strict as GP-02-01: This is listed as an optional section on the worksheet for adoption. The language from the construction model ordinance allows for the jurisdictional authority to withhold a financial guarantee until the practice has been certified to be installed in accordance with the approved plan. Similar language in the post-construction model ordinance gives an option for MS4s to adopt similar language in the post-construction model ordinance

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Demonstration of Equivalence of Local Law Provisions

Municipality: Stormwater Coalition of Monroe County

Date June 2007

By (Name) C. Myers & K. Paris Tuori (Title) Executive Director M.C. Soil and Water Conservation District & Stormwater Coalition staff

Sample Local Law Language - Article 6 '2.2 and 2.3

2.2 Maintenance Guarantee B Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the ((City/Town/Village) of _____) with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities, both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the ((City/Town/Village) of _____) may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

2.3 Recordkeeping B The ((City/Town/Village) of _____) may require entities subject to this law to maintain records demonstrating compliance with this law.

Intent of this Section of the Sample Local Law:

Note: The SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) requires that the provisions of local laws governing stormwater management be as strict as the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01.

- The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02: IV.C.5 (a)) requires that the local stormwater program ensure adequate long-term operation and maintenance of stormwater management practices. The SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01) requires owners and operators of stormwater management facilities to properly operate and maintain those facilities at all times.
- Municipalities have found that financial surety tools are a mechanism for ensuring that local laws are complied with. Therefore most municipalities have provisions in their code that require a performance bond, cash escrow, or letter of credit for certain projects such as a new road (road bond) or a proposed subdivision (cash escrow).
- The intent of section 2.2 is to add stormwater management practice maintenance to the list of projects that may require a bond, cash escrow or letter of credit, and to provide a mechanism for the municipality to draw upon that account if operation and maintenance are not being completed to the standards set by the municipality.
- The intent of section 2.3 is to give the municipality the authority to require the owner or operator

of facilities to maintain records of facility operation as necessary.

- Municipalities should review their municipal code to determine whether there are existing provisions for performance guarantees, cash escrow or letters of credit. If not broad enough in scope, these provisions should be amended with the language in section 2.2 to allow for a financial surety mechanism for stormwater management practice maintenance.

Local Law Deemed Equivalent (attach extra sheets if necessary)

1. Local Code Citation: Post-Construction Model Ordinance- Section XI: Maintenance of Stormwater Management Facilities

2. Local Code Language: “Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the applicant or by a corporation that owns or manages a commercial or industrial facility, the applicant, prior to construction, may be required to provide the (*jurisdictional authority*) with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the (*jurisdictional authority*) acknowledges compliance with all details of approved site plan. If the applicant or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the (*jurisdictional authority*) may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs, until the (*jurisdictional authority*) acknowledges compliance with all details of approved site plan.”

3. How this Language is as Strict as GP-02-01: The language from the model ordinance matches the language from the NYS DEC’s sample local law for this requirement.