

Title 10

WATER, SEWERS AND PUBLIC SERVICES

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Chapter 10.04

INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

Sections:

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10.04.010 Purpose.

This ordinance is adopted under Title 24 VERMONT STATUTES ANNOTATED, Chapter 102 (On-Site Sewage Systems). The purpose of this ordinance is to preserve the public health, prevent pollution and to secure the sanitary protection of waters. This ordinance is intended to ensure that sewage is discharged into an approved sewage treatment system and to accomplish the following:

- A. Prevent the creation of health hazards which include, but are not limited to surfacing sewage; contaminated drinking water, ground water and surface water;
- B. Ensure adequate drainage related to the proper function of sewage disposal; and
- C. Ensure that facilities are designed, constructed, operated and maintained in a manner which will promote sanitary and healthful conditions. (§ 1 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 1 of Ord. passed 11/26/83)

10.04.020 Applicability.

This ordinance shall apply to the construction, alteration and repair of all sewage disposal systems, regardless of lot size. (§ 2 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part))

10.04.030 Definitions.

As used in this chapter:

- A. "Applicant" means the legal owner of the property requiring a sewage disposal system construction permit.
- B. "Assistant Sewage Officer" means a legally designated authority of the town acting under authority of this ordinance. He/she shall work in partnership with the sewage officer, or in absence of sewage officer, where directed by the town manager. The assistant sewage officer shall be appointed by the Selectboard and is subject to the town's personnel policies. He/she may be the town's health officer, administrative officer, or other town official.

- C. "Central disposal system" means one that serves more than one residential building.
- D. "Minor modification" means generally understood to be work on or replacement of septic tank or the piping between the septic tank or the pump chamber and the house. The sewage officer shall decide what constitutes a minor modification on a case-by-case basis.
- E. "Municipal system" means a sewage disposal collection system operated by the municipality.
- F. "Permit" means a written authorization issued by the town.
- G. "Person" means any institution, public or private corporation, individual, partnership or other entity.
- H. "Primitive camps" are camps on their own individual lots with no interior plumbing that are used for no more than three consecutive weeks per year and no more than a total of sixty days per year.
- I. "Sewage disposal system" means a system for a disposal of waste using undisturbed soil on-site as a disposal medium, including a tank for collection of solids and leach area for liquids or any other system which disposes of waste water on-site. This shall include multiple-family, two-family, commercial and industrial on-site disposal systems, as well as individual single-family homes and seasonal dwellings.
The sewage officer may permit off-site systems for pre-existing small lots with pre-existing residential or commercial structures, when it is found that the on-site soils do not meet the minimum requirements of the "Wastewater system and potable water supply rules" and off-site soils do meet the minimum requirements. In such cases the sewage officer shall require that permanent easements are obtained for the off-site systems.
- J. "Sewage officer" means the legally designated authority of the town acting under authority of this ordinance. The sewage officer shall be appointed by the Selectboard. The sewage officer may be the town's health officer, administrative officer, or other town official.
- K. "Single-family" means a group of persons living together as a single household.
- L. "Single-family dwelling" means separate living quarters with cooking, sleeping and sanitary facilities provided within a dwelling unit for the use of a single-family maintaining a household.
- M. "Wastewater system and potable water supply rules, effective August 16, 2002" means promulgated by the Vermont Department of Environmental Conservation. These rules are incorporated into this ordinance by reference. (§ 3 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 1 of Ord. passed 11/26/83)

10.04.040 Applicability of provisions.

All sewage disposal systems shall be built, altered, repaired and used in accordance with this ordinance. This includes, but is not limited to, sewage disposal systems for seasonal dwellings, single, two-family, and multiple-family homes and commercial and industrial properties.

A. Single-family residential structures. All single-family residences shall receive a disposal system construction permit (Section 10.04.050) before commencement of construction on the property. Construction shall be understood to mean:

1. The construction or change of use of any structure, including, but not limited to, foundation, excavation or building construction;
2. Site work which involves or may affect any portion of existing or proposed sewage disposal or water supply facilities for the structure and any change in the use of the structure; and
3. Reconstruction, structural alteration, relocation or enlargement of any structure to the extent that such activity increases or otherwise alters the use of any existing sewage disposal system.

B. Single-family residential structure disposal system alterations. No sewage disposal system shall be altered, repaired, or re-built in any way except as provided in subsection C of this section until a disposal system construction permit has been issued.

C. Exceptions: Minor modifications. When a minor modification (see definitions) to an existing system for a single-family dwelling is proposed, the sewage officer may waive the disposal system construction permit requirements on a case-by-case basis and issue a waiver in writing. The sewage officer will determine what constitutes a minor modification.

D. Multiple (including duplexes) family dwellings. All multiple-family dwellings shall submit an approved water supply and wastewater disposal permit issued by the state before commencement of construction on the property.

Such permits shall be deemed to satisfy the permit requirements of Section 10.04.050 and Section 10.04.060 of this ordinance unless evidence is submitted that the permit is based on false, fraudulent or misleading information. Applicants are still required to file an application and pay the appropriate permit fee.

All multiple-family dwellings shall obtain a certificate of compliance as required by Section 10.04.080 of this ordinance.

E. Commercial and industrial structures. All commercial and industrial structures shall submit an approved water supply and wastewater disposal state permit prior to commencement of construction on the property. Such permits shall be deemed to satisfy the permit requirements of Section 10.04.050 of this ordinance unless evidence is submitted that the permit is based on false, fraudulent or misleading information. Applicants are still required to file an application and pay the appropriate permit fee.

All commercial and industrial structures shall obtain a certificate of compliance as required by Section 10.04.080 of this ordinance.

F. Primitive camps.

1. Primitive camps, are camps on their own individual lots with no interior plumbing that are used for no more than three consecutive weeks per year and no more than a total of sixty days per year.

2. A primitive camp constructed prior to enactment of this ordinance shall not be required to have a sewage disposal system provided no health hazard, nuisance or surface or ground water pollution exists. The sewage officer or health officer shall determine if such conditions do exist. If such conditions exist, a disposal system shall be installed or upgraded (if one already exists) to meet the standards of this ordinance to the extent possible or the running water shall be removed and the generation of sewage ended.

G. Change of use.

1. Change of use shall include, but is not limited to, the addition of plumbing or running water, the addition of bedrooms, conversion of primitive camps to single-family or multiple-family residential structures, conversion of single-family residential structure to multiple or commercial or industrial use.

2. No structure shall be altered in any way so as to change the use of the structure unless the sewage disposal system and all proposed alterations meet the minimum standards of this ordinance.

H. Existing single-family dwellings and primitive camps sewage disposal systems in compliance with the "Health Ordinance for the Town of Essex, VT Relating to Individual Sewage Disposal Systems," dated November 26, 1983, or the small-scale wastewater treatment and disposal rules dated August 8, 1996, at the time of the effective date of this ordinance are approved, provided that such systems do

not create a health hazard, nuisance or pollute surface or groundwater. Whether an existing system is causing a health hazard, nuisance or is polluting surface or groundwater shall be determined by the sewage officer, or health officer. Existing systems determined to be a health hazard, nuisance or polluting surface or groundwater shall be upgraded to meet the standards of this ordinance to the extent possible.

I. Replacement systems.

1. Before a failed system is replaced it is important that the cause of failure be determined to assure that a subsequent failure is avoided.

2. A disposal system construction permit must be obtained prior to installing a replacement system. A certificate of compliance shall be obtained within a reasonable period of time following the commencement of the installation of the system.

3. Replacement systems for single-family homes and seasonal dwellings which have an approved replacement or continuous area shall be installed in the approved area in accordance with the original permit issued unless a new location meeting the current standards can be approved.

4. Replacement systems for multiple-family dwellings and commercial and industrial structures shall be constructed in accordance with relevant state regulations. An approved state permit shall be submitted and approved by the sewage officer, prior to commencement of construction of the replacement system. (§ 4 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

10.04.050 Permit procedure.

A. Application fees. Application fees for permits shall be established by the Selectboard.

B. Disposal system construction permit. The owner of any property, the useful occupancy of which requires a sewage disposal system shall apply for a disposal systems construction permit. The owner of any property on which a sewage disposal system is proposed to be built, altered or replaced shall apply for a disposal system construction permit. The application shall contain soil and site information as required by the Wastewater System and Potable Water Supply Rules and a design for the disposal system and a replacement system. The system shall be designed as specified by the Wastewater System and Potable Water Supply Rules. The basis for the disposal system design shall be a peak flow of one hundred and forty gallons per day per bedroom. Wells must be properly isolated from septic systems, in accordance with the Wastewater System and Potable Water Supply Rules.

C. The sewage officer shall review the application to ensure compliance with this ordinance. In his or her sole discretion, the sewage officer may rely on plans and specifications certified by an engineer or site technician and properly licensed by the State of Vermont, to be in compliance with this ordinance.

D. System designer qualifications. The disposal system design and technical information for the application shall be prepared by a certified site technician B or a professional engineer registered in the State of Vermont and practicing in septic system testing and design.

E. Permit approval and term. The construction permit shall be granted or denied by the sewage officer. If the disposal system is not constructed within two years of the date the permit was issued, the permit must be renewed (see Section 10.04.060 Terms and conditions of permits). (§ 5 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

10.04.060 Terms and conditions of the permits.

A. If the disposal system is not constructed within two years of the date the disposal system construction permit was issued, the permit must be renewed. Renewal shall occur prior to the time of construction of the disposal system. The sewage officer can set terms and conditions on the renewal permit. The permit may be renewed when the applicant submits a report to the sewage officer that verifies the original permit conditions can be met, that the system design meets the standards of any amended sewage disposal regulations that are in effect at the time of renewal, site conditions have remained the same, and water supplies have not been altered and can be used without any redesign or alterations. The sewage officer may require the applicant to submit a recommendation prepared by a qualified consultant (subsection 10.04.050(C)) if information is needed to certify that site conditions have not changed and that the original permit conditions can be met, or other information is needed to make an adequate assessment. Permits shall be renewed unless they are found to be based on false, fraudulent or misleading information or the original permit conditions can no longer be met.

B. Permits denied renewal are void. A new application must be made for a permit. The conditions of the ordinance in effect at the time of the new application shall apply to this new permit.

C. Conditions of construction or use may be placed on the disposal system construction permit, or the certificate of compliance.

D. All permits run with the land and are binding upon each and subsequent owners. At the discretion of the sewage officer all permits issued under this chapter, or those permits with conditions of use issued pursuant to this chapter, may be filed in the town land records.

E. Minor permits—Simplified application process for minor modifications and structures not requiring a sewage disposal system. The owner of any property intending to make a minor modification (see subsection 10.04.040(C)) or construct a structure, the useful occupancy of which shall not require running water, shall make an application for a minor permit on the prescribed form. Such minor modifications shall not include changes of use as described in subsection 10.04.040(G)). Such application shall contain sufficient information to enable the sewage officer to evaluate the project. Application shall be made prior to commencement of construction. (§ 6 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

10.04.070 Revocation of permits.

A. A disposal system construction permit or a certificate of compliance may be revoked by the sewage officer for any of the following reasons:

1. False, fraudulent, or misleading information contained in the permit application;
2. Installation of a system which does not comply with the conditions of the permit;
3. Alteration of the proposed septic system site or replacement areas including effluent dispersion areas so that the proposed septic system does not comply with this ordinance;
4. Information which shows the proposed septic system will not comply with this ordinance, including but not limited to, insufficient isolation distances to water supplies;
5. Failure to comply with this ordinance or any terms or conditions of permits issued under this ordinance;

B. Petition for revocation. A written petition for revocation shall be addressed to the sewage officer and shall set forth the name and address of the petitioner, the petitioner's interest in the matter,

and a brief statement outlining the basis for revocation of permit. Revocation shall only proceed based on the standards established in subsections 10.04.070(A)(1) and (5).

C. The municipality may file a petition and participate in revocation proceedings.

D. The Selectboard shall notify the permit holder in writing of petition for revocation of permit within seventy-two hours.

E. Receipt of the petition shall initiate the revocation procedure. The Selectboard shall hold a hearing within thirty days of the sewage officer receiving a revocation petition. The Selectboard shall render a decision within fifteen days of the conclusion of the hearing.

F. The sewage officer shall give the permit holder written notice of revocation of the permit within seventy-two hours of revocation. All sewage disposal system work and any use of the sewage disposal system must cease immediately upon notification of revocation of permit. (§ 7 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 3 (1) of Ord. passed 11/26/83)

10.04.080 Certificate of compliance.

The sewage officer or his/her designee shall inspect all on-site systems before they are covered with soil. The sewage officer may request to inspect systems at different stages during installation. The town shall receive a minimum of forty-eight hours' notice based upon Town of Essex workdays for a final inspection. The disposal system designer (subsection 10.04.050(D)) shall submit a final inspection report to the sewage officer. Such report shall certify that the disposal system has been installed as approved or variations from the approved design shall be noted in the report. The sewage officer shall issue a certificate of compliance permit when satisfied with the installed sewage system. The newly constructed dwelling shall not be occupied until the certificate of compliance has been issued. Existing dwellings, which require a replacement system may be occupied provided a certificate of compliance is obtained within a reasonable period of time from commencement of installation of the system. The sewage officer shall decide what is a reasonable amount of time. As built plans shall be submitted upon completion of all systems. (§ 8 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 3 (2) of Ord. passed 11/26/83)

10.04.090 Appeals.

Any applicant aggrieved by a decision of the sewage officer may appeal that decision in writing to the Selectboard within thirty days of such decision. The Selectboard shall hold a hearing within thirty days of such an appeal and shall render a decision within fifteen days after the close of such hearing. Following a Selectboard's hearing, any person aggrieved by a decision of the Selectboard may appeal that decision to the superior court. The administrative process must be exhausted before appeal to superior court. (§ 9 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 4 of Ord. passed 11/26/83)

10.04.100 Other applicable regulations.

In case of any other applicable regulation, bylaw, ordinance or statute which differs from this ordinance, the stricter shall apply. It should be noted that this includes the requirement that where municipal sewage systems are available for connection, that all buildings for which the useful occupancy requires water shall be connected to said municipal system pursuant to the Town of Essex "Sewer Use Ordinance." (§ 10 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

10.04.110 Enforcement.

A person who neglects or refuses to comply with the provision of this ordinance may be fined not more than five hundred dollars for each offense by the superior court. Each day that a violation is continued shall constitute a separate offense (24 VERMONT STATUTES ANNOTATED, Section 1974; or its successor). (§ 11 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

10.04.120 Severability.

If any portion of this ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

Approval of any sewage disposal system design and installation by the granting of a disposal system construction permit and certificate of compliance shall not imply that the approved system will be free from malfunction. Proper maintenance of septic systems is vital to their proper functioning. The provisions of this ordinance shall not create liability on the part of the town, of any town official, or employee for the sewage disposal system. (§ 12 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

Chapter 10.08

DISPOSAL OF SEPTAGE

Sections:

- 10.08.010 Purpose and statutory authority of provisions.**
- 10.08.020 Definitions.**
- 10.08.030 Statement of necessity.**
- 10.08.040 Septage disposal restrictions.**
- 10.08.050 Hindering authorized work—Penalty.**
- 10.08.060 Enforcement procedures—Violation—Penalty.**

10.08.010 Purpose and statutory authority of provisions.

The ordinance codified in this chapter is adopted pursuant to the authority of Chapter 11 of Title 18, VERMONT STATUTES ANNOTATED. The purpose of this chapter is to:

- A. Prevent the creation of health hazards;
- B. Prevent the contamination of potable water supplies, groundwater, and surface water;
- C. Insure that all septage disposed of in the Town of Essex is done safely and properly to protect against contagious and infectious diseases. (§ 1 of Ord. passed 3/9/85)

10.08.020 Definitions.

As used in this chapter:

- A. “Essex board of health” means the Essex health officer, deputy health officer(s), and the Selectboard of the Town of Essex.

B. "Essex health officer/deputy health officer" means the designated health authority of the Town of Essex as appointed by the State Board of Health.

C. "Persons" includes any institution, public or private corporation, individual, partnership or other entity.

D. "Septage" means any material removed from any portion of a waste disposal system including sewage and other domestic or commercial wastes. For the purpose of this regulations, this shall not include sludge which is a product of a wastewater treatment facility. (§ 3 of Ord. passed 3/9/85)

10.08.030 Statement of necessity.

The ordinance codified in this chapter has been adopted to complement the sewer use ordinance and, due to the absence of appropriate land septage disposal areas in the Town of Essex as a result of residential and commercial development. In addition, a safe and inexpensive alternative disposal area exists at the sewage treatment plant located in the village of Essex Junction. (§ 3 of Ord. passed 3/9/85)

10.08.040 Septage disposal restrictions.

No septage shall be disposed of, upon or under any land surfaces, whether buried or not, within the boundaries of the Town of Essex, Vermont. All septage disposal in the Town of Essex shall be at the septage disposal facility at the sewage treatment plant on Cascade Street, village of Essex Junction, or other municipal facility hereafter designated by the board of health. (§ 4 of Ord. passed 3/9/85)

10.08.050 Hindering authorized work—Penalty.

Any person who attempts to hinder the work of the Essex health officer or his authorized agent or the Essex board of health, shall be fined not more than five hundred dollars for each offense. (§ 6 of Ord. passed 3/9/85)

10.08.060 Enforcement procedures—Violation—Penalty.

A. The Essex health officer or deputy health officer or the board of health may order compliance with this chapter, including abatement and removal of septage disposed of in violation of this chapter.

B. A person who neglects or refuses to comply with a written order of the Essex board of health, the Essex health officer, or his authorized agent, may be fined no more than five hundred dollars for each offense. Each day that a violation exists shall constitute a separate offense.

C. Request for or imposition of a fine shall not preclude actions for abatement, restoration or rehabilitation of land, or recovery of expenses incurred by the town for the abatement of any nuisance, or for recovery of damage to property.

D. Upon such neglect or refusal, the Essex board of health may prevent, remove or destroy any unhealthful conditions or causes of sickness. Expenses incurred by such action shall be recovered from the person whose legal duty it was to comply with such order. However, such action shall not preclude the imposition of fines or recovery of damages prescribed in subsections B and C of this section. (§ 5 of Ord. passed 3/9/85)

Chapter 10.09

PROCEDURES AND POLICIES FOR MANAGING SEWER BACKUPS

Sections:

10.09.010 Procedures and policies for managing sewer backups.

It is the policy of the Selectboard of the Town of Essex that the town manager, through the public works department, shall respond to requests for assistance by municipal sewer customers, in the event of a sewer backup, in the following manner:

A. An investigation shall be made to determine if the sewer blockage is in the town sewer main (i.e., between municipal manholes or at municipal manholes). This investigation is made generally by removing the manhole covers immediately upstream and downstream of the reported blockage.

1. If the sewage flow in the municipal manholes is flowing freely, the indication is that the blockage is occurring in the service connection between the building and the sewer main. The affected sewer customer(s) shall be notified and informed that the problem appears to be in the service connection. It is the responsibility of the sewer customer to correct the problem and the town will take no further repair action. The town, however, reserves the right granted under the sewer ordinance to inspect and approve all repairs that are made.

2. If the blockage is determined to be in the main sewer line or inside the municipal manhole, the town shall be responsible for removing the blockage and reestablishing flow.

B. If the sewer backup appears to have been caused by a blockage in the sewer main, the town shall:

1. Assist the sewer customer in pumping out or otherwise removing the sewage from the building; and

2. Make arrangements for and pay for a one-time cleaning of the affected area to include walls, floors, carpets and affected upholstered furniture, to a ceiling amount of one thousand dollars per dwelling or business.

C. The purpose of providing the initial cleanup services identified under subsection B.2 of this section is to provide for a minimum level of public health protection to the affected sewer customer. The risk of exposure to pathogenic bacteria and other health-related contaminants is assumed to be greater with a sewer main blockage, potentially involving many sewage customers, than blockage involving a single service.

D. The town shall not be responsible for replacement or repairs to the structure or its contents, including but not limited to walls, floors and floor coverings, heating and other mechanical systems, and furniture and furnishings.

E. If, upon inspection of the facility by the town representative, it is found that the service connection or interior house plumbing does not meet the requirements of the public works standards, the town sewer ordinance, the state plumbing code or other similar accepted standards, the town can, as a condition of continued service, require that appropriate plumbing changes be made. The town may also seek any penalties allowable under law for violation of the referenced standards.

F. The town accepts no legal responsibility for sewer backups or restitution as a result of such backup in that such backup is considered to be an act of God. Actions taken by the town are solely for the purpose of protecting the public health. (Ord. passed 11/20/95)

Chapter 10.12

WATER USE

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Article I

Definitions

10.12.010 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

“Air-gap” means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of such vessel. An approved air-gap shall be at least double the diameter of the supply pipe, measured vertically above the top of the overflow rim of the vessel; and in no case less than one inch.

“Approved” means accepted by the town as meeting an applicable specification stated or cited in this chapter.

“Backflow” means:

1. A flow condition, induced by a differential in pressure, that causes the flow of water or other liquid into the distribution system of a potable water supply, from any source or sources other than its intended source;
2. The backing up of water through a conduit or channel in the direction opposite to normal flow.

“Backflow preventer” means a device or means designed to prevent backflow.

“Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

“Contamination” means any introduction into water of microorganisms, chemicals, wastes or wastewater in a concentration that makes the water unfit for its intended use.

“Corporation cock” means a valve for joining a service pipe to a street water main. It is owned and operated by the water utility. It cannot be operated from the surface. Also called corporation stop, or ferrule.

“Cross-connection” means any physical connection or arrangement between two otherwise separate piping systems; one of which contains potable water and the other water of unknown or questionable safety, steam, gases or chemicals whereby there may be a flow from one system to the other.

“Disinfectant” means any substance, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

“Double check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shutoff valves on each end of the check valves, plus properly located test cocks for the testing of each check valve. To be approved these devices must be readily accessible for in-line testing and maintenance.

“Fire flow” means the rate of flow, usually expressed in gallons per minute, that can be delivered from a water distribution system at a specified residual pressure for firefighting. When delivery is to fire-department pumpers, the specified residual pressure is generally twenty psi.

“Industrial fluids system” means any system containing a fluid or solution which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollution or plumbing hazard if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system which may have deteriorated in sanitary quality; chemicals in fluid form; plating acids and alkalis, circulating cooling waters connected to an open

cooling tower and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, etc.; oils, gases, glycerin, paraffins, caustic and acid solutions and other liquid and gaseous fluids used in industrial or other purposes or for fire-fighting purposes.

“Manager” means the town manager of the Town of Essex, Vermont or a representative authorized by the manager.

“Manifold” means a pipe fitting with numerous branches to convey fluids between a large pipe and several smaller pipes or to permit choice of diverting flow from one of several sources or to one of several discharge points.

“Pathogenic” means causing or capable of causing disease.

“Peak demand” means the maximum momentary load placed on a water system.

“Permit” means a written document issued by the Town of Essex pursuant to this chapter giving a designated person permission to operate and/or construct, alter, renovate or connect to or draw water from the town public water system.

“Person” means an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, municipal corporation, institution, department, division, bureau, agency or any entity recognized by law.

“Pollution” means a condition representing the presence of harmful or objectionable materials in water.

“Potable water” means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the bacteriological, chemical, physical and radiological quality conforming to applicable regulations and standards of the State Department of Health.

“Public water system” means a water system in which all owners of abutting properties have equal rights, and is controlled by public authority.

“Reduced pressure principle device” means an assembly of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located test cocks and tightly closing shutoff valves at each end of the assembly. The assembly shall operate to maintain the pressure in the zone between the two check valves at an acceptable level less than the pressure on the public water supply side of the device. At cessation of normal flow the pressure between the two check valves shall be less than the pressure on the public water supply side of the device.

In case of leakage of either of the check valves the differential relief valve shall operate to maintain the reduced pressure in the zone between the check valves by discharging to the atmosphere. When the inlet pressure is two pounds per square inch or less, the relief valve shall open to the atmosphere. To be approved these devices must be readily accessible for in-line testing and maintenance and be installed in a location where no part of the device will be submerged.

“Sampling” means the act or technique of selecting a representative part of the water supply for testing.

“Service connection” means each single water pipeline which provides water to an individual residential living unit, a commercial unit or an industrial unit from the public water system is a service connection. The service connection shall start at the corporation stop at the main water line and extend inside the building to the water meter. The service connection on new construction shall be constructed

by the applicant to town standards. Once installed, the responsibility for maintenance and repairs on the service connection is split at the curb stop between the owner/applicant and the town. The town has responsibility for maintenance from the main line to and including the curb stop.

The owner/applicant has responsibility for maintenance and repairs from beyond the curb stop to and inside the building with the exception of the meter.

“Shall” is mandatory; “May” is permissive.

“Standard methods” means methods for examination of water and wastewater published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation or successor organizations.

“Tapping sleeves” means a split sleeve used in making a wet connection where a single branch line is to be tapped into a water main under pressure.

“Town” means the legislative body of the Town of Essex, or their designated representatives.

“Valve boxes” means a metal or concrete box or vault set over a valve stem and rising to the ground surface, to allow access to the stem in opening and closing the valve. A cover is usually provided at the surface to keep out dirt and debris.

“Wet tap” means a connection made to a main that is full or under pressure. (Ord. passed 5/5/97 Art. I(A))

10.12.020 Abbreviations.

For the purpose of this chapter, the following abbreviations shall have the meaning ascribed to them under this section. References to standards of the following organizations shall refer to the latest edition of same.

“ANSI” means American National Standards Institute.

“ASME” means American Society of Mechanical Engineers.

“ASTM” means American Society of Testing and Materials.

“AWWA” means American Water Works Association.

“NPC” means National Plumbing Code. (Ord. passed 5/5/97 Art. I(B))

Article II

Mandatory Use of the Public Water System

10.12.030 Connection required.

A. The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the town, or outside the town in specific locations where town water is provided at the time of enactment of the ordinance codified in this chapter, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public water line of the town, is required at his/her expense to connect such property directly with the proper public water line in accordance with the provisions of this chapter within ninety days after date of official notice to do so, unless specifically exempted from this provision by the town.

B. Any property owner required to connect to the town water system may request a deferral. The request for deferral shall be in writing and shall be submitted to the Selectboard within thirty days of receipt of notice to connect. The Selectboard shall take action on the request for deferral within sixty days following receipt of the deferral. A basis for deferral shall be evidence of satisfactory compliance

with State Health Department Drinking Water Standards on the existing water system. (Ord. passed 5/5/97 Art. II, § 1)

10.12.040 Extension of water service.

Extension of water service beyond the limit of the municipal system in place at the time of enactment of this chapter shall be done as part of, and to the standards of, a municipal public water supply system (Vermont Health Regulations Chapter 5, Subchapter 12, Section 5-1250 Public Water System Regulations and subsequent amendments thereto).

A. All municipal water extensions, extended for the purpose of development shall be a minimum pipe size of eight-inch diameter unless waived by the public works director of the town and shall be extended to the furthest boundary line of the development property at a location within the town right-of-way or an easement providing for future extension of the system.

B. There shall be no reimbursement of costs to any developer by the town for developer extension of any public water main, unless approved by the legislative body.

C. The town may reimburse the developer for the difference in cost between the facilities actually needed for the development of the property (reference subsection A of this section for minimum size pipe) and the cost of facilities necessary for other future development. When further development occurs, the town may charge the appropriate portion of the additional cost as outlined in this section to that subsequent developer.

D. Extension of the municipal water system shall be designed, inspected, tested and written certification completed upon installation by a qualified professional engineer licensed in Vermont. Construction shall be done only by firms experienced in the construction of municipal water systems. The determination of qualifications is made by the town.

E. Looping of water lines shall be required unless waived by the Selectboard. (Ord. passed 5/5/97 Art. II, § 2)

10.12.050 Onsite wells.

Onsite wells will not be permitted where municipal water supply is reasonably available, unless waived by the legislative body. (Ord. passed 5/5/97 Art. II, § 3)

Article III

Private Water Supply Systems

10.12.060 Permitted when.

Where a public water system is not available under the provisions of Article II, the building water service connection shall be connected to a private water supply system complying with the provisions of this article. (Ord. passed 5/5/97 Art. III, § 1)

10.12.070 Compliance with applicable regulations required.

The type, capacities, location and layout of a private water supply system shall comply with all mandates and guidelines of the state of Vermont, department of health, the subdivision and Zoning Regulations of the Town of Essex, and other appropriate legal documents of the Town of Essex and state of Vermont. (Ord. passed 5/5/97 Art. III, § 2)

10.12.080 Connection to public water line required when.

At such time as a public water line becomes available to a property served by a private water system, as provided in Article II, a direct connection shall be made to the public water line in compliance with this chapter. (Ord. passed 5/5/97 Art. III, § 3)

10.12.090 Noninterference with health officer's requirements.

No provision of this article shall be construed to interfere with any additional requirements that may be imposed by the town health officer. (Ord. passed 5/5/97 Art. III, § 4)

10.12.100 Written approval required.

Before commencement of construction of a private water system, the owner shall first obtain written approval from the town. The written approval may be in a form of an approved zoning permit or other permit deemed suitable for this purpose. (Ord. passed 5/5/97 Art. III, § 5)

Article IV

Building Water Service Connections

10.12.110 Permit required.

No unauthorized person shall uncover, make any connections with, or opening into, use, alter or disturb any public water line or appurtenance thereof without first obtaining a written permit from the town. (Ord. passed 5/5/97 Art. IV, § 1)

10.12.120 Application.

The owner or agent shall make application for initiation of water service on a form supplied by the town and shall identify whether the water use will be for residential, commercial or industrial purposes. The permit applications shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the town. A water service initiation fee, as set forth in Article IX shall be paid to the town at the time the application is filed. No physical construction between the water service connection piping and the main water line shall be made until the application is approved by the town and the water mains are fully tested and found to be acceptable by the town. (Ord. passed 5/5/97 Art. IV, § 2)

10.12.130 Costs to be borne by owner.

All costs and expense incident to the installation and connection of the building water service connection shall be borne by the owner. The property owner/agent is responsible and must provide all necessary excavation from the main to the building or structure. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the water service connection. (Ord. passed 5/5/97 Art. IV, § 3)

10.12.140 Corporation stop and curb stop requirements.

A separate and independent corporation stop and curb stop with valve box shall be provided for every building. Where one building stands at the rear of another or an interior lot and no water system

is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the town may allow two services from a single corporation stop, providing each building has a separate curb stop and valve box. (Ord. passed 5/5/97 Art. IV, § 4)

10.12.150 Construction specifications.

A. The size, depth, alignment, materials of construction of the building water service connection and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code, public works specifications or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof the materials and procedures set forth in appropriate specifications of the National Plumbing Code, Ten States Standards for Water Main and AWWA Standards, all latest editions, shall apply.

Furthermore, the following additional standards shall apply.

1. New type “k” copper shall be used for all residential service lines up to and including one and one-half inch diameter pipe from the corporation stop to the curb stop and from the curb stop to inside the structure.

2. New service connections for residential or commercial use larger than one and one-half inch diameter pipe may be PVC, schedule SDR21 rated at two hundred psi.

3. All service connections shall be laid at a minimum depth of six feet, unless specifically waived by the town.

4. Service connection taps to the main water line shall only be performed by firms qualified to perform the service connection tap. The qualification of a firm to perform this tap shall be determined by the town.

B. The Town of Essex standard specifications for construction contains additional guidelines for the installation of building water service connections. (Ord. passed 5/5/97 Art. IV, § 5)

10.12.160 Inspection—Restoration of facilities.

Prior to any service connection being made to the main water line, the public works department shall be given at least one working day’s notice in order that the work can be scheduled for inspection. All service connections will be made during normal workday hours and no connection shall be made on Saturday, Sunday or legal town holidays. If the public works department has not been properly notified and the work has proceeded, the public works director shall require the completed work to be uncovered for examination, at the owner’s expense. The property owner/agent shall agree, as a condition of receiving approval for connection to the town water system, to restore the street, sidewalk, curbs, electrical lines, grassed or open areas or other features to their original conditions after the installation of the water line. Failure to comply with proper restoration of facilities may subject the property owner to penalties under Article VIII regardless of whether the installation was performed by the owner or another party. (Ord. passed 5/5/97 Art. IV, § 6)

10.12.170 Meters required.

A. By July 1, 1988, all buildings connected to the Town of Essex water system shall be required to have meters installed. After July 1, 1988, those buildings without meters shall be charged on the basis of estimated user fees as provided for in Article IX.

B. The property owner of each building shall be required to perform all interior or exterior plumbing necessary to accommodate the required meters.

C. The town will provide meter spacers on a loan basis for use in providing the proper plumbing gap for the meter to be installed. Failure to return the loaned spacer bar when requested shall require the owner to reimburse the town for the cost of the spacer bar(s).

D. The town will provide a meter or meters with outside reader in one of the following sizes for each structure:

Meter Size	Operating Range
5/8 inch X 3/4 inch (standard residential)	1—20 gpm
3/4 inch X 3/4 inch	1—30 gpm
1 inch	1—50 gpm
1-1/2 inches	2—100 gpm
2 inches	2-1/2—160 gpm

E. The provision and requirement for the number of meters in a building is as follows:

1. Single-family residential building: one meter;
2. Single-family residential building with accessory apartment (as defined in the zoning ordinance): one meter for the building;
3. Single building with multiple living units: one meter per living unit unless waived by the town;
4. Commercial/industrial building: one meter per each separate and identifiable unit within the building unless waived by the town;
5. Multiple buildings on a single parcel: each individual building shall be metered as indicated under subdivisions (1) through (4) of this subsection.
6. Mixed use building: one meter for each individual unit unless waived by the town.

Waivers. In cases where the town determines that it is not feasible or in the best interest of the town to install individual meters for each unit, the town may allow a single meter to serve multiple units. In cases where such a waiver is requested, the applicant shall provide adequate evidence to the town of legal acceptance of responsibility for use of and payment for all water supplied by the town through the single meter. The number of meters required shall be determined solely by the town. At a minimum, sufficient meters must be installed to differentiate between mixed residential, commercial, and/or industrial flows in a single building.

7. Additional meters for the purpose of identifying specific commercial/industrial flows may be installed if approved by the town. Where such additional meters are to be used by the town as a basis for billing, meters shall be installed by the town at the owner's expense.

F. Buildings existing at the time of enactment of the ordinance codified in this chapter may be waived from the requirement to provide multiple meters within one building. The requirement to install at least one meter to each structure (per subsection A of this section) however still applies to all users.

G. It is the responsibility of the town to fix, check or replace defective or nonworking meters within the town. It is the responsibility of the owner to provide town access to the building, upon request by the town, to replace, fix or check the nonworking meter. The owner shall be responsible for protecting the inside meter and outside reader from damage.

H. Subsequent to July 1, 1997, all new association/multifamily seasonal swimming pools shall be metered. Association/multifamily seasonal swimming pools in existence prior to July 1, 1997, and unmetered shall have meters installed by the town at no charge. Plumbing costs to accommodate the meter(s) shall be borne by the pool owner.

I. Each meter installed after the effective date of the ordinance codified in this chapter shall be controlled by a curb stop directly associated with the meter unless waived by the town. (Ord. passed 5/5/97 Art. IV, § 7)

10.12.180 Testing.

The town may require appropriate tests be made to the pipes and appurtenances and the plumber and contractor, at their own expense, shall furnish all necessary tools, labor, materials and assistance for such tests and shall remove or repair any defective materials when so ordered by the town. (Ord. passed 5/5/97 Art. IV, § 8)

10.12.190 Excavations—Construction within right-of-way—Requirements.

All excavations for building water service connections shall be adequately guarded with barricades and lights so as to protect the public from hazard. A permit shall be obtained from the town for all construction within the highway right-of-way, which permit shall specify the times and dates of construction, the type and manner of construction, any guarantee thereof and any special safety requirements. Construction within state highway right-of-way shall require that a permit be obtained from the Agency of Transportation. (Ord. passed 5/5/97 Art. IV, § 9)

10.12.200 Interference with movement of vehicular traffic.

The owner or their agent shall not block any driveway, street, road or railroad at any time without permission of the town and other controlling agencies. Every effort shall be made to permit the movement of vehicular traffic at all times. Whenever it becomes necessary to cross or interfere with roads, walks, or drives, whether public or private, the owner or their agent shall maintain, at his/her own expense, and subject to the approval of the town, safe bridges or other means of egress. (Ord. passed 5/5/97 Art. IV, § 10)

Article V

Use of the Public Water Supply System

10.12.210 Primary uses.

The primary uses of the public water supply system shall be for the supply of potable water to all connected users for domestic consumption and fire protection for structures within the area served by the public water supply system. (Ord. passed 5/5/97 Art. V, § 1)

10.12.220 Auxiliary uses.

Auxiliary use of the public water system, such as using hydrants to fill swimming pools, shall only be permitted when such uses are approved by the town and not in conflict with the primary uses under Section 10.12.210. Flooding of ice rinks from hydrants is not permitted as an auxiliary use. (Ord. passed 5/5/97 Art. V, § 2)

10.12.230 Hydrant use.

A. Except for hydrant use by fire departments in fighting fires or practicing for firefighting, or public works use, all use of hydrants in the Town of Essex, outside the village of Essex Junction, shall require prior approval and issuance of a hydrant use permit.

B. The public works department shall issue permits and be responsible for hooking up and disconnecting meters and hoses.

C. Hydrant permit holders shall be financially responsible for damage to municipal hydrants, meters, hoses and connections, caused by the permit holder or their agent's failure to protect such facilities during use. Permit holder shall not be held financially liable for actions by the town in hooking up and/or disconnecting meters and hoses or operating the fire hydrant.

D. The town will provide three hundred feet of fire hose; any facility which cannot be served by this length of hose will need additional hose provided by the owner. The fee schedule is as set forth in Article IX, Rates. The permit application form is provided in the appendix, attached to the ordinance codified in this chapter. (Ord. passed 5/5/97 Art. V, § 3)

10.12.240 Conditions on water service.

In consideration of water service supplied by the Town of Essex, all applicants agree to be responsible for payment of all bills rendered and for all water used by the applicant, their tenants, successors in tenancy or in ownership, and all other persons at the specified location, unless and until proper notice is given to the town water department of termination of service on a specific date. The applicant shall agree to abide by all rules and regulations established by the Town of Essex water department, consistent with enforcement of the provisions of this chapter. (Ord. passed 5/5/97 Art. V, § 4)

10.12.250 Backflow prevention.

A. No water service connection to any premises shall be approved or maintained by the Town of Essex unless the water supply is protected as required by state laws and regulations and this chapter. Service of water to any premises shall be discontinued if a backflow prevention device required by this chapter is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, by-passed, or if an unprotected cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

B. Customer's system should be open for inspection at all reasonable times to authorized representatives of the Town of Essex to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exists. When such a condition becomes known, the town shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state and town statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

C. An approved backflow prevention device shall also be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line wherever the following conditions exist:

1. In the case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the town, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line appropriate to the degree of hazard.

2. In the case of premises on which any industrial fluids or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system which have been subject to deterioration in quality.

3. In the case of premises having (a) internal cross-connections that cannot be permanently corrected and controlled, or (b) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impractical or impossible to ascertain whether or not dangerous cross-connections exist, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line.

D. The type of protective device required under subsection (C)(1), (2) and (3) of this section shall depend upon the degree of hazard which exists as follows:

1. In the case of any premises where there is an auxiliary water supply as stated in subsection (C)(1) of this section and it is not subject to any of the following rules, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device.

2. In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

3. In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device. Examples of premises where these conditions will exist include sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals and mortuaries.

4. In the case of any premises where there are uncontrolled cross-connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device at the service connection.

5. In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced pressure principle backflow prevention device on each service to the premises.

E. Any backflow prevention device required in this chapter shall be a model and size approved by the town. The term "approved backflow prevention device" shall mean a device that has been manufactured in full conformance with the standards established by the American Water Works Association entitled: AWWA C506-78 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices.

F. It shall be the duty of the customer-user of any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the town deems the hazard to be great enough there may be required certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by the device manufacturer's representative or by a certified tester approved by the town. The customer-user shall notify the town in advance when the tests are to be undertaken so that the town or its representative may witness the tests if so desired. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever such devices are found to be defective. Records of such tests, repairs and overhaul shall be kept and made available to the town. (Ord. passed 5/5/97 Art. V, § 5)

10.12.260 Water mains—Standards.

All water mains shall be constructed, tested and disinfected in accordance with AWWA standards C-600, C-601, C-900 and the Vermont Public Water System Regulation. The test pressure for all mains shall be a minimum of two hundred psi; or one hundred fifty percent of working pressure, whichever is greater. (Ord. passed 5/5/97 Art. V, § 6)

10.12.270 Preexisting private water supply main connections to the public water supply system.

A. The town responsibility for private water supply main connection to the public water system terminates at the shutoff valve(s) to the private system water mains. The town assumes no responsibility for hydrant or line maintenance, operational checks, line breaks or other similar items of work in connection with these systems.

B. The Town of Essex may assume the responsibility for operation and maintenance of the private water supply main lines, services excluded, at such time as the following conditions for acceptance are met by the owners of the private system:

1. Accurate surveyed as-builts shall be provided to the town, indicating line sizes and locations, hydrants, valves, curb stops, service connections and all other pertinent features of the system.
2. Deeds, easements or other similar legal documents shall be prepared by the owner and found to be acceptable by the Town transferring the owner's legal interest in the main lines and pertinent features.
3. The water department of the town shall conduct an inspection of the system and provide the owner, with a list of improvements which must be made to bring the water system up to municipal public work standards prior to acceptance by the town. The private water system owner shall make the necessary improvements prior to acceptance of the system by the town. (Ord. passed 5/5/97 Art. V, § 7)

Article VI

Protection of Public Water System from Damage

10.12.280 Tampering with system prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the public water system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the VERMONT STATUTES ANNOTATED. Any person

violating this article on conviction thereof shall be fined an amount not less than one hundred dollars for each violation. (Ord. passed 5/5/97 Art. VI)

Article VII

Powers and Authority of Inspectors

10.12.290 Right of entry.

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties within a reasonable time frame for the purposes of inspection, observation, measurement, sampling, and testing and maintenance in accordance with the provisions of this ordinance. Failure to provide reasonable access shall be considered a violation of the ordinance, subject to the penalties outlined in Article VIII. (Ord. passed 5/5/97 Art. VII, § 1)

10.12.300 Liability and indemnification.

While performing the necessary work on private properties referred to in Section 10.12.290, the town manager or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the town employees. The town employees and the town shall indemnify the owner or tenant against liability claims and demands for injury or property damage except as such may be caused by negligence or failure of the company to maintain safe premises or conditions, including conduct of agents or employees of the owner or agent, as applicable. (Ord. passed 5/5/97 Art. VII, § 2)

10.12.310 Access to easements.

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the water works lying within such easement. All entry and subsequent work, if any, on such easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. passed 5/5/97 Art. VII, § 3)

Article VIII

Penalties

10.12.320 Notice of violation.

Any person found to be violating any provision of this chapter except Article VI, shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violation. (Ord. passed 5/5/97 Art. VIII, § 1)

10.12.330 Violation—Penalty.

A. Any person who shall continue any violation beyond the time limit provided for in Section 10.12.320 shall be guilty of a misdemeanor, and on conviction thereof shall be fined the maximum amount allowable under state statute. Each day in which any such violation shall continue shall be deemed a separate offense.

B. In addition to any fine imposed under subsection A of this section, any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such offense. (Ord. passed 5/5/97 Art. VIII, §§ 2, 3)

10.12.340 Remedies nonexclusive.

Notwithstanding any of the foregoing provisions, the town may institute any appropriate action including injunction or other proceeding to prevent, restrain or abate violations of any provisions of this chapter, including termination of service. (Ord. passed 5/5/97 Art. VIII, § 4)

Article IX

Rates

10.12.350 Authority to establish.

The Selectboard shall have the authority to establish rates, including service initiation fees, hydrant use fees, user fees, turn on/shutoff fees, and other similar fees to defray the costs of construction, operations and maintenance of the system. (Ord. passed 5/5/97 Art. IX, § 1)

10.12.360 Service initiation fee.

A service initiation fee shall be paid by all new water users at time of submittal of the application for water service. The service initiation fee is established to help defray the town's past, current and future costs, both direct and indirect, of providing potable water and water for fire protection to the facility. The water initiation fee is due and payable in full upon application for a building permit. Extended payment schedules due to hardship shall require the approval of the Selectboard. The water service initiation fee schedule is:

A. One thousand seven hundred dollars per first individual residential living unit in a dwelling with one thousand two hundred dollars per additional residential living unit in a multifamily dwelling.

1. For the assessment of the service initiation fees, an individual residential living unit is a single-family dwelling or a single-family dwelling unit in a multifamily dwelling.

2. The service initiation fee applies to the building regardless of ownership or metering.

3. Any conversion of a dwelling from single-family residential to a multifamily dwelling will require the payment of the one thousand two hundred dollar service initiation fee per additional residential living unit created plus installation of additional meters as per Section 10.12.170(E).

4. A single-family residential building with an accessory apartment as defined in the Zoning Ordinance shall be considered an exception to subdivision (3) of this subsection, with the service initiation fee on an accessory apartment waived.

B. Two thousand two hundred dollars per first commercial unit in a single building with five hundred dollars per each additional commercial unit in a multi-unit commercial building.

1. A single commercial unit for the purpose of this chapter includes each individual retail store or business except as provided in subdivision (2) of this subsection within one building.

2. A building with one or more nonretail businesses such as business offices, financial or professional offices, each of which does not manufacture, repair, process or fabricate an article, substance or commodity is considered a single commercial unit.

3. Any conversion of a commercial building to individual retail stores will require the payment of the five hundred dollar service initiation fee per additional retail store created plus installation of additional meters as per Section 10.12.170(E).

C. Four thousand two hundred dollars per industrial unit.

1. Each industrial building is considered an industrial unit.

2. An industrial facility is defined by the applicant as stated on the zoning application for approval. (Ord. passed 6/2/03 (part): Ord. passed 5/5/97 Art. IX, § 2)

10.12.370 Hydrant use fee.

A hydrant use fee shall be paid by all users, (not including town departments for use of town hydrants) at the time of submittal of the application for hydrant use. The hydrant fee schedule is twenty-five dollars for use of the town hydrant at the intersection of Foster Road and Sand Hill Road and fifty dollars for use of any other town hydrant. All hydrant use must be completed during normal working hours so as to allow adequate time for hydrant shutdown and retrieval of the meter/hose. Hydrant use in excess of the standard one-day period may be approved by the manager if such use is determined not to be in conflict with Article V. In addition to payment of the hydrant use fee, the applicant shall be responsible for payment of normal user fees for all water taken from the hydrant. (Ord. passed 5/5/97 Art. IX, § 3)

10.12.380 User fee.

A user fee shall be paid by all users who are physically connected to the municipal water system. The user fee shall be payable regardless of whether or not water service is physically turned on during all or part of the billing period and shall be determined as follows:

A. Standard Metered Service. System users with approved meters shall be billed based on the metered usage multiplied by the rate per thousand gallons as set by the Selectboard except as follows:

1. Users with standard metered service shall be billed a minimum of thirty-two dollars per each billing period. This minimum charge reflects the fact that all users receive some level of fire protection in addition to the benefit of potable water use. This charge is based in part on the significant portion of water system expenses that are independent of actual customer usage.

2. If in the opinion of the town, the available metered flow information is insufficient to provide an adequate basis for billing or if the metered flow cannot be reasonably obtained by the town, the user shall be billed as an unmetered service in accordance with subsection B of this section.

B. Unmetered Service. System users that do not have metered service or which are excepted from standard metered service under subsection A of this section shall be billed based on an estimated usage per Table 10.12.380 multiplied by the rate per thousand gallons set by the Selectboard except as follows:

1. If a user fails to make reasonable accommodations as determined by the town, so as to allow the installation of a meter or if a user fails to provide reasonable access to the town for the purpose of reading, inspection, installation, repair or replacement of a meter, billing shall be based on one hundred

twenty-five percent of the estimated usage per Table 10.12.380 multiplied by the rate per thousand gallons set by the Selectboard.

2. If in the opinion of the town, sufficient metered usage history exists prior to the unmetered usage to accurately estimate current usage, such an estimate may be used in place of the estimated usage per Table 10.12.380.

Table 10.12.380

Establishment Classifications	Estimated Usage (gallons per day)
Single-family residence	200 gpd each residence
Mobile home	200 gpd each residence
Apartment, condominium dwelling unit	140 gpd each apartment or condominium dwelling unit
Dormitory	100 gpd each per bedroom
Laundries, self-service	400 gpd each per machine
Schools—grade K - 12:	
Daycare without shower and cafeteria	
Daycare with shower or cafeteria	14 gpd each per student 20 gpd each per student
Daycare facilities	20 gpd each child
College/university classroom building	
(non-lab)	200 gpd each building
Nursing home/home for the aged	60 gpd each patient
Hotels/motels	140 gpd each rental unit
Restaurant	
Add for lounge	32 gpd per seat 20 gpd per seat
Service station (without car washing)	300 gpd each set of gas pumps
Church	200 gpd
Barber/beauty shop	160 gpd per chair
Other categories	To be determined based upon comparable use using fixture units and the National Plumbing Code as a basis.

(Ord. passed 5/5/97 Art. IX, § 4)

10.12.390 Maintenance and repair of water service connections—Shutoff and turn on fees.

A. The town owns and is responsible for maintenance and repair of water service connections from the main line up to and including the curb stop, water meters except industrial/commercial meters over two inches in size and meter connection fittings. Only an authorized employee of the town may operate, repair, replace, remove or modify these items. The owner is responsible for the service line from the curb stop into the building and for all internal plumbing with the exception of town-owned water meters and meter connection fittings.

B. All structures connected to the water system subsequent to adoption of the ordinance codified in this chapter must have an appropriate valve to allow water service to be shut off inside the building prior to any fittings and have a second valve on the opposite side of the water meter for the purpose of isolating the meter. The owner shall be responsible for all costs associated with purchase and installation of such valves. Owners of buildings that do not currently have appropriate shutoff valves are encouraged to install them.

C. There shall be service fees for curb stop shutoff/turn on services provided by the town as follows:

1. Normal Working Hours. There shall be a fee of twenty-five dollars for all shutoff/turn on services provided during normal working hours except as follows:

a. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the town portion of the service line, the curb stop, or town-owned meters.

b. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the owners portion of the service line or repair/installation of the inside shutoff valve if these services are completed during normal working hours.

c. Fees for services associated with delinquency disconnect shall be the maximum allowed under Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect.

2. Overtime Hours (Including Weekends and Town Holidays). There shall be a fee of thirty-seven dollars and fifty cents for shutoff/turn on services provided during overtime hours except as follows:

a. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the town portion of the service line, the curb stop, or town-owned meters

b. Fees for services associated with delinquency disconnect shall be the maximum allowed under Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect.

3. When multiple service calls are required for a single repair, each call shall be billed individually. (Ord. passed 5/5/97 Art. IX, § 5)

10.12.400 Disposition of excess revenues.

Excess revenues may be placed into a sinking fund, accessible for use on water-system-related construction or expenses. (Ord. passed 5/5/97 Art. IX, § 6)

10.12.410 Payment of charges—Delinquent when—Billing.

A. Water charges will be invoiced a minimum of twice a year. Water charges shall be payable on or before the thirtieth day following the date of the invoice or a later date as shown on the invoice.

B. In the event that such charge is not paid when due, a penalty of eight percent shall be added thereto plus the judgement rate of interest per month shall be added after the first thirty days of delinquency. If any account shall remain delinquent, the legislative body may also take any action that is consistent with the provisions of Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect, as presently constituted and as amended from time to time, to obtain payment of delinquent charges or to discontinue water service. Such charges shall be a lien upon the real estate as provided in 24 VERMONT STATUTES ANNOTATED, 3612 and 5149.

C. New water connections made during a six-month billing period shall be billed on the following basis: The billing shall be the larger of the actual metered billings or the minimum charge billing for the period.

D. All water charges will be billed to the owner of record of the facility(s) served, unless the owner of record provides written documentation to the town accepting responsibility for payment but identifying other person(s) for receipt of billings.

E. There will be a fee of ten dollars for interim bills requested due to a change of tenants. (Ord. passed 5/5/97 Art. IX, §§ 7, 8)

10.12.420 Review of fee structure.

The fee structure shall be reviewed by the legislative body as deemed necessary. (Ord. passed 5/5/97 Art. IX, § 9)

10.12.430 Effective date for rate changes.

All rate changes shall be effective for water used subsequent to the spring 1997 billing. (Ord. passed 5/5/97 Art. IX, § 10)

Chapter 10.16

SEWER USE

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Article I

Definitions

10.16.010 **Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

“Biochemical oxygen demand (BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Celsius, expressed in milligrams per liter.

“Building drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

“Building sewer” means the part of the sewerage system which receives the sewage from the house plumbing system and conveys it to the nearest end of the house connection, unless a house connection is not available, whereby the building sewer shall be extended to the nearest available “Y” branch on the main sewer.

“Combined sewer” means a sewer receiving both surface runoff and sewage.

“Garbage” means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

“Industrial wastes” means the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

“Manager” means the town manager of the Town of Essex, Vermont or the manager’s authorized representative.

“Natural outlet” means any outlet into a watercourse, pond, ditch, lake or other body or surface or groundwater.

“Person” means any individual, firm, company, association, society, corporation or group.

“pH” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

“Properly shredded garbage” means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the slow conditions normally prevailing in public sewers, with no particle greater than one-half-inch (1.27 centimeters) in any dimension.

“Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

“Sanitary sewer” means a sewer which carries sewage and to which storm, surface and groundwater are not intentionally admitted.

“Secretary” means the secretary of the Agency of Environmental Conservation, state of Vermont or his/her representatives.

“Sewage” means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

“Sewage treatment plant” means any arrangement of devices and structures used for treating sewage.

“Sewage works” means all facilities for collecting, pumping, treating and disposing of sewage.

“Sewer” means a pipe or conduit for carrying sewage.

“Shall” is mandatory; “may” is permissive.

“Slug” means any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes, more than five times the average twenty-four-hour concentration of flows during normal operation.

“Storm drain” (sometimes termed “storm sewer”) means a sewer which carries stormwaters and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

“Suspended solids” means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

“Town” means the legislative body of the Town of Essex, Vermont authorized under statute to act as the board of sewage disposal commissioners.

“Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently. (Ord. passed 5/5/97 Art. I(A))

10.16.020 Abbreviations.

For the purpose of this chapter, the following abbreviations shall have the meaning ascribed to them under this section. References to standards of the following organizations shall refer to the latest edition of same.

“ANSI” means American National Standards Institute.

“ASME” means American Society of Mechanical Engineers.

“ASTM” means American Society of Testing and Materials.

“AWWA” means American Water Works Association.

“cm” means centimeter.

“CS” means Commercial Standards.

“Degrees C” means degrees Centigrade.

“Degrees F” means degrees Fahrenheit.

“kg” means kilograms.

“l” means liters.

“m” means meter.

“mg/l” means milligrams per liter.

“NPC” means National Plumbing Code.

“ppm” means part per million.

“sq.m” means square meters.

“WPCF” means Water Pollution Control Federation. (Ord. passed 5/5/97 Art. I(B))

10.16.030 Fort Ethan Allen System.

A. The Town of Essex acquired a portion of the sanitary sewer system of the Ethan Allen Air Force Base by quit-claim deed of the United States of America dated December 17, 1964, which deed is recorded in Volume 69 at Pages 318-323 of the Town of Essex land records and Volume 165 at Pages 370-375 of the town of Colchester land records. Such deed specifically excluded from the conveyance all service laterals and/or building connections and all items of plumbing located in any of the buildings upon such Ethan Allen Air Force Base. The following sections define the public system, consistent with the public sewer in other portions of the town.

B. The “public sewer” for purposes of this chapter shall include the following pipes, conduits and manholes:

1. The eight-inch line extending generally westerly from Manhole 41 adjacent to Building 301 to and through Manholes 40, 39, 30, 22, 20, 19, 17, 16, 15, 14, 13, 12 and 9;
2. The line connecting Manhole 8 to Manhole 13;
3. The line extending from Manhole 2A adjacent to Vermont Route 15 through Manholes 1A, 8, 44, 45, 45A, 78, 79 and 84 adjacent to Building 57;
4. The line from Manhole 44 near the intersection of Barnes Street and Ethan Allen Avenue through Manholes 48, 49, 52, 56, 59, 61, 65, 65A, 70A, 70 and 69 adjacent to Building 76;
5. The line from Manhole 56 extending through Manhole 53 to Manhole 86 located in Bellew Street;
6. The line extending from Manhole 81 through Manhole 80 to the line westerly adjacent to Barnes Street.

C. The following lines are considered abandoned and not part of the sewer system:

1. The line extending northerly from Manhole 15;

2. The line extending northerly from Manhole 74;
3. The line extending northeasterly from Manhole 86 to Manhole 103;
4. The line extending generally northerly from Manhole 89 through Manhole 102 to and beyond Manhole 104.

D. All sewer lines and manholes not specifically above described are service lines which are not part of the public sewer system.

E. Reference is made to a plan entitled "Fort Ethan Allen, Essex and Sanitary Sewer System," drawn by S. Prime, dated January 5, 1988, last revised March 1994. (Ord. passed 5/5/97 Art. I(C))

Article II

Mandatory Use of Public Sewers

10.16.040 Unlawful acts.

A. It is unlawful for any person to place, deposit or permit to be placed or deposited, upon public or private property within the town or in any area under the jurisdiction of the town, any human excrement, garbage or sewage.

B. It is unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of the town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and the laws of the state of Vermont.

C. Except as provided in Article III of this chapter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage. (Ord. passed 5/5/97 Art. II, §§ 1—3)

10.16.050 Installation of toilet facilities and connection to public sewer required.

A. The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the town, or outside the town in specific locations where town sewers are provided at the time of enactment of the ordinance codified in this chapter, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the town, is required at his/her expense to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within ninety days after date of official notice to do so, unless specifically exempted from this provision by the Selectboard, provided that the property in part or in total, abuts on such street, alley or right-of-way.

B. Where the owner is of the opinion that undue hardship would result from the requirement to connect to the sewer, the property owner shall make a request in writing to the Selectboard within thirty days of receipt of notice to connect, stating the reasons for requesting the deferral. The Selectboard shall make a determination on whether or not to grant the deferral. (Ord. passed 5/5/97 Art. II, § 4)

Article III

Private Sewage Disposal

10.16.060 Permitted when.

Where a public sanitary or combined sewer is not available under the provisions of Section 10.16.050, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article. (Ord. passed 5/5/97 Art. III, § 1)

10.16.070 Compliance with applicable regulations required.

The type, capacities, location and layout of a private sewage disposal system shall comply with all mandates of the state of Vermont, Department of Health or its successor, including, but not limited to those regarding wastewater treatment and disposal by individual on-site systems, and all other applicable federal, state and local regulations. No septic tank, cesspool, mound system or sewage leach field shall be permitted to discharge to any natural outlet. (Ord. passed 5/5/97 Art. III, § 2)

10.16.080 Disconnection and abandonment required when.

At such time as public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 10.16.050, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be pumped out, filled with suitable material, such as bank run gravel, or removed and the system shall be abandoned. (Ord. passed 5/5/97 Art. III, § 3)

10.16.090 Operation and maintenance requirements.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town. (Ord. passed 5/5/97 Art. III, § 4)

10.16.100 Noninterference with health officer's requirements.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the town health officer. (Ord. passed 5/5/97 Art. III, § 5)

10.16.110 Permit required.

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the town health officer. The application for such permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the town health officer. A permit and inspection fee as set by the Selectboard shall be paid to the town at the time the application is filed, unless waived under the provisions of Section 10.16.140. (Ord. passed 5/5/97 Art. III, § 6)

10.16.120 Inspection.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the town health officer, zoning administrator or other duly authorized agent. They shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify them when the work is ready for final inspection and before any underground portions are covered. (Ord. passed 5/5/97 Art. III, § 7)

Article IV

Building Sewers and Connections

10.16.130 Permit required.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the manager. Any person proposing a new discharge into the system or a substantial change in volume or character of pollutants that are being discharged into the system shall notify the manager at least thirty days prior to the proposed change or connection, unless waived. (Ord. passed 5/5/97 Art. IV, § 1)

10.16.140 Building sewer permits—Classes—Fees.

A. There shall be two classes of building sewer permits:

1. For residential and commercial service; and
2. For service to establishments producing industrial wastes.

B. In either case, the owner/agent shall make application on a special form furnished by the town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the manager.

C. A service initiation fee to cover the cost of plan review, permit processing, inspection, system improvements and excess capacity repayment shall be paid to the town. This initiation fee shall consist of a connection fee of one thousand dollars per connection plus a capacity fee of five dollars per gallon based on estimated usage as determined by the manager using Table 10.16.510. Extended payment schedules due to hardship shall require the approval of the Selectboard. (Ord. passed 6/2/03 (part); Ord. passed 5/20/02; Ord. passed 5/5/97 Art. IV, § 2)

10.16.150 Costs to be borne by owner.

All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. passed 5/20/02; Ord. passed 5/5/97 Art. IV, § 3)

10.16.160 Separate sewer service required—Exceptions.

A separate and independent sewer service shall be provided for every building. This requirement may be waived by the manager in special cases if independent connections are not feasible or if shared connections are in the best interest of the town. (Ord. passed 5/5/97 Art. IV, § 4)

10.16.170 Use of old sewers permitted when.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test made by the manager and paid for by the owner to meet all requirements of this chapter. The time frame for notification prior to inspection shall be as set forth in Section 10.16.220. (Ord. passed 5/5/97 Art. IV, § 5)

10.16.180 Construction specifications.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench, shall all conform to the

requirements of the building and plumbing code or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply and the National Plumbing Code, latest edition. Appendix 3, attached to the ordinance codified in this chapter, contains guidelines for the installation of building sewers and connections. (Ord. passed 5/5/97 Art. IV, § 6)

10.16.190 Building sewer elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the sanitary sewer. (Ord. passed 5/5/97 Art. IV, § 7)

10.16.200 Prohibited connections.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, cellar drains, basement sumps, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. (Ord. passed 5/5/97 Art. IV, § 8)

10.16.210 Connection requirements.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the state and town or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9 and the National Plumbing Code, latest edition. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the manager before installation. (Ord. passed 5/5/97 Art. IV, § 9)

10.16.220 Cleanouts.

Cleanouts shall be installed where the distance from the building to the main sewer is greater than one hundred feet or where bends greater than forty-five degrees are used in the building sewer. Cleanouts shall be made by installing a “Y” and one-eighth bends of the same diameter as the building sewer. The cleanouts shall ordinarily be installed at the point of connection between the building sewer and the outside part of the house plumbing system, at curves on the building sewer and on the straight part of the house sewer to the main sewer. The cleanout shall be brought up from the building sewer to four inches (10.2 cm) below ground level and be properly capped. Locations of all cleanouts shall be recorded and turned over to the manager. (Ord. passed 5/5/97 Art. IV, § 11)

10.16.230 Inspection—Notification.

Prior to any connection to the house connection, “Y” or to the main sewer, the manager shall be given twenty-four hours’ notice in order that the work may be inspected. All connections will be made during normal workday hours and no connections shall be made Saturday, Sunday or legal town holidays. If the manager has not been properly notified and work has proceeded, the work shall be uncovered for examination at the owner’s expense. (Ord. passed 5/5/97 Art. IV, § 10)

10.16.240 Inspection—Required.

Before any portion of the existing plumbing system outside of the building is connected to the building sewer, the owner shall prove, to the satisfaction of the manager, that it is clean and conforms in every respect to this chapter and that all joints are watertight. The time frame for notification prior to inspection shall be as set forth in Section 10.16.220. (Ord. passed 5/5/97 Art. IV, § 12)

10.16.250 Testing.

The manager shall apply appropriate tests to the pipes and the plumber and contractor, at their own expense, shall furnish all necessary tools, labor, materials and assistance for such tests and shall remove or repair any defective materials when so ordered by the manager. (Ord. passed 5/5/97 Art. IV, § 13)

10.16.260 Excavations—Construction within right-of-way—Requirements.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. A permit shall be obtained from the manager for all construction within the highway right-of-way, which permit shall specify the times and dates of construction, the type and manner of construction, any guarantee thereof and any special safety requirements. (Ord. passed 5/5/97 Art. IV, § 14)

10.16.270 Interference with movement of vehicular traffic.

The contractor shall not block any driveway, street, road or railroad at any time without permission of the manager and other controlling agencies. Every effort shall be made to permit the movement of vehicular traffic at all times. Whenever it becomes necessary to cross or interfere with roads, walks or drives, whether public or private, the contractor shall maintain, at his/her own expense, and subject to the approval of the town, safe bridges or other means of egress. (Ord. passed 5/5/97 Art. IV, § 15)

Article V

Use of the Public Sewers

Prohibited discharges to sanitary sewers.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer. (Ord. passed 5/5/97 Art. V, § 1)

10.16.290 Discharge of stormwater and unpolluted drainage.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the manager. Industrial cooling water or unpolluted process waters may be discharged on approval of the manager. (Ord. passed 5/5/97 Art. V, § 2)

10.16.300 Discharge of certain waters or wastes prohibited.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- A. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
- B. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant;
- C. Any waters or wastes having a pH lower than 5.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
- D. Solid or viscous substances in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, and other paper or fiber containers, either whole or ground by garbage grinders. (Ord. passed 5/5/97 Art. V, § 3)

10.16.310 Discharge of certain substances prohibited.

No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the manager that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, health, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the manager will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, prevailing state and federal regulations and other pertinent factors. The substances prohibited are:

- A. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (sixty-five degrees Celsius);
- B. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two and one hundred fifty degrees Fahrenheit (between zero and six degrees Celsius);
- C. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the manager;
- D. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;
- E. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the manager for such materials;
- F. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the manager as necessary, after treatment of the composite sewage to meet the requirements of the state, federal and other public agencies having jurisdiction for such discharge to the receiving waters;

- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the manager in compliance with applicable state or federal regulations;
- H. Any waters or wastes having a pH in excess of 9.5;
- I. Materials which exert or cause:
 - 1. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);
 - 2. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
 - 3. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works or which may cause the effluent limitations of the discharge permit to be exceeded;
 - 4. Unusual volume of flow or concentration of wastes constituting "slugs" as defined in this chapter;
- J. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters. (Ord. passed 5/5/97 Art. V, § 4)

10.16.320 Authority of manager to reject wastes or impose additional controls.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 10.16.310 of this article, and which in the judgement of the manager, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life, health or constitute a public nuisance, the manager may:

- A. Reject the wastes;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers;
- C. Require control over the quantities and rates of discharge.

If the town permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the town board of sewage commissioners and health officer, and subject to the requirements of all applicable codes, ordinances and laws and to the municipal discharge permit. Further, such pretreatment installations must be consistent with the requirements of any state pretreatment permit issued to the industry. (Ord. passed 5/5/97 Art. V, § 5)

10.16.330 Grease, oil, hair and sand interceptors.

A. Grease, oil, hair and sand interceptors shall be provided when, in the opinion of the town, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the town and shall be located as to be readily and easily accessible for cleaning and inspection.

B. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

C. Where installed, all grease, oil, hair and sand interceptors shall be maintained by the owner, at his/her expense, in continuously efficient operation at all times. Materials collected shall not be reintroduced into the public sewerage system. The owner shall provide the town with records of cleaning, maintenance and inspection as deemed necessary by the manager. (Ord. passed 5/5/97 Art. V, §§ 6—8)

10.16.340 Treatment or flow-equalizing facilities—Maintenance responsibility.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his/her expense. (Ord. passed 5/5/97 Art. V, § 9)

10.16.350 Control manholes.

When required by the manager, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters, and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times. (Ord. passed 5/5/97 Art. V, § 10 (part))

10.16.360 Monitoring of discharges—Recordkeeping required.

All industries discharging into a public sewer shall perform such monitoring of their discharges as the manager may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the manager. Such records shall be made available, upon request, by the manager, to other agencies having jurisdiction over discharges to the receiving waters. Where industrial pretreatment permits are issued by the state of Vermont, monitoring records must also be submitted to the Secretary in accordance with such permit. Records of any monitoring will be supplied by the manager to the secretary on request. (Ord. passed 5/5/97 Art. V, § 10 (part))

10.16.370 Measurements, tests and analyses—Methods.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. (The particular analyses involved will determine whether a twenty-four-hour composite of

all outfalls of a premises is appropriate or whether a grab sample or samples should be taken.) Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pH's are determined from periodic grab samples. (Ord. passed 5/5/97 Art. V, § 11)

10.16.380 Termination of disposal authorization for violation.

Any industry held in violation of the provisions of this chapter may have its disposal authorization terminated. (Ord. passed 5/5/97 Art. V, § 12)

10.16.390 Acceptance of wastes of unusual strength for treatment allowed when.

No statement contained in this article shall be construed as prohibiting any special agreement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment, therefor, by the industrial concern, provided that such agreements do not contravene any requirements of existing federal and state laws and regulations and sound engineering practice, and are compatible with any user charge and industrial cost recovery system in effect. (Ord. passed 5/5/97 Art. V, § 13)

Article VI

Protection from Damage

10.16.400 Tampering with public sewerage disposal system prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the public sewerage disposal system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the VERMONT STATUTES ANNOTATED. Any person violating this article on conviction thereof shall be fined an amount not less than one hundred dollars for each violation. (Ord. passed 5/5/97 Art. VI)

Article VII

Powers and Authority of Inspectors

10.16.410 Right of entry.

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. The town manager or his/her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment. Delays by the owner in providing reasonable access to duly authorized employees of the town enforcing the provisions of this chapter may be considered a violation of this chapter, subject to penalties outlined in Article VIII of this chapter. (Ord. passed 5/5/97 Art. VII, § 1)

10.16.420 Liability and indemnification.

While performing the necessary work on private properties referred to in Section 10.16.410, the town manager or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the town employees and the town shall indemnify the company against liability claims and demands for injury or property damage asserted against the company arising from the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe premises or conditions, including conduct of agents or employees of the company. (Ord. passed 5/5/97 Art. VII, § 2)

10.16.430 Access to easements.

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within such easement. All entry and subsequent work, if any, on such easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. passed 5/5/97 Art. VII, § 3)

Article VIII

Penalties

10.16.440 Notice of violation.

Any person found to be violating any provision of this chapter except Article VI, shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. (Ord. passed 5/5/97 Art. VIII, § 1)

10.16.450 Violation—Penalty.

A. Any person who shall continue any violation beyond the time limit provided for in Section 10.16.440, shall be guilty of a misdemeanor, and on conviction thereof shall be fined the maximum amount allowable under state statutes. Each day in which any such violation shall continue shall be deemed a separate offense.

B. In addition to any fine imposed under subsection A of this section, any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such offense. (Ord. passed 5/5/97 Art. VIII, §§ 2, 3)

10.16.460 Remedies nonexclusive.

Notwithstanding any of the foregoing provisions, the town may institute any appropriate action including injunction or other proceeding to prevent, restrain or abate violations of any provisions of this chapter, including termination of water and/or sewer service. (Ord. passed 5/5/97 Art. VIII, § 4)

Article IX

Rates

10.16.470 Authority to establish.

The Selectboard, acting under authority as the board of sewage disposal commissioners, shall have the authority to establish reasonable sewer rates to defray the costs of construction, operation and maintenance of the system. (Ord. passed 5/5/97 Art. IX, § 1)

10.16.480 Rate structure.

The rate structure shall consist of two components: a capital construction fee and an operations and maintenance fee. The capital construction fee shall be based on a system of equivalent user units as set forth in Table 10.16.510 of this article. The operations and maintenance fee shall be based on water usage per Section 10.16.510 of this article. (Ord. passed 5/5/97 Art. IX, § 2)

10.16.490 Capital construction fee.

A. The capital construction fee shall include, but not be limited to, the cost of the total sewer debt service due within the fiscal period divided by the total number of equivalent users within the sewered area. The total number of equivalent users within the sewered area includes the users physically connected to the system, whether or not the facility discharges sewage into the system, parcels for which connection waivers have been granted by the Selectboard, unless specifically exempted by the Selectboard, and all other parcels required under Section 10.16.050 of Article II of this chapter to connect to the sewer system.

B. The capital construction fee for each user shall be determined by multiplying the capital construction fee per equivalent user unit by the number of equivalent user units assigned by the manager.

C. Each user will be notified at least annually of the portion of the user charges which are attributable to capital construction costs. (Ord. passed 5/5/97 Art. IX, §§ 3, 5)

10.16.500 Operations and maintenance fee.

The operations and maintenance fee shall be based on water usage determined as follows:

A. Standard Metered Service. System users with approved water meters shall be billed for sewer use based on the metered water usage multiplied by the rate per thousand gallons as set by the Selectboard except as follows:

1. If in the opinion of the manager, the available metered flow information is insufficient to provide an adequate basis for billing or if the metered flow cannot be reasonably obtained by the manager, the user shall be billed as an unmetered service in accordance with subsection B of this section.

2. If in the opinion of the manager, a substantial discrepancy exists between the metered water use and the sewer discharge for a commercial/industrial building, and where such discrepancy can be quantified through the use of a measuring device furnished by the owner and approved by the manager, the manager may adjust the total gallons billed to more accurately correspond with the volume discharged to the municipal sewer system.

B. Unmetered Service. System users that do not have metered water service or which are excepted from standard metered water service under subsection (A)(1) of this section shall be billed for

sewer use based on an estimated usage per Table 10.16.510 multiplied by the rate per thousand gallons set by the Selectboard except as follows:

1. If a user fails to make reasonable accommodations as determined by the manager, so as to allow the installation of a meter or if a user fails to provide reasonable access to the manager for the purpose of reading, inspection, installation, repair or replacement of a meter, billing shall be based on one hundred twenty-five percent of the estimated usage per Table 10.16.510 multiplied by the rate per thousand gallons set by the Selectboard.
2. If in the opinion of the manager, sufficient metered usage history exists prior to a period of unmetered usage to accurately estimate current usage, such an estimate may be used in place of the estimated water usage per Table 10.16.510. (Ord. passed 5/5/97 Art. IX, § 4)

10.16.510 Equivalent user units.

**Table 10.16.510
Equivalent User Units**

Establishment Classifications	Equivalent User Unit
Single-family residence	1.0 each residence
Mobile home	1.0 each residence
Apartment, condominium dwelling unit	.7 each apartment or condominium dwelling unit
Dormitory	.5 each per bedroom
Laundries, self-service	2.0 each per machine
Schools—grade K - 12:	
Daycare without shower and cafeteria	.07 each per student
Daycare with shower and cafeteria	.10 each per student
Daycare facilities	.10 each child
College/university classroom buildings (non-lab)	1.0 each building
Nursing home/home for the aged	.30 each patient
Hotels/motels	.70 each rental unit
Restaurant	
Add for lounge	.16 per seat
	.10 per seat
Service station (without car washing)	1.5 each set of gas pumps
Office, store or other commercial	E.U. based on flow; no E.U. less than .5
Manufacturing, factory, occupied warehouse	E.U. based on flow; no E.U. less than .5
Church	1.0 each
Barber/beauty shop	.4 per chair
Other categories	E.U. based on flow; no E.U. less than .5

For establishment classifications with equivalent user units based on flow, such flow shall be determined from average metered usage where available or estimated usage as determined by the

town. The town will review this average metered usage on an annual basis and adjust equivalent user units as necessary. Equivalent user units will not be adjusted to reflect seasonal fluctuations in use.

If any parcel connected to the sewer combines two or more of the classifications listed in this section, the number of equivalent user units in each classification shall be determined and the total shall constitute the number of equivalent user units assigned to the parcel. (Ord. passed 5/5/97 Art. IX (part))

10.16.520 Review of system of equivalent units.

The system of equivalent units shall be reviewed as deemed necessary by the Selectboard and adjusted if necessary. (Ord. passed 5/5/97 Art. IX, § 6)

10.16.530 Surcharge for abnormal wastes.

A. Users which discharge any toxic pollutants, high strength wastes or other detrimental wastes to the sewer system shall be required to pay a surcharge directly related to the costs incurred by the town, to manage the abnormal wastes including management of both the liquid effluent and wasted sludge portions. This section shall not be construed as to create a right to discharge.

B. The Selectboard shall adopt a surcharge system for handling toxic or other abnormal wastes at such time as the need develops. The surcharge system shall use the parameters of a medium strength waste as a comparative base. (Ord. passed 5/5/97 Art. IX, §§ 7, 8)

10.16.540 Disposition of excess revenues.

The Selectboard shall apply excess operating revenues accrued from users in a given year and these shall be applied in the determination of the operating portion of the user rate for the following year. Excess capital revenues or other excess sewer income may be placed into a sinking fund, accessible for use on sewer-related expenses or new sewer construction improvements, or applied to reduce the capital construction fee rate or operating rate. (Ord. passed 5/5/97 Art. IX, § 9)

10.16.550 Payment of charges—Delinquent when—Billing.

A. Sewer charges will be invoiced twice a year. Sewer charges shall be payable on or before the thirtieth day following the date of the invoice or a later date as shown on the invoice.

B. In the event that such charge is not paid when due, a penalty of eight percent shall be added thereto plus the judgement rate of interest per month shall be added after the first thirty days of delinquency. If any account shall remain delinquent, the legislative body may also take any action that is consistent with the provisions of Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect, as presently constituted and as amended from time to time, to obtain payment of delinquent charges or to discontinue sewer and/or water service. Such charges shall be a lien upon the real estate as provided in 24 VERMONT STATUTES ANNOTATED, 3612 and 5149.

C. New sewer connections made during a six-month billing period shall be billed on the following basis:

1. Capital construction fee for the entire six-month period regardless of date of hookup within the period; plus
2. Operating costs prorated for the period from the date of hookup to the end of the billing period.

D. All sewer charges will be billed to the owner of record of the facility(s) served by the sewer, unless the owner of record provides written documentation to the town accepting responsibility for payment but identifying other person(s) for receipt of billings. (Ord. passed 5/5/97 Art. IX, §§ 10—11)

Chapter 10.18

SEWER ALLOCATION

Sections:

- 10.18.010 Purpose.**
- 10.18.020 Ownership and permit.**
- 10.18.030 Introduction to reserve capacity allocation.**
- 10.18.040 Definitions.**
- 10.18.050 Total reserve capacity and allocation categories.**
- 10.18.060 Authority of the town manager to approve sewer allocations.**
- 10.18.070 Sewer allocation approvals by the Selectboard.**
- 10.18.080 Sewer allocations outside the sewer core area.**
- 10.18.090 Allocation procedures—Applications.**
- 10.18.100 Allocation procedures—Preliminary approvals.**
- 10.18.110 Effect of preliminary approval.**
- 10.18.120 Allocation procedures—Final approvals.**
- 10.18.130 Authority to require connection.**
- 10.18.140 Prior allocations.**
- 10.18.150 Severability.**
- 10.18.160 Adoption of ordinance.**

10.18.010 Purpose.

The municipal plan provides for the protection of the general health, safety and welfare of Essex residents, the orderly development of the town within its capacity to provide public services and facilities and the mitigation of development impacts on the natural environment and unique resources. Uncontrolled growth threatens the natural environment, historical character and provision for public services and facilities. The town has limited waste water disposal capability and creating additional capacity will require substantial future investment. In recognition of the need to manage its available capacity, the town has completed a “Sanitary Sewer System Capacity Study” update, prepared by Donald L. Hamlin Consulting Engineer, dated February, 2003. Pursuant to the above, it is the purpose of this chapter to establish sewer allocation provisions for new development and connection of existing structures, and a sewer core area that provides for the orderly and cost effective development of the town. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.020 Ownership and permit.

The Town of Essex has acquired an initial treatment capacity of one million gallons per day and an additional capacity of one hundred thousand gallons per day totaling one million one hundred thousand

gallons per day of sewage at the sewage treatment and disposal facility ("Plant") in Essex Junction and a sewage collection and transmission system ("Sewers") as defined in 24 VERMONT STATUTES ANNOTATED, Sections 3501(6) and 3601. The Plant has a permitted capacity serving the communities of Essex Junction, Essex and Williston, and is operated in accordance with a discharge permit issued by the Vermont Department of Environmental Conservation ("Department") under authority granted in 10 VERMONT STATUTES ANNOTATED, Chapter 47. The board of sewage disposal commissioners ("Board") is obligated by law to comply with conditions of that permit, and to operate and manage the Sewers as governmental functions under and pursuant to 24 VERMONT STATUTES ANNOTATED, Chapters 97 and 101. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.030 Introduction to reserve capacity allocation.

A. The capacity of the Plant allocated to the Town of Essex and Sewers are the property of the town. The uncommitted reserve capacity of the Plant and Sewers shall be allocated over the remaining estimated fifteen-year life of the system by the Board in the manner described below. This ordinance is adopted pursuant to the provisions of 24 VERMONT STATUTES ANNOTATED, Section 3625; in the manner provided in 24 VERMONT STATUTES ANNOTATED, Chapter 59 (or in the manner provided for in 24 VERMONT STATUTES ANNOTATED, Chapter 117), and shall not be construed as an abandonment or relinquishment of the authority or responsibility of the Board to regulate, control and supervise all means and methods of sewage collection, treatment and disposal within the town, nor shall it be construed to impair or inhibit the ability of the town to contract with persons for the collection, transmission and treatment of sewerage.

B. As a prerequisite to receiving federal funds for the initial construction of the Plant and Sewers, the town was required to analyze the project's effects on population density, on patterns of land use and on increased growth at a faster rate than that planned by the existing community, and to identify techniques for mitigating adverse effects through phasing of sewer use. After conducting the required analysis, the town incorporated its findings into a sewer allocation policy directed at allocating use of the new resource over a twenty-year period after 1984.

C. After the initial policy adoption, the town conducted several studies regarding actual and projected future usage of the sewer system. The latest report, the "Sanitary Sewer System Capacity Study Update" ("Study"), dated February 2003, addresses changes within the town involving land development, zoning changes, and additions to the collection system.

D. Recognizing that there is insufficient capacity to provide sewer service to the entire town, the Board has created a revised sewer core area ("CORE") (Figure 1) as revised in 2003 to establish definitive boundaries for future extensions of the sanitary sewer system. The Study estimates total system flow for full build-out, and it finds that potential connections of existing development to the sanitary sewer system and anticipated new development within the Core will use up the entire available sewer system capacity of one million one hundred thousand gallons per day by year 2018. Year 2018 build-out is achieved by excluding Category "A" streets within the sewer core from service between 2003 and 2018.

E. The location and method of allocation for this sewer capacity is set forth in the following sections of this chapter. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.040 Definitions.

The following words will have the meanings below when used in this chapter:

“Board” means the Selectboard acting as a board of sewage disposal commissioners under 24 VERMONT STATUTES ANNOTATED, Section 3614.

“Completed construction” means:

1. For building development, the completion of construction of all foundations, framing, siding and roofs.
2. For subdivision development, the sale of the individual lots and the completion of all public infrastructure.

“Category ‘A’ development streets” means those streets within the sewer core that are not anticipated to be connected to the municipal sewer system until after 2018, as defined in the Sanitary Sewer System Capacity Study Update dated February 2003.

“Core” means the sewer core area located within the boundaries depicted in Figure 1.

“Department” means the Vermont Department of Environmental Conservation.

“Development” means the construction of improvements on a tract of land for any purpose including, but not limited to, residential, commercial or industrial activity.

“Development wastewater flow” means the flow resulting from full use of the development at its peak capacity, which flow shall be calculated using flow quantities, as set forth in the Town of Essex sewer use ordinance.

“Discharge permit” means a permit issued by the Department pursuant to authority granted in 10 VERMONT STATUTES ANNOTATED, Chapter 47.

“Initiate construction” means:

1. For building development, the completion of the foundation.
2. For subdivision development, the sale or lease of the first individual lot and the initiation of public infrastructure improvements.

“Manager” means the town manager, or his designee, authorized by the Selectboard to act on its behalf.

“Person” shall have the meaning prescribed in 1 VERMONT STATUTES ANNOTATED, Section 128.

“Plant” means the municipal sewage treatment plant owned by the Village of Essex Junction.

“Reserve capacity” means the permitted wastewater flow minus the actual plant wastewater flow during the preceding twelve months.

“Sanitary wastewater” means wastewater of the same character and range of strength as expected from homes.

“Sewers” means the sewage collection and transmission system owned by the Town of Essex.

“Study” means the Town of Essex “Sanitary Sewer System Capacity Study Update,” February 2003, prepared by Donald L. Hamlin Consulting Engineers, Inc.

“Uncommitted reserve capacity” means that portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects approved but not yet discharging to the Sewer.

“Wastewater flow” means the wastewater passing through the treatment plant in gallons per day on an annual average basis (three hundred sixty-five day average) except where flows vary significantly from seasonal development. In the latter case, plant wastewater flow is determined as the average throughout the high seasonal use period, as determined by the Board. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.050 Total reserve capacity and allocation categories.

A. All existing connections and estimated future connections are expressed in “equivalent units” (EU’s) with one EU equal to two hundred gallons per day of wastewater flow.

B. At the time of the Study, approximately two thousand nine hundred fourteen EU’s were connected to the sewer system. Approximately two thousand five hundred and eighty-six EU’s are left for those projects already approved but not constructed, for connection of existing unserved structures within the Core and for future connections of the vacant land within the Core. Based on existing zoning regulations and in conformance with the Town Plan, the depicted parcels will accommodate a balance of industrial, commercial and residential users. In order to prevent growth from occurring more rapidly than other municipal services can accommodate, the two thousand five hundred and eighty-six EU’s for future growth are intended to be allocated over a minimum of fifteen years.

C. The projected full build-out for the areas provided with estimates of equivalent units for future connections results in an estimated total flow, based on areas the model was run for, of one million, ninety-nine thousand six hundred and ten gallons per day. This is an estimate of flow subject to change with each connected user. Town staff shall regularly monitor existing sewer connections, approvals for projects that have not yet connected, and remaining capacity, and shall report to the Manager and Board as to whether any modifications in allocation procedures are needed to avoid exceeding the town’s total available capacity. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.060 Authority of the town manager to approve sewer allocations.

A. The Study estimates EU’s for all vacant land and other unconnected structures within the Core. The Board authorizes the town manager (Manager) to approve a sewer allocation for any project up to one hundred twenty-five percent of the maximum number of EU’s depicted in the Study for the parcel on which the project is located.

B. Prior to approval of any sewer allocation, the Manager shall obtain input from the public works and community development directors regarding a project’s impact on municipal services and conformity with the Town Plan.

C. If the Manager denies an application for a sewer allocation for a project within the Core, the applicant may appeal the Manager’s denial to the Board subject to the provisions of the following section. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.070 Sewer allocation approvals by the Selectboard.

A. The Board shall consider applications for sewer allocations only if an applicant is appealing a denial by the Manager, the application is for more than one hundred twenty-five percent of the maximum number of EU’s depicted in the Study for the parcel on which the project or connection is located, or if the project or connection is located within the Core but was not allocated capacity in the Study or is in a development listed as a “Category A” development in the Study.

B. With respect to an application for more than the one hundred twenty-five percent maximum, the scope of initial review by the Board shall normally be limited to two criteria: (1) the adequacy of the sewer system infrastructure, and (2) the manner in which use of this infrastructure supports the goals of the Town Plan.

C. With respect to an application for sewer allocation for a property not granted capacity in the Study or included within a “Category A” development as listed in the study, the scope of initial review

shall also normally include the following additional criteria: (3) the need for the connection to the system with respect to the potential for additional development or future connections to the sewer system in the surrounding area, natural resources that might be negatively impacted by an on-site sewage disposal system and the suitability of the site for an on-site sewage disposal system; (4) the adequacy of the unallocated capacity that would be left to the system; and (5) the degree to which any physical expansion of the sewer system proposed by the application represents a compact and logical physical expansion of the sewer system within the Core.

D. In any appeal of a denial by the Manager, the Board shall be limited to a technical determination as to whether the allocation procedures of this ordinance have been applied correctly. Prior to approval of any sewer allocation, the Board shall obtain input from the town administration regarding this scope of review. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.080 Sewer allocations outside the sewer core area.

No sewer allocations may be approved by the Board or Manager for connections outside the Core as illustrated in Figure 1, revised 2003. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.090 Allocation procedures—Applications.

A. All allocations to projects shall be based on the development wastewater flow. Any differential between actual flows and development wastewater flows that occurs is not available to the development owner for re-allotment to another project site. It is available for re-allotment within the project site or for project expansion within the project site.

B. All proposals for subdivision or residential land development must first obtain sketch plan approval from the Planning Commission. Thereafter, applications for sewer allocation (on forms provided by the Manager) shall be completed and returned to the Manager's office. Such applications shall:

1. Be accompanied by a calculation of the development wastewater flow to be generated by the project;
2. Include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the Manager or Board;
3. Unless waived by the Manager or Board all calculations required above for developments generating over one thousand gallons per day shall be certified by a Vermont licensed professional engineer, civil or environmental. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.100 Allocation procedures—Preliminary approvals.

Upon receipt of the application and supporting documents, the Manager or Board may approve a preliminary sewer allocation upon making affirmative findings that:

A. The proposed wastewater is of domestic, sanitary origin and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection; or

B. The proposed wastewater is not of domestic sanitary origin and that sufficient evidence has been presented by the applicant to demonstrate that the flow and character of the wastewater is compatible with the proper operation of the Plant and Sewers and that the proposed wastewater will not alone or in combination with other wastes cause a violation of the discharge permit, pass through

the Plant without treatment, interfere or otherwise disrupt the proper quality and disposal of Plant sludge or be injurious in any other manner to the Plant or Sewers and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection; and

C. The proposed use of wastewater capacity complies with the allocation principles and is not in conflict with any other enactment adopted by the Board or municipality. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.110 Effect of preliminary approval.

A. The Manager or Board, after making the approval findings above, may issue a preliminary connection approval, which approval shall be a binding commitment of capacity to the project contingent on compliance with any conditions attached to the preliminary approval and the subsequent issuance of a final connection approval. Preliminary connection approvals shall be effective until sixty days after all applicable local, state and federal permits for the project have been secured; except that preliminary approvals shall not exceed two years without subsequent approval by the Manager or Board.

B. Preliminary allocations must be approved by the Manager or Board prior to an applicant requesting final subdivision approval (or site plan approval if subdivision approval is not required). Determination of annual phasing for residential projects shall be the responsibility of the Planning Commission. Approval of a preliminary sewer allocation by the Manager or Board shall not imply final subdivision approval or granting of a residential phasing allocation by the Planning Commission. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.120 Allocation procedures—Final approvals.

The Manager on making affirmative findings that all conditions of the preliminary connection approval have been fulfilled shall issue the final connection approval permit which approval shall be conditioned as follows:

A. The permit shall specify the allowed volume, flow rate, strength, frequency and any other characteristics of the proposed discharge determined appropriate by the Manager.

B. The capacity allocation shall not be transferable to any other person or project.

C. Capacity allocated in conjunction with the final connection permit for building development shall revert to the town if the permit recipient has failed to initiate construction within one year of the issued date on the final connection permit.

D. The permit shall expire for all uncompleted construction three years from the date of issuance. Provided that a project has received a residential phasing allocation from the Planning Commission, the permit shall expire three years after the final phasing date. The permit also shall expire if no substantial construction activity occurs on a project for a consecutive three-year period. Within the three-year period a revised development plan and connection application may be approved by the Manager or Board in the same manner as the original, which may or may not extend the time period of the permit. If the Manager or Board approves an amended connection application, it will issue a revised final connection permit with reduced or increased capacity allocation determined in accordance with the allocation principles. Where a portion of the committed allocation is unused after expiration of the permit or where reduced capacity is granted in a revised connection permit, the excess capacity will

revert to the town.

E. When the owner/developer of a subdivision sells individual lots within the time frame of the permit, the ownership of the final connection permit shall transfer with the ownership of the lot and the new owner shall be bound to comply with all requirements applicable to that lot including permits issued and plans and specifications for connecting to the municipal Sewers. The transferred permit will be considered a new permit issued on the date of property transfer and the constraints of Section 10.18.120 will apply to this permit. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.130 Authority to require connection.

Nothing herein shall be construed as limiting or impairing the authority of the town or its Board to require connections to the Sewers under the general laws of the state or local ordinances. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.140 Prior allocations.

Adoption of the ordinance codified in this chapter shall not modify any allocations of treatment capacity issued prior to the adoption of this chapter. However, the procedures established by this chapter shall govern. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.150 Severability.

The invalidity of any section, clause or provision of this chapter shall not affect the validity of the chapter as a whole. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

10.18.160 Adoption of ordinance.

The ordinance codified in this chapter shall become effective upon passage. To the extent that any provision herein shall be inconsistent with or contrary to any provision of the Essex Sewer Use Ordinance, adopted May 7, 1997, then the provisions of this chapter shall apply. The adoption of this allocation chapter shall not interfere with the authority and responsibility of the legislative body as sewer commissioners, in matters relating to the management and operation of the public sewer system as provided in Chapters 97 and 101 of 24 VERMONT STATUTES ANNOTATED. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

Chapter 10.20

STORM WATER

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- 10.20.011 Basis for the Ordinance**
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- 10.20.091** General Approach and Purpose

10.20.100	Waivers
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APPENDIX A: Small Site Erosion Control Guide

APPENDIX B: Town of Essex Erosion and Sediment Control Permits Application

APPENDIX C: Stormwater Management Permit and Plan

APPENDIX D: Stormwater Management Design Criteria

*Prior ordinance history: Ordinances passed 11/16/05, 7/18/14.

10.20.010 General Provisions

This chapter is adopted pursuant to the Town's enabled right to adopt ordinances, bylaws, and regulations according to Section 103(a), et seq. of the Town of Essex Charter, and Sections 3508 and 3617 of Title 24, Vermont Statutes Annotated.

10.20.011 Basis for the Ordinance

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response and water quality aspects of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, sediment transport and deposition and the concentration of waterborne pollutants and pathogens.
- B. Clearing and grading during construction tend to increase soil erosion and reduce the native vegetation important for terrestrial habitat, for stream regulation through shading and for maintenance of natural food cycles important to food chains and aquatic habitat.
- C. Improper design and construction of storm water management practices can increase downstream flooding and increase the velocity of storm water runoff causing stream bank erosion and build-up of sedimentation.
- D. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow.
- E. Storm water runoff, soil erosion and non-point source pollution can be controlled, minimized and in some cases eliminated through the regulation of storm water runoff from land development activities. Illicit discharges must be eliminated.

F. The regulation of storm water discharges from new development and redevelopment of existing sites, the elimination of illicit discharges and the control of erosion and sediment discharge is in the public interest and will minimize threats to public health and safety

G. Economic loss and stream water quality degradation can result from these adverse impacts. Pet and wildlife wastes in storm water may raise bacteria levels, potentially resulting in loss of recreation use of the streams and Lake Champlain.

§10.20.012 Purpose

The purpose of this chapter is to provide for increased regulation to address the items outlined in Section 10.20.011 and to thereby protect the public health, safety, and general welfare of the Town of Essex through the establishment of storm water best management practices in the following areas:

- A. Illicit Discharges (reference Section 10.20.050).
- B. Erosion and Sediment Control (reference Section 10.20.060).
- C. Development Storm Water Management (reference Section 10.20.070).
- D. Storm Water Control, Operation, and Maintenance (reference Section 10.20.080).
- E. Riparian Buffer Zones (reserved for the future)

In addition, this chapter ensures compliance with the storm water management provisions of the Small Municipal Separate Storm Sewer Systems (MS4), General Permit No. 3-9014, for those construction sites and post construction storm water management projects which disturb one acre or more of earth.

§10.20.013 Applicability.

This chapter applies to all property within the Town of Essex, Vermont outside the Village of Essex Junction and shall apply specifically as indicated in other sections by topic matter in this Ordinance.

§10.20.014 Documents Incorporated by Reference.

The latest versions of the following documents are incorporated herein by reference:

- A. *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations.*
- B. *Town of Essex Outside the Village of Essex Junction Official Zoning Bylaws.*
- C. *Town of Essex Standard Specification for Construction.*
- D. *Vermont Storm water Management Manual, Volumes I and II.*
- E. *Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites*
- F. *Town of Essex Storm Water Management Plan dated April 2003*

10.20.015 Definitions.

As used in this chapter:

“Accelerated erosion” means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn by the action of water, wind, or chemical action.

“Applicant” means a property owner or duly designated agent who files an application for a land disturbance activity.

“Authorization to Discharge Permits” means permits issued by the State of Vermont to discharge storm water into receiving water bodies, which may or may not be valid permits at time of adoption of Section 10.20.090 of this Ordinance.

“Best management practices” (BMP’s) means schedules of activities, prohibitions of practices, maintenance procedures, the use of pollution control devices and other management practices to prevent or reduce the amount of pollution introduced to receiving bodies of water from storm water runoff. BMP’s can include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Building” is as defined in Article XXVII of the Town of Essex Zoning Bylaws, as amended.

“Channel” means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

“Clean Water Act” means the federal Water Pollution Control Act (33 USC §1251, et seq.), and any subsequent amendments thereto.

“Clearing” means any activity that removes the vegetative surface cover.

“Construction activity” means activities such as clearing and grubbing, grading, excavating, and demolition. Coverage for construction site runoff under the State of Vermont General Permit may be required for projects resulting in land disturbance of one acre or more of land.

“Conveyance” means the process of water moving from one place to another.

“Detention” means the temporary storage of storm water runoff in a storm water system with the goal of controlling peak discharge rates and providing gravity settling of pollutants.

“Detention facility” means a detention basin or alternative structure designed to temporarily store stream flow or surface runoff and to gradually release stored water at controlled rates.

“Development” is as defined in Article XXVII of the Town of Essex Zoning Bylaws, as amended.

“Drainage easement” means a legal right granted by a landowner to a grantee allowing the use of land for storm water management purposes.

“Drainage way” means a channel that conveys surface runoff through the site.

“Erosion” means when land is diminished or worn due to wind or water. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road building, and timber harvesting.

“Erosion and sediment control plan” means a plan that indicates the specific measures and their sequencing for use to control sediment and erosion on a development site during and after construction.

“Existing development” means a development that was built prior to the effective date of the adoption of this Ordinance.

“Expired storm water permits” means storm water permits previously issued by the State of Vermont that are no longer current.

“Flow Restoration Plan (s)” means a stream flow plan required by the State of Vermont designed to implement storm water runoff controls producing runoff characteristics that return stream flows to compliant, stable flow conditions as required to meet the water-quality based TMDL requirements for a particular impaired waterway.

“Grading” means excavation or fill of material, including the resulting conditions thereof.

“Hazardous materials” means any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hotspot” means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

“Hydrologic soil group” (HSG) means a Natural Resource Conservation Service classification in which soils are categorized into 4 runoff potential groups. The groups range from “A” soils with high permeability and little runoff production to “D” soils that have low permeability rates and produce much more runoff.

“Illicit discharge” means any direct or indirect non-storm water discharge to the storm drain system, except as may be exempted under this chapter.

“Illicit connections” means either of the following definitions:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency.
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

“Impaired waterways” means rivers, lakes, or streams that do not meet one or more water-quality standards, and therefore are considered too polluted for their intended uses.

“Impervious cover” means human-made surfaces including, but not limited to, paved and unpaved roads, parking areas, building roofs, driveways (paved and unpaved) walkways and compacted surfaces, from which precipitation runs off rather than infiltrates. A measure of imperviousness is a “C” value for runoff under of the Unified Soil Classification System of .70 or greater.

“Industrial activity” means activities subject to NPDES Industrial Permits as defined in 40 CFR §122.26(b)(14).

“Industrial storm water permit” means a NPDES permit issued to a commercial industry or group of industries that regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

“Infiltration” means the process of percolating storm water into the subsurface.

“Infiltration facility” means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above or below grade.

“Jurisdictional wetland” means an area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

“Land disturbance activity” means any activity that changes the volume or peak flow discharge rate of rainfall runoff from the land’s surface. This may include grading, digging, cutting, scraping, or excavating soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or human-made watercourse.

“Landowner” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

“Maintenance agreement” means a legally recorded document that acts as a property deed restriction and that provides for long-term maintenance of storm water management practices.

“Maximum extent practicable” (MEP) means the requirement in the federal Clean Water Act permitting discharges from municipal storm sewers to include controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the state of Vermont determines appropriate for the control of such pollutants.

“Minimum control measures” means any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

“MS4” means the municipal separate storm water system.

“National Pollutant Discharge Elimination System” (NPDES) means the name of the surface water quality program authorized by Congress as part of the 1987 Clean Water Act. This is EPA’s program to control the discharge of pollutants to waters of the United States and means a permit issued by EPA (or by a state under authority delegated pursuant to 33 USC §1342(b)) authorizing 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 the construction of new impervious surfaces on a tract or tracts of land occurring after the effective date of this Ordinance.

“Non-impaired waterways” means rivers, lakes, or streams that currently meet the designated water-quality standards for the water body.

“Non-point source (NPS) pollutants” means pollutants from many diffuse sources. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters, and even into underground sources of drinking water.

“Non-public contributing storm water permittee” means a current storm water permit holder, including homeowner associations and any successors or assigns, of either a valid or expired storm water permit that is not a public entity.

“Non-public storm water infrastructure” means storm water infrastructure not owned, operated or maintained by the Town.

“Non-storm water discharge” means any discharge to the storm drain system that is not composed entirely of storm water.

“Nonstructural best management practices” means nonphysical methods or activities used to mitigate the adverse impacts of storm water runoff including, but not limited to ordinances, maintenance activities and education/outreach activities.

“Offset fee” means a monetary compensation paid to a local government for an inability to meet pollutant load reduction targets.

“Offsite” means the land within the development’s drainage area that is not owned or controlled by the permit applicant.

“Outfall” means the point where drainage discharges from a pipe, ditch, or other conveyance to a receiving body of water.

“Perimeter control” means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

“Person” means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner’s agent.

“Phasing” means clearing of a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

“Point source pollutant” means pollutants from a single, identifiable source such as a factory or refinery.

“Pollutant” means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes and solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes and yard wastes, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution, floatables, pesticides, herbicides, and fertilizers, hazardous substances and wastes, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from constructing a building or structure, and noxious or offensive matter of any kind.

“Private (storm water) system owner” means the non-public owner of a storm water system, including homeowner associations and any successors or assigns, consisting of, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems.

“Public storm water infrastructure” means storm water infrastructure such as, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems, all of which is under Town ownership or within Town easements, and which infrastructure has been accepted by the Town as a component of the Town storm water system or systems.

“Recharge” means the replenishment of underground water reserves.

“Redevelopment” means in the context of storm water, any construction, alteration, or improvement exceeding 10,000 SF on previously developed land.

“Residual Designation Authority (RDA)” means the authority granted to the United States Environmental Protection Agency and delegated to the State of Vermont to issue a permit directly to a party or parties discharging storm water to a water body where a TMDL supports such a determination and where discharges are contributing to water quality violations.

“Riparian Buffer Zone” means the width of land adjacent to streams or lakes between the top of the bank or top of slope or mean water level and the edge of other land uses. Riparian buffer zones are typically undisturbed areas that protect the waterbody and adjacent riparian corridor ecosystem from the impact of adjacent land uses.

“Riparian corridor” means the waterbody and width of adjacent land that supports a distinct ecosystem with abundant and diverse plant and animal communities and which provides for channel stability of the water body.

“Runoff” means drainage or flood discharge that leaves an area as surface flow or as pipeline flow that has reached a channel or pipeline by either surface or sub-surface routes.

“Sediment” means soil, sand, and minerals washed from land into water, usually after rain. Sediment can destroy fish-nesting areas, clog animal habitats, and cloud water so that sunlight does not reach aquatic plants.

“Sediment control” means measures that prevent eroded sediment from leaving the site.

“Shared storm water system” means a storm water system such as, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems which consist of both public and non-public storm water infrastructure.

“Sheet flow” means the portion of precipitation that moves initially as overland flow in very shallow depths before eventually reaching a stream channel.

“Site” means a parcel of land or contiguous combination thereof, where grading work is performed as a single unified operation.

“Stabilization” means the use of practices that prevent exposed soil from eroding.

“Start of construction” means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling, installation of streets and walkways, excavation for basements, footings, piers, or foundations, erection of temporary forms, and installation of accessory buildings such as garages.

“Stop work order” means an order issued requiring that all construction activity on a site be stopped.

“Storm drainage system” means facilities by which storm water is collected and/or conveyed including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Storm water” means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

“Storm water management” means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

“Storm water pollution prevention plan” means a document describing the BMP’s and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

“Storm water retrofit” means a storm water management practice designed for an existing development site that previously had either no storm water management practice in place or a practice inadequate to meet the storm water management requirements of the site.

“Storm water runoff” means flow on the surface of the ground, resulting from precipitation.

“Storm water treatment practices” (STP’s) means measures, either structural or non-structural, that are determined to be the most effective, practical means of preventing or reducing point source or non-point source pollution inputs to storm water runoff and water bodies.

“Structural best management practices” means physical features used to improve storm water quality or reduce peak flows such as detention ponds, grassed swales, sand filters, and infiltration basins.

“Substantially deteriorated” means the condition of a storm water treatment practice that would necessitate repair or reconstruction beyond that which would be considered typical, periodic maintenance for a system of similar design.

“Total maximum daily load” (TMDL) means the maximum amount of pollutants that can be released into a water body without adversely affecting the water quality.

“Unpermitted (storm water) discharges” means a system discharging storm water to a stream or watercourse that has never been issued any type of authorization to discharge storm water by either the Town or the State of Vermont.

“Urban runoff” means storm water from urban areas that tend to contain heavy concentrations of pollutants from urban activities.

“Valid storm water system” means a system which has been issued a storm water permit by the Town or the State of Vermont that is current with respect to the issuance and expiration dates of the permit.

“Wastewater” means any water or other liquid other than uncontaminated storm water discharged from a facility.

“Water quality volume” (Wqv) means the storage needed to capture and treat 90% of the average annual storm water runoff volume. Numerically Wqv will vary as a function of long-term rainfall statistical data.

“Watercourse” means a permanent or intermittent stream or other body of water, either natural or human-made, that gathers or carries surface water.

“Watershed” means that geographical area that drains to a specified point on a watercourse, usually a confluence of streams or rivers.

“Wetland” means those areas that are inundated by surface or ground water with a frequency sufficient to support plants and animals that depend on saturated soil conditions for growth and reproduction. Designated wetlands in Vermont are classified as Class I, II or III. (Ord. passed 11/16/05, Ord. passed 7/18/14 (part))

10.20.016 General Exemptions

The Illicit Discharge requirements of this Ordinance are applicable in all cases.

The following activities are exempt from review or control under this Ordinance to the extent they do not involve Illicit Discharges:

A. Agricultural and silvicultural activity, except that log landing and log haul roads are subject to the provisions of this Ordinance. In addition, logging or silvicultural activity conducted as a part of a land development application is not exempt from the general provisions of this Ordinance.

B. Repairs to any storm water management system that is deemed necessary by the Town Engineer

C. Cemetery facilities

D. Installation of fence, sign, telephone and electric poles and other kinds of fences, posts or poles.

E. Emergency activity immediately necessary to protect life, property or natural resources.

F. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for the use by that person and his/her family.

G. Land development activities that disturb less than one (1) acre.

H. Municipal activities not requiring Site Plan or Subdivision approval. Reconstruction/maintenance of municipal gravel roads shall adhere to the guidelines entitled "Vermont Better Back Roads Manual," latest version.

10.20.050 Illicit Discharges

10.20.051 Illicit Discharges - General.

This sub-chapter regulates non-storm water discharges to the storm drainage system as required by federal and state law. Methods are established for controlling the introduction of pollutants into the municipal separate storm water system (MS4) to meet the following objectives, consistent with the requirements of the State of Vermont General Permit process:

- A. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- B. To prohibit illicit connections and discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.

10.20.052 Discharge Prohibitions.

Prohibition of illicit discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited except as described herein. The following discharges are exempt from discharge prohibitions established by this sub-chapter:

- A. Flushing of water line or other potable water sources (except when a particular substance in the water is subject to control by State or federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- B. Landscape irrigation or lawn watering (unless such watering results in a direct discharge and the discharge is identified as containing pollutants or chemicals that are required to be controlled by state or federal regulation).
- C. Diverted stream flows.
- D. Rising or pumped ground water, providing such groundwater is not contaminated or polluted.

- E. Ground water infiltration to storm drains.
- F. Foundation or footing drains (not including active ground water dewatering systems) containing no contaminants or pollutants.
- G. Air conditioning condensation (except when control of a particular substance in the water is by federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- H. Uncontaminated springs.
- I. Non-commercial washing of vehicles (unless such watering results in a direct discharge and the discharge is identified as containing pollutants or chemicals that are required to be controlled by state or federal regulation).
- J. Natural riparian habitat or wetland flows.
- K. Swimming pools (if de-chlorinated– typically less than one PPM chlorine and except when control of a particular substance in the water is by State or federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- L. Firefighting activities, not including the cleanup of spills or accidents involving contaminated material such as oil spills or hazardous wastes.
- M. Any other water source not containing pollutants.
- N. Discharges specified in writing by an authorized representative of the Town of Essex as being necessary to protect public health and safety.
- O. Dye testing is an allowable discharge, if approved by the Town Engineer.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued for the discharge and administered under the authority of the US EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the Town for any discharge to the storm drain system.

Prohibition of illicit connections. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

A person is in violation of this sub-chapter if the person connects a line conveying sewage, laundry waste or other forms of gray water to the MS4 or allows such a connection to continue.

10.20.053 Suspension of MS4 Access.

Suspension due to illicit discharges in emergency situations. The Town may, without notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town Engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or water of the United States, or to minimize danger to persons.

A person commits a violation of this Ordinance if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Town Engineer.

10.20.054 Industrial or Construction Activity Discharges.

Any person subject to an industrial multi-sector permit or other separately-issued storm water permit by the Town, State or EPA shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

10.20.055 Monitoring of Discharges.

Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

Access to facilities. Authorized representatives of the Town shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to authorized representatives of the Town.

Facility operators shall allow the authorized Town representative ready access to all parts of the premises for inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES or State permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The Town shall have the right to require the discharger to install on any permitted facility such devices necessary in the opinion of the Town Engineer to conduct monitoring and/or sampling of the facility's storm water discharge at the expense of the discharger.

The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the authorized Town representative and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delay in allowing the authorized Town representative access to a permitted facility is a violation of a storm water discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits a violation of this Ordinance if the person denies the authorized Town representative reasonable access to the permitted facility for conducting any activity authorized or required by this chapter.

If the authorized Town representative has been refused access to any part of the premises from which storm water is discharged, such refusal shall be a violation of this Ordinance. The authorized Town representative may secure warrants from the applicable court having jurisdiction in cases where access is refused.

10.20.056 Requirement to Prevent, Control, and Reduce Storm Water Pollutants.

The Town has adopted best management practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States through the State of Vermont Phase II Storm-water Permit. The owner or operator of a commercial or industrial establishment shall provide, at their expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of applicable structural and non-structural BMP's. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMP's to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid Multi-sector General permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provision of this section. These BMP's shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

10.20.057 Watercourse Protection.

Every person owning property through which an intermittent or continuously flowing watercourse passes, or such person's lessee, shall not deposit in the watercourse or on the land impacted by runoff to the watercourse trash, debris, cut brush, grass or wood, pet waste and other obstacles that would pollute, contaminate, or significantly alter the natural flow of water through the watercourse. Natural blockages of the stream by wildlife are considered not the responsibility of the landowner or lessee. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Riparian buffers established as part of development approval and required by Town regulations shall be maintained by the developer and all other subsequent property owners or associations within the development.

10.20.058 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States from such facility or operation, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies and the Town Engineer of the occurrence. In the event of a release of non-hazardous materials, said person shall notify the Town Engineer no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town Engineer within 3 business days of the phone or in-person notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

10.20.060 Erosion and Sediment Control

10.20.061 Erosion and Sediment Control- General.

During construction, soil is vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Clearing and grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitat. For erosion and sediment control, this sub-chapter:

- A. Safeguards persons, protects property, and prevents damage to the environment.
- B. Promotes the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land.

10.20.062 Erosion and Sediment Control Applicability.

This sub-chapter applies to any clearing, grading, construction or land disturbance activity within the jurisdictional area of the Ordinance.

All such activities are regulated under this subchapter unless exempted under section 10.20.016

10.20.063 Disturbance of Less Than One Acre of Land

Erosion Control Permits will not be required for clearing, grubbing, grading or any land disturbance activities that involve one acre or less of contiguous disturbed land, unless a Storm Water Management Plan per Section 10.20.072 is required.

The Town shall provide erosion and sediment control standard diagrams for mandatory compliance on sites that involve less than one acre of disturbance, and that do not require a Storm Water Management Plan. The small site plan diagrams and guidelines shall be provided with the issuance of each building permit issued within the Town and shall be available for all persons within the Town at the Town offices. The information is contained in Appendix A. Non-compliance with any of the provisions within Appendix A is a violation of this Ordinance, subject to the same legal remedies and fines as under the main body of the Ordinance.

Compliance with the erosion control guidelines is also required for individual building construction performed within a larger subdivision or project which is subject to additional conditions imposed under a broader Town or State issued General Permit for Construction Site Runoff.

10.20.064 Applicability of State Erosion and Sediment Control Permits

The Town shall accept a State of Vermont General Permit for construction site runoff as evidence of meeting Town erosion and sediment control permit requirements for those projects which fall under the jurisdiction of the State requirements. If a state permit is accepted as evidence of compliance with the Town Ordinance, a separate Town application will not be required and Town storm-water permit fees shall be waived.

10.20.065 Permit Required

No person shall be granted a permit for construction activities disturbing more than one acre of land without the Town Engineer's approval of an erosion and sediment control plan.

Appendix B to this Ordinance contains the requirements for inclusion in an Erosion and Sediment Control Permit issued by the Town. Each permit application shall be accompanied by a non-refundable permit application fee as established by the Selectboard, which shall be reviewed annually. Incomplete applications will not be accepted. The erosion and sediment control plan shall be submitted by a registered professional engineer in the State of Vermont or by a licensed and certified erosion control technician. Each application shall include a statement that any land clearing, construction, or development involving the disturbance of at least one acre of earth shall be in accordance with the erosion and sediment control plan and that an authorized representative of the applicant shall be onsite or readily accessible on all days when construction or grading takes place.

The applicant shall file with the Town, if required based upon the scope of the work, a faithful form of improvement security, such as a letter of credit or similar financial instrument, in an amount deemed sufficient by the Town to cover all costs of improvements, landscaping and maintenance of improvements for such period as specified by the Town, including any necessary amount to cover inflationary and contingency costs, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site. If the project is included as part of an overall development involving a formal letter of Credit and Highway Agreement, the estimated costs for erosion control compliance may be included as a line item in the overall development letter of credit.

Review and approval. The Town shall review each application for an erosion and sediment control permit to determine its conformance with the provisions of this regulation. Within 15 business days after receiving an application deemed complete by the Town, the Town shall, in writing: approve the permit application; approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or, disapprove the permit application, indicating the reason(s).

10.20.066 Erosion and Sediment Control Plans.

A description and listing of the plan requirements is contained in Appendix B.

10.20.067 Construction Site Access and Driveway Requirements.

All construction site accesses shall meet the minimum requirements for a construction access road as contained in Appendix A. In addition:

- A. The Town may require more stringent site access requirements if conditions warrant or if the construction site access is not maintained in an acceptable condition.
- B. All persons within the Town of Essex are required to take preventative action to prevent the tracking of sediment from construction sites and driveways onto Town or State roads. Immediate action shall be taken by the responsible persons to wet sweep the road and to clean any catch basins or remove such sediment from drainage ditches affected by the tracking of sediment onto paved roadways. Failure to comply shall be a violation of this Ordinance, subject to the remedies contained therein.

10.20.068 Inspection.

The Town Engineer or his representative shall make inspections on an as needed basis.

For projects operating under a Town approved and issued erosion control plan, periodic scheduled inspections are required by the design engineer or licensed technician to certify the status of the implemented plan. The following inspection schedule is a requirement of the issued permit:

- A. Start of construction.
- B. Installation of sediment and erosion measures;
- C. Completion of final grading;
- D. Close of the construction season (if multi-season);
- E. Completion of final landscaping and following clean-up of all impacted Town infrastructure, such as catch basins, storm water piping and detention basins.

The permit holder shall notify the Town Engineer or his authorized representative at least 24 hours in advance of the scheduled inspections by the certifying engineer or licensed technician.

All inspections shall be documented in writing and submitted to the Town Engineer as specified by the approved permit.

The authorized representative of the Town shall enter the property of the applicant as deemed necessary to conduct periodic inspections.

Failure to inspect or keep a written record of the inspection as required shall be considered a violation of this Ordinance.

10.20.070 Development Storm Water Management

10.20.071 Development Storm Water Management - General.

This subchapter establishes minimum storm water management requirements for new development/redevelopment to augment existing Town development regulations and to provide controls to protect and safeguard the general health, safety, and welfare of the public. This subchapter:

- A. Minimizes increases in storm water runoff from new development/redevelopment to reduce flooding, siltation, and streambank erosion.
- B. Minimizes increases in non-point source pollution caused by storm water runoff from development that would otherwise degrade water quality.
- C. Minimizes the total annual volume of surface water runoff that flows from any specific site during and following development to not exceed the predevelopment hydrologic regime to the maximum extent practicable.
- D. Reduces storm water runoff rates and volumes, soil erosion, and non-point source pollution, wherever possible, through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

10.20.072 Development Storm Water

Management Applicability.

This subchapter applies to all subdivision and site plan applications for new development and redevelopment activities that create new or is an expansion of old impervious surfaces that are equal to or greater than one-half (1/2) acre.

In addition, this subchapter applies to land development activities smaller than the minimum applicability criteria if such activities are part of a larger common plan of development (Master Plan, Planned Residential Development, Planned Unit Development) meeting the applicable criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.

Exemptions. The following activities shall be exempt from the provisions of this chapter:

Additions/modifications to existing single-family residential structures.

Permit required. No landowner or land operator shall receive any Town permit, including a Zoning Permit, required for new development or redevelopment projects that creates a new or expanded impervious area of one-half (1/2) acre or more without first meeting the requirements of this chapter.

Application requirements. Unless specifically excluded by this chapter, any person desiring a permit for a new development or redevelopment project creating or disturbing one acre or more of land and/or creates a new or expanded impervious land area of one-half acre (1/2) acre or greater shall submit to the Town Engineer a Development Storm-water Permit application on a form provided for that purpose.

State permits. Projects requiring a State Stormwater permit may submit a copy of the issued State permit with supporting documentation as evidence of compliance with the requirement for a Town Development Storm-water Management Permit. The permit requirements are found in Appendix C.

Unless otherwise exempted by this chapter, a Development Storm-water Management Permit application must be accompanied by the following for an application to be considered complete: a storm water management plan; a maintenance agreement; an erosion and sediment control permit per Section 10.20.065, if applicable and a non-refundable permit review fee. The storm water management plan shall be prepared to meet the requirements of this chapter, and the fees shall be those established by the Selectboard of the Town, which shall be reviewed annually.

Application review fees. The fee for review of a Development Storm-water Management permit shall be based on the amount of new or disturbed impervious land. The fee shall be used to support local plan review, inspection, and program administration or related municipal storm water projects or storm-water related taskings. The fee must be submitted with the application prior to the issuance of any Zoning Permit for construction.

Application procedure. Applications for Development Storm-water Management Permit Applications must be filed with the Town. An original and three copies of the permit application shall be submitted, including four copies of all supporting documents. Within 15 business days of the receipt of a complete application, including all documents as required by this chapter, the Town shall inform the applicant whether the application, plan, and maintenance agreement is approved, approved with conditions, or disapproved. If the permit application, final storm water management plan, and maintenance agreement are approved (with or without conditions), a Development Storm-water Management Permit shall be issued.

Permit duration. Permits issued under this section shall be valid from the date of issuance through the date three years after the Town notifies the permit holder that all storm water management practices have passed final inspection.

Other related permits. Issuance of a local Development Storm-water Management Permit does not negate the requirement of the applicant to obtain State or other storm-water permits as may be required.

10.20.073 Storm Water Design Manual.

The storm water manual as referenced in this chapter refers to the technical analysis and design standards specified in the *Vermont Storm Water Management Manual* (volumes I and II), latest revision.

10.20.074 General Performance Criteria.

The following performance criteria shall be addressed for storm water management at all sites:

- A. All site designs shall establish storm water management practices to control the peak flow rates of storm water discharge associated with specified design storms, as noted in the Vermont Storm Water Management Manual, Volumes I and II, aimed at reducing the generation of storm water. These practices should seek to use pervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide for both water quality treatment and control of quantity.
- B. All storm water runoff generated from new development shall not discharge storm water directly into a jurisdictional wetland or local water body without adequate treatment. Where such discharges are proposed, the impact of the proposal on wetland functional values shall be assessed using a method acceptable to the Town. In no case shall the allowable impact on functional values be any less than the impact allowed by the Army Corps of Engineers (ACE) or the state wetlands office (or its successor).
- C. Annual groundwater recharge rates shall be maintained by promoting infiltration through the use of structural and non-structural methods. At a minimum, annual recharge from the post development site shall be at the same rate as the annual recharge from pre-development site conditions.
- D. For new development, structural storm water treatment practices, where required, shall be designed at a minimum to remove 80% of the average annual post development total suspended solids load (TSS) and 40% of the total phosphorus load, unless a TMDL has been established requiring a more stringent criteria in the receiving water. It is presumed that a STP complies with this performance standard if it is: sized to capture the prescribed water quality volume; designed according to the specific performance criteria outlined in the current state storm water manual; constructed properly; and maintained regularly.
- E. To protect stream channels from degradation, a specific channel protection criteria shall be provided as prescribed in the current state storm water manual.
- F. Storm water discharges to critical areas with sensitive resources (e.g., swimming areas, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to use or restrict certain storm water management practices.
- G. Certain industrial sites are required to prepare and implement a storm water pollution prevention plan and shall file a notice of intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES) general permit. The storm water pollution prevention plan requirement applies to existing and new industrial sites.
- H. Storm water discharges from land uses or activities with higher potential pollutant loadings, know as "hotspots," may require the use of specific structural STP's and pollution prevention practices.
- I. Prior to design, applicants are required to consult with the Town to determine if they are subject to additional storm water design requirements.
- J. The calculations for determining peak flows as found in the current storm water design manuals shall be used for sizing all storm water management practices.
- K. An evaluation may be required of any downstream impacts.

10.20.075 Basic Storm Water Management Design Criteria.

Minimum control requirements are contained in Appendix D to this Chapter, which is incorporated herein by reference.

Maintenance agreements. All storm water treatment practices shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the storm water treatment practices and to perform routine maintenance as necessary to ensure proper functioning of the storm water treatment practice. In addition, a legally binding covenant specifying the parties responsible for the proper maintenance of all storm water treatment practices shall be secured prior to issuance of any permits for land disturbance activities.

On projects involving storm-water systems that will ultimately become the responsibility of the Town because of location in the public right of way or on public land, the maintenance agreement shall identify the responsibilities of all parties from permit approval through transfer of responsibility to the Town.

10.20.076 Requirements for Development Storm Water Management Plan Approval.

A storm water management plan is required for all developments, meeting the criteria of section 10.20.072. No application for development, meeting the criteria of section 10.20.072, will be approved unless it includes a storm water management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by a professional engineer and must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of practices. The complexity and details of the submitted plan may vary depending upon the extent of the submitted project.

The storm water management plan(s) shall be referred for comment to all other interested agencies, and any comments must be addressed in a final storm water management plan. This final plan must be signed by a licensed, professional engineer, who will verify that the design of all storm water management practices meet the submittal requirements. No building permit shall be issued until a satisfactory final storm water management plan, or a waiver thereof, shall have undergone a review and been approved by the Town after determining that the plan or waiver is consistent with the requirements of this chapter.

10.20.077 Construction Inspection.

The applicant must notify the Town in advance before the commencement of construction. Regular inspections of the storm water management system construction shall be conducted by the professional design engineer and certified upon completion to the Town.

The Town shall also conduct periodic inspections as verification of the work progress and compliance with the approved plans. All inspections shall be documented and written reports prepared that contain the following information: date and location of the inspection; whether construction is in compliance with the approved storm water management plan; variations from the approved construction specifications; and, any violations that exist.

If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. All corrective actions shall be made within a reasonable time as determined by the Town. If corrective actions are not taken in accordance with the Town's schedule, it shall be considered a violation of this Ordinance subject to the penalties established herein. If the situation

is determined to pose an immediate threat to the environment or the public health, safety and welfare, the Town may order work to cease on the project until the corrections are satisfactorily completed.

10.20.078 As-built Plans.

All applicants shall submit actual “as-built” plans for any storm water management practices after final construction completion. The plan must show the final design specifications for all storm water management facilities and must be certified by a professional engineer. A satisfactory final inspection by the Town Engineer is required before the release of any performance securities may occur.

If the final construction is substantially different from the approved plans, a final plan amendment may be required as part of the development review process.

10.20.079 Landscaping and Stabilization Requirements.

Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be re-vegetated within 10 business days from the substantial completion of such clearing and construction, or as otherwise approved by the Town. The criteria for vegetative cover are identified in Appendix D.

A landscaping plan must be a component element of the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape planner or other qualified person, and must be approved prior to receiving a permit. A landscaping plan submitted in compliance with other Town requirements as noted in the Subdivision Regulations or Zoning Bylaws will satisfy the requirements in this Ordinance provided the landscaping plan addresses the requirements of this Ordinance.

10.20.080 Storm Water Control, Operation and Maintenance.

10.20.081 Design.

All storm water Best Management Practices (BMP’s) shall be designed to minimize the need for maintenance and reduce the chance of failure in accordance with the design guidelines outlined in the most current state storm water management manual.

Storm water easements and covenants shall be provided by the property owner for access for facility inspections and maintenance. Easements and covenants shall be recorded in the Town Land Records for any storm water discharge permit.

10.20.082 Routine Maintenance.

All storm water BMP’s shall be maintained according to the measures outlined in the current state storm water management manual or as directed in approval documents issued by the Town specific to the permit.

10.20.083 Maintenance Easement.

Prior to the issuance of any permit that has a storm water management facility as one of the requirements of the permit, the property owner of the site must execute a maintenance access agreement that shall be binding on all subsequent owners of land served by the storm water management facility. The agreement

shall provide for access to the facility at reasonable times for periodic inspection by the Town and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement agreement shall be recorded in the Town Land Records.

10.20.084 Maintenance Covenants.

Maintenance of all storm water management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the Town and recorded in the Town Land Records prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the storm water management facility. The covenant shall include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

The Town, in lieu of a maintenance covenant, may accept dedication of an existing or future storm water management facility for maintenance, provided such facility meets all the requirements of this chapter, includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance, and the components of the system are entirely within a Town right-of-way or Town easement. All storm water management facilities must undergo, at a minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this chapter and accomplishment of its purposes. These needs may include: removal of silt, litter, and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any identified maintenance needs must be addressed in a timely manner, as determined by the Town, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the storm water management facility.

10.20.085 Maintenance Inspections.

Inspection programs. Inspection programs may be established on any reasonable basis including, but not limited to: routine inspections; random inspections; inspections based on 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 that are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES storm water 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 storm water treatment practices.

Right-of-entry for inspection. 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, sanitary sewer or combined sewer, the property owner shall grant to the Town 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 chapter is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

10.20.086 Records of Installation and Maintenance Activities.

Parties responsible for the operation and maintenance of a storm water management system including but not limited to catch basins, pipes and treatment systems shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least 5 years. These records shall be made available to the Town during inspection of the facility and at other reasonable times upon request.

10.20.087 Failure to Maintain Practices.

If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the Town after reasonable notice may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the Town shall notify the party responsible for maintenance of the storm water management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to effect maintenance and repair of the facility in an approved manner. After proper notice, the Town may assess the owner of the facility for the cost of repair work and any penalties, and the cost of the work shall be a lien upon the real estate furnished with such service in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 of Title 32 and shall be an assessment enforceable under the procedures set forth in section 3504 of Title 24.

10.20.090 Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction (the "Town") to NPDES MS4 General Permit 3-9014.

A. The Vermont Agency of Natural Resources Department of Environmental Conservation ("DEC") issues Authorization to Discharge Permits under General Permits for area or site-specific storm water discharges to applicants, including municipalities, private parties, and shared storm water systems involving both privately-owned and publicly-owned components.

B. Valid storm water system discharge permits have been issued by the DEC for projects in the non-impaired and impaired waterways within the Town, and the Town has either accepted full responsibility for such permits in these waterways or shared permit responsibility based upon the percentage of impervious area contributed by the publicly-owned component of the system in comparison to the impervious area contributed by the privately-owned component.

C. As of the adoption of this Ordinance, valid storm water system discharge permits have not been issued to expired storm water permit holders in the impaired waterways due to the inability to legally authorize, under State law, renewal of the previously issued Authorization to Discharge Permits.

D. Current responsibility for previously issued expired storm water permits and valid storm water system discharge permits in the impaired watersheds in the MS4 area varies widely. In some cases, there is a well-defined chain of responsibility from the "owner" of the original permit to the current permit holder. In other cases, permit responsibility is either poorly defined or non-existent notwithstanding that permit responsibility runs with the land. Some expired and valid (permit) discharges are defined in the original permit as directly to a stream or water body; in others, they are defined as being directed to or connected into a shared storm water system.

E. Pre-existing unpermitted storm water discharges occur within the impaired and non-impaired waterways. These discharges were either never issued permits or the discharges occurred before DEC

began issuing discharge permits. Pre-existing unpermitted storm water discharges into impaired waterways may obtain legal coverage under the MS4 general permit in the manner outlined in this Ordinance.

F. The Village of Essex Junction (“Village”) regulates storm water discharges through its Land Development Code. The Village intends to amend its Ordinances to incorporate the terms of this Town Ordinance, which is intended to apply to storm water discharges in the Town, inclusive of the Village. To the extent the terms of this Ordinance conflict with the Village Ordinance, the Town Ordinance governs.

G. For purposes of this Ordinance, the “appropriate legislative body” for the Town outside the Village shall be the Selectboard, and for the Village, the Board of Trustees. Either appropriate legislative body may delegate its authority under this Ordinance to an appropriate municipal panel. (Ord. passed 7/18/14)

10.20.091 General Approach and Purpose

A. The Town seeks to develop consistent policy and procedures for determination of storm water permit responsibility for both valid storm water system discharge permits and expired storm water permits, and to establish minimum requirements for transfer of expired and future new permit responsibility by and between the appropriate parties.

B. MS4 responsibility for operation, repair and maintenance of storm water infrastructure extends only to public storm water infrastructure and proportional shared responsibility on shared storm water systems, and is separate and distinct from permit responsibility. The Town may accept permit responsibility if determined by the appropriate legislative body to be in the Town’s best interests. Factors to be considered when determining whether acceptance of permit responsibility is in the Town’s “best interests” include, but are not limited to, whether improved water quality is not otherwise obtainable without additional Town participation, potential cost savings to the Town, or provision of land or easements for treatment or storage of storm water for shared systems. The non-public contributing storm water permittee shall be responsible for the operation, maintenance, repair, replacement and upgrade of the non-public infrastructure, unless the Town determines that accepting some or all of this responsibility to be in its best interests as defined above. (Ord. passed 7/18/14)

10.20.092 NPDES Phase 2 MS4 Requirement for Expired Authorization to Discharge Permits

A. The Vermont Agency of Natural Resources (VANR) Authorization to Discharge Permit Number 7025-9014 issued to the Town and Authorization to Discharge Permit Number 7024-9014 issued to the Village under NPDES MS4 General Permit 3-9014 requires the Town and the Village, separately as MS4 permittees, to submit to the Secretary of VANR a plan for addressing expired storm water permits discharging to the MS4 permittee’s system, which was accomplished through the proposed adoption of this Ordinance.

B. A compliance date of October 2015 is set within the Authorization to Discharge Permits for verification of the condition of all public and non-public storm water infrastructures identified in and approved under each original expired permit.

C. On expired permits within the impaired waterways or with regard to discharges that have no permits in the impaired waterways, it is the intent of the VANR to either have these permits ultimately come under the umbrella of the Town MS4 Permit or issue Residual Designation Authority (RDA) permits

directly to each permittee or party responsible for the storm water discharge not covered under the MS4 umbrella permit. (Ord. passed 7/18/14)

10.20.093 Classification of Storm Water Systems within the Town as Relates to Authorization to Discharge Permits.

A. Due to the complexity and variety of existing permit “ownership” and types of permits, the Town has classified all valid storm water system discharge permits and all expired storm water permits into one of the following four types for purposes of determining permit responsibility:

1. Type 1 Storm Water System:

a. A Type 1 storm water system consists of a system of storm water infrastructure that is entirely on public land (public rights of way, municipally-owned property or on public storm water easements) and owned by the Town, including residential subdivisions or groups of houses with no non-public storm water infrastructure, such as privately-owned catch basins or privately-owned storm water pipelines connected into storm water systems on public land (excluding private underdrain systems). For purposes of this Ordinance, a “private underdrain system” is storm water infrastructure serving individual private lots or buildings from the private lot or building to the point of interconnection with public storm water infrastructure.

b. Examples of Type 1 storm water systems include:

1) Public buildings such as municipal offices, police stations, fire stations, municipal highway garage complexes, schools or other educational facilities with no on-site storm water infrastructure (other than underdrains connected with public storm water infrastructure) which do not discharge directly into a stream, and/or similar facilities.

2) Residential subdivisions with valid or expired permits in the Town. Those residential subdivisions presently identified by the Town as meeting the Type 1 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.

c. Type 1 storm water systems do not include any private lot, residential subdivision or groups of housing covered under an expired storm water permit that has non-public storm water infrastructure such as catch basins and pipelines (excluding private underdrain systems) connected into public storm water infrastructure.

2. Type 2 Storm Water System:

a. A Type 2 storm water system consists of a system of storm water infrastructure that is entirely contained on private property, discharges directly or indirectly to a stream or other recognized water body and is not directly connected by piping to a Type 1 or Type 3 storm water system.

b. Examples of Type 2 storm water systems include:

1) Private residential, commercial or industrial systems that retain all storm water flows onsite as originally designed and have valid or expired permits for such discharge, and private residential, commercial or industrial systems that discharge some or all of their storm water flows to a stream or other recognized water body.

2) Select storm water systems in the Town. Those private residential, commercial or industrial systems presently identified by the Town as meeting the Type 2 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 maybe revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.

3. Type 3 Storm Water System:
 - a. A Type 3 storm water system consists of a shared storm water system covered under either valid and/or expired storm water permits that combines storm water flow from both public and non-public storm water infrastructure before discharging storm water directly or indirectly into a stream, swale or other method of water conveyance to waters of the State.
 - b. Examples of Type 3 storm water systems include:
 1. Non-public storm water infrastructure systems that discharge directly to public storm water infrastructure; public storm water infrastructure systems that discharge to non-public storm water infrastructure; public and non-public infrastructure systems that discharge to a common storm water pond or open swale on public or private property or to an outfall pipe leading to a stream, swale or other conveyance to a recognized water body; other systems that combine storm water flow from both public and non-public storm water infrastructure; prior to valid storm water permits involving both public and non-public components covered under one issued permit with responsibility defined in the permit between public and non-public contributors to a storm water system.
 2. Those combined public-private systems in the Town presently identified by the Town as meeting the Type 3 criterion as listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.
- B. Prior to adoption of this section, the Town has not accepted full or shared permit responsibility for Authorization to Discharge permits within the impaired watersheds. (Ord. passed 7/18/14)

10.20.094 Methodology for Establishment of Permit Responsibility for Each Type of Storm Water System

A. Type 1 Storm Water Systems

1. The Town accepts responsibility for all valid Type 1 storm water system permits in the non-impaired waterways, all expired Type 1 storm water system permits in the impaired waterways, and all future Type 1 storm water system permits. These permits will be consolidated under the Town's NPDES MS4 General Permit 3-9014.
2. The Town accepts responsibility for the operation, maintenance, repair, replacement and upgrade of all public storm water infrastructure included in Type 1 storm water systems, with the exception of private underdrain systems and overland storm water flow systems from private lands such as driveways, open swales, and vegetated land. Such private underdrain systems and overland flow systems shall remain the responsibility of the property owner.
3. Acceptance of storm water permit responsibility by the Town does not relieve individual property owner(s) or housing and/or homeowner association(s), of any successor(s) and assign(s), from compliance with other sections of the Town's storm water ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.

B. Type 2 Storm Water Systems

1. The Town shall have no responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water

permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate legislative body, in its sole discretion, to be in the Town's best interests, as defined in Section 10.20.091.B above, to accept some or all of this responsibility.

2. The Town may accept MS4 permit responsibility for valid or expired Type 2 storm water system permits if requested by the current private storm water system owner and provided the following conditions are satisfied:

a. The private storm water system owner under an original valid or expired permit enters into a written agreement with the Town prior to January 1, 2015, which includes, at a minimum, the requirements set forth in section 10.20.094.b, below. A form of the Type 2 Storm Water System Agreement is provided in Appendix B to this Ordinance. If the private storm water system owner has not entered into a written agreement with the Town by January 1, 2015, the Town will request the State to use its RDA to require permit compliance by the holder of the expired Type 2 storm water permit.

b. The written agreement specified in section 10.20.094.a shall, at a minimum, require the following:

i. All applicable permit fees, including initial fees and all future renewal fees, if any such fees are required, shall be paid by the Type 2 private storm water system owner;

ii. The Type 2 private storm water system owner shall allow the Town to hire a professional engineer, at no cost to the holder of the Type 2 storm water permit, to inspect and certify that the Type 2 non-public storm water infrastructure is in compliance with the infrastructure requirements as contained in the expired permit. The certification shall occur prior to August 1, 2015. Alternatively, the current holder of the expired non-public storm water permit may hire a professional engineer, acceptable to the Town, to perform the necessary inspection and certification. Future inspections that occur after the initial certification inspection of Type 2 non-public storm water infrastructure shall be conducted by the Town at no charge to the private storm water system owner;

iii. The Type 2 non-public contributing storm water permittee shall correct any deficiencies noted as a result of the engineer's inspection at their own expense prior to the August 1, 2015 date for system certification;

iv. The Type 2 non-public contributing storm water system permittee shall be responsible for permanent maintenance, repair, replacement and upgrade if necessary of all elements covered under the Type 2 storm water system permit, the Town shall conduct annual system compliance inspections to verify the condition and maintenance of the Type 2 storm water system and report findings to the State and the responsible party identified under the Type 2 storm water system permit;

v. The Type 2 non-public contributing storm water system permittee shall sweep clean all paved private roadways or parking lots at least twice a year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump, or enter into an agreement with the Town to perform the services for a fee;

vi. The failure of the Type 2 non-public contributing storm water system permittee to perform the required actions under b. iv. and v. shall be deemed a violation of this Ordinance and shall subject the non-public contributing storm water system permittee to penalties under section 10.20.112. The Town has the right but not the obligation to take the necessary actions to ensure that the required maintenance is performed and otherwise correct any violation of this

Ordinance. The provisions of section 10.20.116 of this Ordinance shall apply in the event the costs for the maintenance or correcting the violation are not paid by the non-public contributing storm water system permittee; and

vii. The cost of required storm water upgrades to the Type 2 storm water system to meet the Town's adopted and State approved FRP shall be borne by the non-public contributing storm water system permittee unless it is determined by the Town to be in its best interests as defined in Section 10.20.091.B above to participate in some or all of the system upgrade project or project costs.

3. Any prior written agreements entered into by the Town and non-public contributing storm water system permittees shall remain in full force with respect to cost sharing and operation, maintenance, repair and replacement of existing storm water infrastructure.
 - a. Permit responsibility and upgrades to meet the FRP are separate elements of storm water responsibility not defined in previous agreements and therefore this Ordinance is the controlling document relative to permitting.
 - b. In the event of any conflict between pre-existing agreements and the Ordinance, the pre-existing agreements shall control.
4. Acceptance of partial storm water permit responsibility by the Town shall not relieve non-public contributing storm water system permittees from compliance with all other elements of the storm water ordinance or State environmental regulations, including but not limited dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.

C. Type 3 Storm Water Systems

1. The Town will not accept responsibility for operation, maintenance, repair, replacement and upgrade to meet an approved FRP of non-public storm water infrastructure identified in a valid or expired storm water permit or non-public storm water infrastructure added subsequent to the original version of the valid or expired permit, unless it is determined by the appropriate legislative body, in its sole discretion, to be in the best interests of the Town, as defined in Section 10.20.091.B. above, to accept some or all of this responsibility.
2. The Town will accept MS4 permit responsibility on a proportional basis by relative impervious area contributed within the permitted area of the shared storm water system for the valid or expired Type 3 storm water system permit if requested by the non-public contributing storm water system permittee and provided the following conditions are satisfied:
 - a. The Type 3 non-public contributing storm water permittee shall enter into a written agreement with the Town prior to January 1, 2015, which includes, at a minimum, the requirements set forth in Section 10.20.094.b.i-vii above. A form of the Type 3 Storm Water System Agreement is provided in Appendix C to this Ordinance. If the non-public contributed storm water system permittee has not entered into a written agreement by January 1, 2015, the Town will request the State to use its RDA to require permit compliance by the Type 3 non-public contributing storm water permittee.
 - b. If the Type 3 non-public contributing storm water system permittee elects not to enter into a shared agreement with the Town on MS4 permit responsibility, the Town shall comply with the requirements pertaining to the public storm water infrastructure, and may request the State to

use its RDA over that portion of the shared storm water system not included within an agreement with the Town.

c. All applicable permit fees, including initial fees and all future renewals, if such fees are required, shall be shared between the municipality and the non-public contributing storm water permittee on the basis of relative impervious area, unless the appropriate legislative body determines that it is in the Town's best interests, as defined in Section 10.20.091.B above, that such fees shall be paid either on a larger percentage than relative impervious area or in full by the Town. If the Town accepts permit responsibility, then the intent is to consolidate the permit under the municipal NPDES MS4 General Permit 3-9014.

3. Any prior written agreements entered into by the Town and the Type 3 non-public contributing storm water system permittee shall remain in full force with respect to cost sharing and operation, maintenance, repair and replacement of existing storm water infrastructure.

a. Permit responsibilities and upgrades to meet the FRP are separate elements of storm water responsibility not defined in previous agreements and therefore this Ordinance is the controlling document relative to these issues.

b. In the event of any conflict between executed pre-existing agreements and this Ordinance, the pre-existing agreements shall control.

4. Acceptance of MS4 Permit responsibility by the Town does not relieve non-public contributing storm water system permittees from compliance with other elements of the Town's storm water ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.

D. Type 4 Storm Water Systems

1. Other storm water systems with valid or expired storm water permits that do not qualify as a Type 1, 2, or 3 storm water system.

2. These systems shall be managed on a case by case basis, using the general procedures and methods as applicable from the three system types.

3. Permits involving the Town and VTRANS shall fall under this category, VTRANS is a separate MS4 permittee. Under a future adopted FRP for each impaired waterway, the Town will negotiate an agreement with VTRANS on the level of shared responsibility and costs for meeting the TMDL requirement of each impaired waterway. In the event an agreement cannot be negotiated with VTRANS, the Town will request VANR to use its RDA with respect to those VTRANS direct or indirect discharges contributing storm water flow to the impaired watersheds under the VTRANS MS4 permit. (Ord. passed 7/18/14)

10.20.100 Waivers.

Every applicant shall provide for storm water management as required by this chapter, unless a written request is submitted to the Town Selectboard to waive applicable portions of this Ordinance.

Input from the Town Engineer shall be obtained as to whether there is a technical basis for the granting of a waiver.

Minimum requirements for storm water management may be waived in whole or in part provided at least one of the following conditions applies:

- A. It can be demonstrated that the proposed development will not impair attainment of the objectives of this chapter.
- B. Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan approved by the Town.
- C. Provisions are made to manage storm water by an off-site facility. The off-site facility is required to be in place, designed and adequately sized to provide a level of storm water control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for long-term operation and maintenance of the storm water practice.
- D. The Town finds meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.
- E. Non-structural practices will be used on the site that reduce: the generation of storm water from the site, the size and cost of storm water storage, and the pollutants generated at the site. These non-structural practices are explained in detail in the current state design manual and the amount of credit available for using such practices shall be determined by the Town.

In instances where one of the above conditions applies, the Town may grant a waiver from strict compliance with this chapter, as long as acceptable mitigation measures are provided. However, to be eligible for a waiver, the applicant must demonstrate to the satisfaction of the Town that the waiver will not result in any of the following impacts to downstream waterways: deterioration of existing culverts, bridges, dams, and other structures; degradation of biological functions or habitats; accelerated stream bank or streambed erosion or siltation; or increased threat of flood damage to public health, life, and property.

Furthermore, where compliance with minimum requirements for storm water management is waived, the applicant shall satisfy the minimum requirements by meeting one of the following mitigation measures approved by the Town.

Mitigation measures may include, but are not limited to, the following: the purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or re-forestation (these lands should be located adjacent to the stream corridor to provide permanent buffer areas to protect water quality and aquatic habitat); the creation of a storm water management facility or other drainage improvements on previously developed properties, public or private, that currently lack storm water management facilities designed and constructed pursuant to the purposes and standards of this chapter; monetary contributions (fee-in-lieu) to fund storm water management activities such as research and studies.

- A. Where the Town waives all or part of the minimum storm water management requirements, or where the waiver is based on the provision of adequate storm water facilities provided downstream of the proposed development, the applicant shall be required to pay a fee based on the impact of the impervious area created in an amount determined by the Town.
- B. In lieu of a monetary contribution, an applicant may obtain a waiver of the required storm water management practice by entering into an agreement with the Town for the granting of an easement or the dedication of land by the applicant, for the construction of an off-site storm water management facility. The agreement shall be entered into by the applicant and the Town

prior to the recording of a plat(s) or, if no record of a plat(s) is required, prior to the issuance of any Zoning Permit for construction.

10.20.105 Appeals.

Any applicant aggrieved by a decision of the Town not associated with a noticed violation of this Ordinance may appeal that decision in writing to the Selectboard within 15 calendar days of such decision. With public notice, the Selectboard shall hold a hearing within 30 calendar days of such an appeal and shall render a decision within 15 calendar days after the close of such hearing. Following the Selectboard's decision, any person aggrieved by the decision may appeal that decision to the appropriate court. The administrative process must be exhausted before appealing to court.

10.20.110 Enforcement.

10.20.111 Stop-work Order; Revocation of permit.

Should any person holding a development storm water permit or erosion and sediment control permit pursuant to this chapter, violate the terms of the permit or implement site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site, the Town may suspend or revoke the storm water permit.

10.20.112 Violation and Penalty.

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, fill, or cause the same to be done, contrary to or in violation of any terms of this Ordinance. Any person violating any of the provisions of this Ordinance or a permit issued hereunder shall be subject to a civil penalty of Five Hundred Dollars (\$500.00) for each violation of this Civil Ordinance.

Each day that any violation of any of the provisions of this Ordinance or a permit issued hereunder continues shall constitute a separate offense.

Any person, partnership, or corporation convicted of violating any of the provisions of this chapter shall bear the expense of any required restoration. The Town may recover all attorney's fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

10.20.113 Notice of Violation.

Whenever the Town finds that a person violates a prohibition or fails to meet a requirement of this Ordinance or any permit issued hereunder, the Town may order compliance by written notice of violation to the responsible person. Such notice may require without limitation: the performance of monitoring, analyses, and reporting; the elimination of illicit connections or discharges; that violating discharges, practices, or operations shall cease and desist; the abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; payment of a fine to cover administrative and remediation costs; and, the implementation of source control or treatment BMP's.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to re-mediate or restore within the established deadline, the work will be done by the Town or its designated contractor and the expense thereof shall be charged to the violator.

10.20.114 Appeal of Notice of Violation.

Any person receiving a notice of violation may appeal the determination of the authorized representative of the Town to the Selectboard. The notice of appeal must be received by the authorized representative of the Town or the Town Clerk within 5 business days from the date of the notice of violation. After public

notice, the Selectboard shall conduct a hearing on the appeal. The hearing shall take place within 30 calendar days of the date of receipt of the notice of appeal. The decision of the Town Selectboard shall be final, subject to appeal procedures under Vermont Statutes.

10.20.115 Enforcement Measures after Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of any appeal, within 10 business days of the decision of the Town upholding the violation, then representatives of the Town shall be authorized to enter upon the subject property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Town to enter upon the premises for the purposes set forth above.

10.20.116 Cost of Abatement of the Violation.

Within 30 calendar days after abatement of the violation, the property owner shall be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 calendar days. If the amount due is not paid within a timely manner as determined by the decision of the Town or by the expiration of the time in which to file an appeal, the charges shall become a lien upon the real estate furnished with such service in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 and Title 32 and shall be an assessment enforceable under the procedures set forth in section 3504 of Title 24.

Any person violating any of the provisions of this section shall become liable to the Town for the cost of abating such violation. Interest at the legal percentage rate established by State Statute shall be assessed on the balance beginning on the 1st day of the 1st month following discovery of the violation.

10.20.117 Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance or any permit issued hereunder. If a person has violated or continues to violate the provisions of this chapter, the Town may petition for an injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

10.20.118 Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance or any permit issued hereunder is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

10.20.119 Remedies not Exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Town to seek cumulative remedies.

10.20.120 Other Applicable Regulations.

In case of any other applicable regulation, bylaw, ordinance, or statute that differs from this chapter, the stricter shall apply.

Any requirements under this chapter may be administered by the Town through other regulatory and permitting processes including but not limited to the reviews enabled in the Essex Zoning Bylaws and the Essex Subdivision Regulations.

10.20.130 Adherence to Public Works Specifications.

All development, redevelopment, construction, etc. shall adhere to the Town’s Public Works Specifications.

10.20.140 Fees, Fines, and Applicable Charges.

The Town Selectboard shall adopt a schedule of reasonable fees, fines, and other charges applicable to carrying out the purposes of this chapter, and shall review the schedule of fines and fees on an annual basis.

10.20.150 Severability.

If any portion of this chapter is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

Approval of any storm water management system design and installation by the granting of a municipal storm water permit and certificate of compliance shall not imply that the approved system will be free from malfunction. Proper maintenance of storm water systems is vital to their proper functioning. The provisions of this chapter shall not create liability on the part of the Town, of any Town official, or employee for the storm water management system.

APPENDIX A

Table 1: Valid and Expired Storm Water Permits in the Village of Essex Junction and the Town of Essex Outside the Village as of the Date of Ordinance Adoption

Permit #	Old Permit #	Village or Town	Project Name	Valid (V) or Expired (E)	Ordinance Type	Watershed
2-0855		Village	Village Knoll-Woods End & Acorn	V	Type 1	Indian Brook
2-1103		Village	Pleasant Street & East Street	V	Type 1	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Chestnut Lane	E	Type 2	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Spruce Lane	E	Type 2	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Walnut Lane	E	Type 2	Indian Brook
2-0835		Village	Village Glen Condos	E	Type 2	Indian Brook
1.1527.0111		Village	Highland Village	E	Type 2	Sunderland Brook

1-0236		Village	Brickyard	E	Type 2 & 3	Indian Brook
1-1074		Village	Countryside II Fairview Farms Locust Lane	E	Type 3	Indian Brook
2-0863		Village	167 Pearl Street (McEwing)	E	TBD	Sunderland Brook
2-0633		Town	Shillingford Crossing	E	Type 1	Sunderland Brook
3575- 9010.R	1-1186	Town	Woodlands I	V	Type 1	Alder Brook
1-0667		Town	Woodlands I	E	Type 1	Indian Brook
3577- 9010.R	1-0677	Town	Woodlands II/ Lang Farm Parcel H	V	Type 1	Alder Brook
1-0250		Town	Kimberly Drive	E	Type 1	Sunderland Brook
3578- 9010.R	1-0612 2-0752	Town	Pinewood Development	V	Type 1	Winooski River /Alder Brook
Permit #	Old Permit #	Village Or Town	Project Name	Valid (V) Or Expired (E)	Ordinance Type	Watershed
3581- 9010.R		Town	Heritage Phase II	V	Type 1	Alder Brook
3579- 9010.R		Town	Old Stage Village	V	Type 1	Alder Brook
3580- 9010.R		Town	Rivers Bend	V	Type 1	Winooski River
3201- 9010.R		Town	Pinewood Section G	V	Type 1	Winooski River
3267- 9010.R		Town	Saybrook	V	Type 1	Alder Brook
4367- 9010.R		Town	Autumn Knoll	V	Type 1	Browns River
3996- 9010		Town	Town Swimming Pool Complex	V	Type 1	Alder Brook
2-0631		Town	Essex Resort and Spa	E	Type 2	Indian Brook
1-1463		Town	VT Systems, Inc.	E	Type 2	Sunderland Brook
1-0965		Town	#7 Ewing Place	E	Type 2	Sunderland Brook
1-0518		Town	#3 Ewing Place	E	Type 2	Sunderland Brook
1-0619		Town	#26 Susie Wilson Road	E	Type 2	Sunderland Brook

2-0634		Town	#26 Susie Wilson Road	E	Type 2	Sunderland Brook
1-1319		Town	Church of Latter Day Saints	E	Type 2	Indian Brook
1-1371		Town	Why Not LLC (Land Farm Golf Course)	E	Type 2	Indian Brook
3324-9010.R		Town	Meadows Edge	V	Type 3	Winooski River /Alder Brook
3574-9010.R	1-0730	Town	Forestdale	V	Type 3	Winooski River /Alder Brook
3081-9010.R		Town	Perkins Bend	V	Type 3	Winooski River
1-1381		Town	The Commons at Essex Way	E	Type 3	Indian Brook
1-1307		Town	Homestead Design	E	Type 3	Indian Brook
Permit #	Old Permit #	Village Or Town	Project Name	Valid (V) or Expired (E)	Ordinance Type	Watershed
1-0755		Town	The Outlets and Hannaford's	E	Type 3	Indian Brook
2-0613		Town	The Outlets and Hannaford's	E	Type 3	Indian Brook
1-1469		Town	Mainstay Suites	E	Type 3	Sunderland Brook
1-0552		Town	The Market Place	E	Type 3	Sunderland Brook
1-0896		Town	Yankee Enterprises, Oil #1 LLC, Bradley, Oil Annex, Patco Properties	E	Type 3	Sunderland Brook
1-0761		Town	Ewing	E	Type 3	Sunderland Brook
1-0694		Town	Ewing	E	Type 3	Sunderland Brook

(Ord. passed 7/18/14)

APPENDIX B

TYPE 2 STORM WATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this _____ day of _____ 20__ by and between the [Village of Essex Junction] [Town of Essex], a Vermont municipal corporation with a principal place of business at [Village address] [81 Main Street], Essex, Vermont 05452 (the [“Town”] [“Village”]), and _____ with a principal place of business at _____ (“Permittee”). The [Town] [Village] and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.”

WITNESSETH:

WHEREAS, the [Town has adopted an amendment to its Storm Water Ordinance] [Village has adopted an amendment to its Village Ordinance , incorporating Section 10.20.90 of the Town Storm Water Ordinance] entitled Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction; and

WHEREAS, the Storm Water Ordinance amendment identifies the requirements under section 10.20.094.B necessary for the [Town] [Village] to accept storm water permit responsibility for a valid or expired Type 2 storm water permit, as such type is defined in the Ordinance Amendment; and

WHEREAS, Permittee has identified that it is in their best interests to have the [Town] [Village] accept storm water permit responsibility by entering into this Agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont storm water permit compliance; and

WHEREAS, the Parties agree that the [Town] [Village] has no responsibility for the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, or non-public storm water infrastructure added to the original version of a valid or expired storm water permit; and

WHEREAS, the [Town] [Village] may in its sole discretion, if determined by the legislative body to be in its best interests, to accept some or all of the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, at some future date;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

SECTION ONE
[TOWN] [VILLAGE] OBLIGATIONS

The [Town] [Village] agrees to accept full or shared permit responsibility for valid or expired storm water system permits as follows and also shall:

1. Hire a professional engineer, at no cost to Permittee, to inspect and certify that the Type 2 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the [Town] [Village] by Permittee. The certification shall occur prior to August 1, 2015.
2. Conduct future inspections that occur after the initial certification inspection of Type 2 storm water systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 2 storm water system and report findings to the State and the Permittee.
4. Inspect and prepare an annual structural condition survey and extent of debris capture in all catch basins contributing storm water flow within the permitted area.
5. At the request of Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on the Permittee's property and their business operations thereon in performing its obligations under this Agreement.

SECTION TWO
PERMITTEE OBLIGATIONS

Permittee shall:

1. Accept all responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate legislative body, in its sole discretion, to be in the [Town's] [Village's] best interests, as defined in Section 10.20.091.B above, to accept some or all of this responsibility.
2. To pay all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required of the Type 2 storm water system.

3. Hire a professional engineer, at no cost to the [Town] [Village], to inspect and certify that the Type 2 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the [Town] [Village]. The certification shall occur prior to August 1, 2015.
4. Correct any deficiencies identified in the engineer's storm water system inspection at their own expense prior to the August 1, 2015 date for system certification.
5. Maintain, repair, replace and upgrade as necessary all storm water infrastructure covered under the Type 2 storm water system permit.
6. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump, or enter into an agreement with the Town to perform the services for a fee.
7. Bear all costs of required storm water system upgrades (if needed) to the Type 2 storm water system to meet the [Town's] [Village's] adopted and State approved FRP unless it is determined by the [Town] [Village] to be in its best interests as defined in Section 10.20.091.B of the Town's Storm Water Ordinance [as adopted by Village's Land Development Code] to participate in some or all of the system upgrade project or project costs.
8. Comply with all other elements of the Storm Water Ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.
9. Perform any necessary structural repairs to any non-public storm water infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six months of discovery, reimburse the [Town] [Village] for all its costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair.
10. Indemnify, defend and hold harmless the [Town] [Village] and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the [Town's] [Village's] performance of the required annual operations and maintenance and required testing of the storm water infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the [Town] [Village] or its employees, agents or contractors, or (b) are covered by insurance carried by the [Town] [Village], its agents or contractors.

SECTION THREE
MISCELLANEOUS

1. The [Town] [Village] will notify Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of Permittee to make on-site storm water improvements as required under the FRP.

2. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.

3. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land, and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on property of the Party failing to make payment, and shall be collectible in the same fashion as unpaid property taxes.

4. In the event a Party resorts to the judicial process to enforce another Party's obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees.

5. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.

6. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

_____, VERMONT

Witness

BY: _____
Duly Authorized Agent

Witness

BY: _____
Duly Authorized Agent

STATE OF VERMONT)
) SS.
COUNTY OF CHITTENDEN)

At Essex in said County this ____ day of _____, A.D., ____, personally appeared _____ duly authorized officer of _____, and he acknowledged this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the [Town of Essex] [Village of Essex Junction].

Before me,

Notary Public
My Commission Expires: _____

STATE OF VERMONT)
) SS.
COUNTY OF CHITTENDEN)

At Essex in said County this ____ day of _____, A.D., ____, personally appeared _____ duly authorized officer of _____, and he/she acknowledged this instrument, by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of _____.

Before me,

Notary Public
My Commission Expires: _____

(Ord. passed 7/18/14)

Appendix C

TYPE 3 STORM WATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this _____ day of _____ 20__ by and between the [Village of Essex Junction] [Town of Essex], a Vermont municipal corporation with a principal place of business at [Village address] [81 Main Street], Essex Junction, Vermont 05452 (the [“Town”] [“Village”]), and _____ with a principal place of business at _____ (“Permittee”). The [Town] [Village] and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.” **(Note: May be multiple parties to sign.)**

WITNESSETH:

WHEREAS, the [Town has adopted an amendment to its Storm Water Ordinance] [Village has adopted an amendment to its Village Ordinance , incorporating Section 10.20.90 of the Town Storm Water Ordinance] entitled Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction; and

WHEREAS, the Storm Water Ordinance amendment identifies the requirements in section 10.20.094.C necessary for the [Town] [Village] to accept shared or full storm water permit responsibility for a valid or expired Type 3 storm water permit, as such type is defined in the Ordinance Amendment; and

WHEREAS, Permittee **(NOTE: May be multiple parties)** has identified that it is in their best interests to have the [Town] [Village] accept storm water permit responsibility by entering into this agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont storm water permit compliance; and

WHEREAS, the Parties agree that the [Town] [Village] has no responsibility for the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, or non-public storm water infrastructure added to the original version of a valid or expired storm water permit and shared responsibility on storm water systems consisting of both public and non-public infrastructure; and

WHEREAS, the [Town] [Village] may in its sole discretion, if determined by its legislative body to be in the [Town’s] [Village’s] best interests, to accept some or all of the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, at some future date;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

SECTION ONE.
[TOWN] [VILLAGE] OBLIGATIONS

The Town agrees to accept full or shared permit responsibility on a proportional basis by relative impervious area contributed by the public and non-public storm water infrastructure within the permitted area for valid or expired storm water system permits. The relative impervious area has been agreed as follows: [Town] [Village] __%; Permittee __%. The [Town] [Village] also shall:

1. Hire a professional engineer, at no cost to the Permittee, to inspect and certify that the Type 3 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the [Town] [Village] on non-public storm water infrastructure by Permittee. The certification shall occur prior to August 1, 2015.
2. Conduct future inspections that occur after the initial certification inspection of Type 3 storm water systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 3 storm water system and report findings to the State and the Permittee.
4. Inspect and prepare a structural condition survey and extent of debris capture in all catch basins contributing storm water flow within the permitted area.
5. At the request of Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on any Permittee's property and their business operations thereon in performing its obligations under this Agreement.

SECTION TWO
PERMITTEE OBLIGATIONS

Permittee (**NOTE: *May be multiple parties***) shall:

1. Accept all responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, or their portion of a shared storm water system to meet an approved Flow Restoration Plan (FRP)

unless it is determined by the appropriate legislative body, in its sole discretion, to be in the [Town's] [Village's] best interests, as defined in Section 10.20.091.B of the Storm Water Ordinance to accept some or all of this responsibility.

2. Pay their proportionate share of all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required of the Type 3 storm water system, and
3. Hire a professional engineer, at no cost to the [Town] [Village], to inspect and certify that the non-public or shared portion of the Type 3 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the [Town] [Village]. The certification shall occur prior to August 1, 2015.
4. Correct any deficiencies on the non-public portion of the storm water system identified by the engineer's storm water system inspection at their own expense prior to the August 1, 2015 date for system certification.
5. Maintain, repair, replace and upgrade as necessary all non-public storm water infrastructure and to share responsibility for portions of shared storm water systems covered under the Type 3 storm water system permit according to the percentages identified above.
6. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump on non-public private storm water infrastructure or enter into an agreement with the [Town] [Village] to perform such services for a fee.
7. Bear the cost of required storm water system upgrades on non-public portions of the shared storm water systems and to share in the costs of all shared elements of the storm water system (if needed) to the Type 3 storm water system to meet the [Town's] [Village's] adopted and State approved FRP according to the percentages identified above unless it is determined by the [Town] [Village] to be in its best interests as defined in Section 10.20.091.B of the Town's Storm water Ordinance to participate in some or all of the system upgrade project or project costs.
8. Comply with all other elements of the Storm Water Ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.
9. Perform any necessary structural repairs to any non-public storm water infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six (months) of discovery, reimburse the [Town] [Village] for all its

costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair; and share in such costs on shared elements of the storm water system according to the percentages identified above.

10. To indemnify, defend and hold harmless the [Town] [Village] and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the [Town's] [Village's] performance of the required annual operations and maintenance and required testing of the storm water infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the [Town] [Village] or its employees, agents or contractors, or (b) are covered by insurance carried by the [Town] [Village], its agents or contractors.

SECTION THREE MISCELLANEOUS

1. The [Town] [Village] will notify Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of Permittee to make on-site storm water improvements as required under the FRP.
2. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.
3. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land, and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on property of the Party failing to make payment, and shall be collectible in the same fashion as unpaid property taxes.
4. In the event a Party resorts to the judicial process to enforce another Party's obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees.
5. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.
6. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

[VILLAGE OF ESSEX JUNCTION] [TOWN OF ESSEX], VERMONT

_____ BY: _____

Witness

Duly Authorized Agent

PERMITTEE

Witness

BY: _____
Duly Authorized Agent

STATE OF VERMONT)
) SS.
COUNTY OF CHITTENDEN)

At Essex in said County this ____ day of _____, A.D., ____, personally appeared _____ duly authorized officer of _____, and he acknowledged this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the [Town of Essex] [Village of Essex Junction].

Before me,

Notary Public
My Commission Expires: _____

(Ord. passed 7/18/14)

Appendix D

Storm Water Management Design Criteria

Storm water management design criteria apply to the following: (1) erosion and sediment control systems (2) conveyance systems such as culverts, catch basins and pipelines and (3) treatment systems. Existing Town and State Standards apply as noted in the Town Storm Water Ordinance, Section §10.20.014. The purpose of this Appendix is to provide supplemental guidance to those guidelines and standards that are listed in the Ordinance.

The goal for all new development and redevelopment is to reduce the impervious area to the minimum essential area to meet regulatory requirements and to restrict runoff to the maximum practical extent from the site.

Erosion and Sediment Control Systems

Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized.

Soil stabilization shall be completed within 10 business days following clearing or construction inactivity.

Soil stockpiles must be protected or stabilized at the end of each workday; properly installed silt fence or hay bales shall be used to prevent erosion from unused soil stockpiles in existence for longer than 72 hours.

The entire disturbed site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.

The area of disturbance shall be limited to the minimum necessary to perform the construction task being undertaken; entire sites shall not be cleared or graded without prior permission from the Town.

Temporary and permanent erosion and sediment control, if required, may consist of rock check dams, specialized plantings for erosion control and topographic changes that create grassed depressed areas to allow for the infiltration of runoff water onsite.

A component of an effective erosion and sediment control plan is the rapid growth of replacement land cover and landscaping. The landscaping plan, when required, shall detail both the vegetation to be used in the practice and how/who will manage and maintain this vegetation. This plan must be prepared by a qualified person, experienced in landscape planning. The criteria for vegetative cover is:

- A. Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over 90% of the seeded area.
- B. Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
- C. Any area of re-vegetation must exhibit survival of a minimum of 90% of the cover crop throughout the year immediately following re-vegetation. Re-vegetation must be repeated in successive years until the minimum 90% survival for 1 year is achieved.

D. All disturbed areas must be mulched before winter.

Conveyance Systems

All storm water management practices shall be designed to convey storm water to allow for the maximum removal of pollutants and reduction in flow velocities.

Pre and post development drainage calculations must be submitted. The post development calculations shall include conveyance systems and treatment systems.

Conveyance systems that allow for the infiltration of storm water, in part or in whole are preferred, providing the designer can demonstrate that the underlying soil can accommodate the infiltration without a negative impact on adjacent roads, structures, etc.

All conveyance systems located within a current or planned Town Right of Way shall be designed with non-leak joints for both pipes and catch basins. Catch basin “boots” for both the inlet and outlet piping shall be provided on all catch basins. No new catch basins will be allowed that have a portion of the frame or concrete basin under the curb.

In special situations, the Town may require the use of catch basin inserts to capture added solids, organics or oil based products

Flow paths shall be maximized from inflow points to outflow points.

All catch basins and associated piping shall be protected from sediment during construction and shall be cleaned prior to Town acceptance..

The outlet from all piped drainage systems shall be designed so there is no vertical head loss to the adjacent stream and the outlet stream channel shall be stone lined to eliminate erosive flow velocities.

The as built plans on all completed projects shall contain a certification that no cross-connections have been made between storm and sanitary service lines and main lines.

The Town Subdivision requirements state that all post-development drainage calculations must be based on a 25-year storm event; structural components of a storm drainage system may be designed on the basis of a lesser storm event providing the calculations demonstrate that the 25 year event can be accommodated through a combination of design features, such as infiltration and storage. The minimum pipe sizes in the Public Works Specifications shall apply.

Treatment Systems:

All storm water management systems shall be designed to capture and treat storm water runoff according to the specifications outlined in the current State Storm Water Design Manual.

On large projects, involving up to 5% of the specific watershed in the Town, the Town may require that studies be undertaken to determine the cumulative impact on other downstream storm-water facilities in the specific watershed of the Town.

Site design feasibility. Storm water management practices for a site shall be chosen based on the physical conditions of the site. Factors that should be considered include: topography, maximum drainage area, depth to water table, soils, slopes, terrain, head, location in relation to environmentally sensitive features or ultra-urban areas.

Applicants shall consult the current state storm water design manual for guidance on the factors that determine site design feasibility when selecting a storm water management practice.

Pretreatment requirements. Every storm water treatment practice shall have an acceptable form of water quality pretreatment, in accordance with the pretreatment requirements found in the current

state storm water design manual. Certain storm water treatment practices, as specified in said manual are prohibited even with pretreatment in the following circumstances: storm water generated from highly contaminated source areas know as “hotspots,” storm water carried in a conveyance system that also carries contaminated non-storm water discharges, storm water managed in a designated groundwater recharge area, or certain geologic conditions that prohibit the proper pretreatment of storm water.

(Ord. passed 11/16/05)