

Town of Windham
Surface Water Protection Ordinance

Chapter 142

From the

Code

Of the

Town of Windham

Adopted

8/13/2002

Effective

11/13/2002

County of Cumberland
State of Maine

SURFACE WATER PROTECTION ORDINANCE

A. PURPOSE

The purposes of this Ordinance are to prevent and minimize surface water pollution due to phosphorus contained in stormwater runoff from developed areas, to promote preventive measures to improve surface runoff water quality and lessen degradation to receiving watersheds and bodies of water within the Town of Windham to prevent and control water pollution caused by soil erosion and sediment transport resulting from soil disturbance associated with building development, to protect and promote safe and healthful conditions for humanity, and to protect fish spawning grounds, aquatic life, bird and other wildlife habitat in the town.

B. AUTHORITY

This Ordinance has been prepared in accordance with the provisions of Title 38 S435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

C. APPLICABILITY

This Ordinance applies to all activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and a permit shall be required and a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

1. Mulching and re-vegetation of disturbed soil.
2. Temporary runoff control features such as hay bales, silt fencing or diversion ditches. Permanent stabilization structures such as retaining walls or riprap.

Activities which require site plan approval from the Planning Board are to be prepared in accordance with prevailing best management practices as referenced in the current issue of Maine Erosion and Sediment Control Handbook for Construction: Best Management Exempt from the requirements of this ordinance are the following:

- a. Activities in the Shoreland Zone which are governed by the Shoreland Zone Ordinance.
- b. Permit applications in subdivisions, which have a Planning Board approved soil erosion and sediment control plan.

- c. Activities wherein none of the area of soil disturbance has a slope steeper than two percent, but it shall be the applicant's responsibility to furnish a topographic survey demonstrating such gradual slope.
- d. Normal Agriculture as defined in the Shoreland Zoning Ordinance Chapter 199-17
- e. Five Hundred (500) square feet or less of net impervious area (foot print)
- f. The maximum amount of soil area to be disturbed shall be based on the slope of the disturbed area, as outlined in Table I.

Table I

% Ground Slope Range	Amount of Soil Disturbance (sf)
≥ 20%	500 sf
≥ 10 < 20%	1000 sf
≥ 5 < 10%	2000 sf
≥ 2 < 5%	4000 sf

D. INTENT

In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site, control stormwater run-off through the construction phase and strategic placement of structures, roads and driveways. The natural features and drainage patterns of the lot should be preserved using careful site design prior to any clearing or construction. The natural flow of water should be identified and undisturbed buffers protected to minimize off site transport by stormwater. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible. The intent of this ordinance is to have a zero off-site impact from any proposed development

E. EXPOSED GROUND AREA

Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time the work was started, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- a. Where mulch is used, it shall be applied at a rate of a least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
- b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover. (wood chips are acceptable)

- c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

F. SOILS

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state certified professionals. Licensed, Registered or Certified Professional may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other Licensed, Registered or Certified Professionals who have proof of training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analyses of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data, which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. Soil conditions that are inappropriate or uncorrectable in an environmentally acceptable manner shall be sufficient grounds for denial, even though the proposed use is otherwise permitted in that zone.

G. PARKING AREAS & DRIVEWAYS

Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site. Where runoff can not be retained on-site licensed professionals in this field shall review and certify in writing to assure that the purpose of this ordinance is upheld.

H. ROADWAY DRAINAGE

In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Road surface drainage, which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize, channelized flow of the drainage through the buffer strip.

I. DITCHING

Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow

in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:

1. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

ROAD GRADE (%)	SPACING (in feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

2. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.
3. On road sections having slopes greater than eight (8) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road.
4. On slopes of eight (8) percent or greater, surface materials shall be bituminous pavement, reclaimed asphalt or well compacted gravel. (Minimum compaction 95%)
5. Ditch relief culverts shall be sufficiently sized by a Registered Engineer or professional with expertise in hydrology and open channel flows and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

J. MAINTENANCE AND REPAIR

Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads shall be maintained on a regular basis to assure effective functioning. When maintenance and/or repair are performed, such performance must be in accordance with Best Management Practice.

1. Duration of plan: for temporary measures
Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction, shall be minimized to reduce the potential for erosion.
2. Duration of plan: for permanent measures
Permanent soil erosion and sedimentation control measures such as, but not limited to, level lipped spreaders, rip-rap installation, vegetated buffers, drainage dips and water turnouts shall be protected with a maintenance agreement.

K. STORM WATER RUNOFF

1. Construction:

All construction and development shall minimize stormwater runoff from the site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters. Areas of connected impervious surfaces should be minimized to take full advantage of these features. Where runoff can not be retained on site it shall be reviewed by licensed professionals in this field.

a. Buffers:

Buffers (also know as vegetative filter or filter strips). Within the required setback of the corresponding zone three shall be a vegetative buffer. Excluded from this requirement are all of the commercial zones. This buffer shall consist of landscaping, to include but not limited to, grass, trees, shrubs, and wood chips. Within this buffer access to the property can be made for essential services and driveway access.

b. Drainage ways:

Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap

2. Maintenance:

Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

3. Plan Required:

When required by this ordinance, the Code Enforcement Officer or the Planning Board, stormwater management plans shall be designed utilizing the most recent approved version of the Cumberland County Soil and Water Conservation Districts and Maine DEP's "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices and the Maine DEP's Stormwater Management for Maine: Best Management Practices. Completed plans, when required above, may be reviewed by the Cumberland County Soil and Water Conservation District, or other qualified professional firm, agency, or organization..

4. General:

All activities are expected to employ appropriate stormwater management practices regardless of the zone or district they are located in.

L. CONDITIONS OF PERMITS

Permits granted under this section may be made subject to additional conditions or restrictions to ensure conformity with the purposes and provisions of this chapter. Each application for a building permit shall be accompanied by the building permit fee set by the Town. Each application to the Code Enforcement Officer for a permit to erect a new building or structure or to enlarge or to move an existing one shall be accompanied by a site plan showing the measurements of the lot and of all buildings, driveways, yards and parking spaces, drainage ways, storm drains, streams existing and proposed, the intended use of land and buildings shall be indicated clearly. Additional measures may be required in order to comply with this ordinance, such as, such as drainage ways and easements, soil erosion control measures, and all features to be installed for compliance with this Ordinance. Any other application for a building permit and any application for a permit shall be accompanied by a description of the intended use or use of the land and buildings and such further details as the Code Enforcement Officer may require for a clear understanding of the case.

M. APPEALS

1. Appointment:

There is hereby created a Board of Appeals of the Town of Windham created pursuant to the authority of Title 30-A M.R.S.A. S2691. The members of the Board shall be residents of the town. In accordance with the statutes, the following statutes shall apply:

- a. The Board shall consist of five (5) members. In addition, said Board shall have one (1) alternate member, who shall have all the rights of a full member, except that said alternate may vote only in the absence of a full member.
- b. The term of office of members shall be three (3) years, except that initial appointments of members shall be made for one (1) two (2) and three (3) years respectively.
- c. A municipal official or his spouse shall not be a member of the Board.
- d. When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.
- e. The Board shall elect a Chair and Vice Chair from its own membership.
- f. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- g. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.
- h. A Secretary to the Board shall be appointed by the appropriate town officials.

2. Jurisdiction and Authority:

In addition to the power granted by Title 30-A M.R.S.A. S2691, the Board Appeals shall have the following jurisdiction and authority.

- a. Subject to the provisions of this chapter, to hear and decide appeals from

orders, decisions, determinations or interpretations made by the Code Enforcement Officer.

- b. Subject to the provisions of this chapter, to hear and grant or deny application for variances from the terms of the Surface Water Protection Ordinance. A variance can only be granted where undue hardship is proven. "Undue hardship" is defined to mean:
 - i. That the land in question cannot yield a reasonable return unless the variance is granted.
 - ii. That the need for a variance is because of unique circumstances of the property such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood.
 - iii. That the granting of a variance will not change the essential character of The locality; and
 - iv. That the hardship is not the result of action taken by the applicant or a prior owner.
- c. Permitted variances run with the land and thus pass from one owner to the next.
- d. Attention be given to the following wherever applicable:
 - i. Location, character and natural features.
 - ii. Fencing and screening.
 - iii. Landscaping, topography and natural drainage.
 - iv. Vehicular access, circulation and parking.
 - v. Pedestrian circulation.
 - vi. Signs and lighting.
 - vii. All factors which affect health, welfare and safety.

3. In granting appeals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter.

N. PROCEDURE

1. Meetings:

The Board of appeals shall meet twice each month as called by the Chair. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least three (3) members. A majority vote of the quorum is required for the passage or denial of any appeal.

2. Minutes:

The Secretary shall record a permanent record of all Board meetings. All meeting minutes and all correspondence of the Board shall be maintained in the Town Office. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issued of fact, law or discretion

presented and the appropriate order, relief or denial thereof. Notice of any decisions shall be mailed or hand delivered to the petitioner, his representative or his agent and the Department of Environmental Protection.

3. Public Hearing:

For all appeals, the Board shall hold a public hearing as prescribed herein. At least seven (7) days before the hearing, the Code Enforcement Officer or his assistant shall notify by mail the owners of properties abutting the property for which the appeal or application is made. Failure to receive this notice shall not invalidate the proceedings herein prescribed. The owners of properties shall be considered to be the parties listed by the Assessor as those against whom those taxes are assessed. Notice of the hearing shall also be placed at least twice in a newspaper of general circulation at least seven (7) days prior to the hearing. The Code Enforcement Officer or his assistant may attend all hearings and present to the Board all plans, photographs or other factual materials which are appropriate to an understanding of the case.

4. Appeals:

Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer or who wishes to request a variance from the Surface Water Protection Ordinance or who wishes a use permit may file an application with the Board of Appeals. An appeal of a decision made by the Code Enforcement Officer must be filed within thirty (30) days of the date of the decision. Application materials submitted to the Board must include a completed application form, including a location and site plan if appropriate, and a fee of two hundred dollars (\$200.00, which must be submitted to the Code Enforcement Officer at the time the appeal request is submitted). All application materials must be submitted for the Boards review at least fourteen (14) days prior to the Board meeting at which the applicant wishes to be heard. All meetings of the Board are public hearings. At the public hearing, the applicant or his representative must appear before the Board to present the proposal and to answer questions. Other interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal. Written notice of the decision of the Board shall be sent to the appellant within seven (7) days of the date of the decision. Any aggrieved party may appeal from the decision of the Board to the Superior Court within forty-five (45) days of the decision date.

5. Decision:

After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one (1) year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

6. Reconsideration:

In accordance with Title 30-A M.R.S.A. §2691-3-F, the Board may reconsider any decision reached under this section within thirty (30) days of its prior decision. A vote

to reconsider and the action taken on that reconsideration must occur and be completed within thirty (30) days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony as provided in this section.

7. Expiration date:

The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six (6) months or substantially completed within eighteen (18) months of the date of the vote by the Board.

O. ENFORCEMENT

1. Nuisances:

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer.

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provisions of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indication the nature of the violation and ordering the action necessary to such violation, indication the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.
- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocations actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

3. Legal Actions.

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement

Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in:

- a. bad faith, or unless the removal of the structure or use will result in a threat or
- d. hazard to public health and safety or will result in substantial environmental damage.

4. Fines.

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A M.R.S.A. §4452. Current penalties include fines of not less than \$100.00 nor more than \$2500.00 per violation for each day that the violation continues.