

# **Stormwater Management Gap Analysis Workbook For Local Officials**

**Minimum Control Measure 4: Construction Site Stormwater Runoff Control**

**Minimum Control Measure 5: Post-Construction Stormwater Management in New Development and Redevelopment**

**March, 2006**

**Note: The easiest way for a regulated MS4 municipality to ensure that it satisfies Minimum Control Measures 4 and 5 is to adopt the Sample Local Law for Stormwater Management and Erosion & Sediment Control as amendments to existing local land use regulations (see Stormwater Management Guide for Local Officials, Chapter 3 and Appendix 1.)**

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# Complying with Minimum Control Measures 4 and 5 Through a Stormwater Management Local Law

*The easiest way for a regulated MS4 municipality to ensure that it satisfies Minimum Control Measures 4 and 5 is to adopt the Sample Local Law for Stormwater Management and Erosion & Sediment Control as amendments to existing local land use regulations (see Stormwater Management Guide for Local Officials, Chapter 3 and Appendix 1.)*

## **New York's Sample Local Law and the Gap Analysis Workbook**

In New York State, local land use regulations are the framework for carrying out the construction/post-construction stormwater management program. In 2004, the New York State Department of State and Department of Environmental Conservation (DOS and DEC) published a draft *Sample Local Law for Stormwater Management and Erosion & Sediment Control*. This Sample Local Law contains all the local code provisions that MS4s need to comply with Minimum Control Measures 4 and 5.

Because New York State expects that local stormwater management programs will be integrated with other local regulatory programs, the Sample Local Law is set up as amendments to local land use laws and ordinances that already exist in regulated MS4 communities, and is designed to be applicable to the wide variety of existing local land use regulatory provisions found in New York State. The Sample Local Law serves as the basis for the Stormwater Management Gap Analysis Workbook for Local Officials.

In March, 2006, after public review of the Gap Analysis Workbook, the state made a few revisions to the Sample Local Law. These revisions more closely align the SWPPP preparation and site inspection requirements with the NYS General Permit for Stormwater Discharges from Construction Activities (GP-02-01), and clarify a few items of language. Changes from the 2004 version are indicated as footnotes in the March, 2006 revision of the Sample Local Law.

MS4s that already have adopted the 2004 version of the Sample Local Law do not need to make any changes in their local codes. For municipalities that have not yet adopted a local law in fulfillment of their stormwater management regulatory obligations, the revised 2006 Sample Local Law is provided in Microsoft Word and WordPerfect word processing formats, as well as in Portable Document Format (PDF, readable by Adobe Acrobat version 6 and higher).

**Localities that adopt the Sample Local Law as amendments to their existing local code will not need to conduct Gap Analysis**, unless they move provisions or delete required provisions in the Sample Local Law.

## **Assessing Compliance with the Gap Analysis Workbook**

The *SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems* (MS4s), GP-02-02 (referenced hereafter as the MS4 permit) stipulates that regulated MS4 municipalities can comply with Minimum Control Measures 4 and 5 by developing programs that are equivalent to, or more stringent than, the *SPDES General Permit for Stormwater Discharges from Construction Activity*, GP-02-01 (referenced as Construction Permit).

This Gap Analysis Workbook is designed to evaluate the equivalence of local code language that is not identical to the *Sample Local Law for Stormwater Management and Erosion & Sediment Control*. The method provided in this workbook will be used by New York State in reviewing local programs for compliance.

### **What Local Governments Will Get From Using the Workbook**

- Assessment of the municipality's current stormwater management compliance status
- A way to document the equivalence of existing provisions to Minimum Control Measures 4 and 5
- A list of changes needed to bring local laws and ordinances into compliance with stormwater management requirements
- Information to include for annual reporting of the community's progress in building the MCM 4 and 5 local law component of the stormwater management program

### ***Determining Equivalence of Local Regulatory Mechanisms***

To meet the equivalence standard, local code provisions should accomplish the same thing as the requirements under Minimum Control Measures 4 and 5 and the Construction Permit. Of course, some localities prefer to exceed these requirements, and will design amendments to their local laws and ordinances to do so.

The *Sample Local Law for Stormwater Management and Erosion & Sediment Control* is designed to amend local land use laws, ordinances, and other regulations so that they will accomplish the intent of the Construction Permit. If the locality prefers legislative language that is different from the Sample Local Law, the resulting local code must still meet the full intent of the Sample Local Law. The municipality must demonstrate that its local code contains all the technical and land use requirements outlined in the MS4 Permit and the Construction Permit, and detailed in New York State's technical standards.

#### **Basic Provisions That Must be Present in Local Code**

- To comply with state and federal law, local codes must contain all of the following provisions:
- Apply to all construction activities disturbing one acre or more
- Require construction site operators to prepare Stormwater Pollution Prevention Plans (SWPPPs) before construction begins
- Require stormwater controls consistent with state technical standards (adopt the state technical standards for stormwater management facilities and practices or equivalent)
- Provide for local review and approval of SWPPPs by the planning board, code enforcement officer or other designated officials, for local land use decisions including (but not limited to) subdivisions, site plans and special permits
- Require management of waste on construction sites

- Establish responsibility for ongoing maintenance of stormwater management facilities
- Provide technical standards and access for ongoing maintenance
- Specify requirements for inspections, penalties and enforcement that apply to the stormwater management program

#### **Technical Standards Required in Local Code**

As a general principle, to be equivalent to the Sample Local Law for Stormwater Management and Erosion & Sediment Control, a municipality's local laws or ordinances must require at a minimum technical standards as described in New York Standards and Specifications for Erosion and Sediment Control (updated in 2005) and the New York State Stormwater Management Design Manual (updated in 2003). Key provisions include:

- Updated sizing and material specifications for erosion and sediment control practices used during construction, maintenance criteria and requirements for preparing and implementing Stormwater Pollution Prevention Plans (SWPPPs), as detailed in the 2005 NY Standards and Specifications for Erosion & Sediment Control.
- Design of stormwater management practices based on the criteria contained in the 2003 New York State Stormwater Design Manual for water quality volume, channel protection volume, overbank flood control, and extreme storm flood control.

The New York State technical guidance documents may be obtained from DEC or DOS. An order form and downloadable files are available on the Internet at:

<http://www.dec.state.ny.us/website/dow/Workbookbox/escstandards/index.html>

<http://www.dec.state.ny.us/website/dow/swmanual/swmanual.html> and

<http://www.dos.state.ny.us/lgss/stormwaterpub/index.html> .

#### **Applicability Requirements**

The local regulation must apply the technical standards to the following Construction Permit categories:

- **All projects disturbing one acre or more of soil** must have an erosion and sediment control plan
- **For multi-family, commercial, industrial, institutional and highway projects of one or more acre of soil disturbance, single family home subdivisions of five or more acres of soil disturbance, and any projects draining to a 303(d) listed waterbody or located in a TMDL watershed**, the SWPPP must also include water quantity and water quality controls (post-construction stormwater management controls).

## Steps for Using the Stormwater Management Gap Analysis Workbook

### **Step 1. Identify all codes that are part of the MS4's land use regulations.**

Include the Zoning Law or Ordinance and any Site Plan Review, Subdivision, Erosion & Sediment Control (referenced in the Gap Analysis Workbook as E&SC) or stormwater regulation, as well as other provisions of local code that may come into play in regulating stormwater runoff (e.g. site inspection, monitoring, enforcement and penalties provisions as outlined in Article 6 of the *Sample Local Law for Stormwater Management and Erosion & Sediment Control*).

### **Step 2. Make a preliminary assessment of how well local codes match stormwater management requirements.**

Use the Preliminary Local Codes Assessment Worksheet to estimate how well local code complies, and to roughly predict the amount of effort required to achieve compliance. As directed at the top of the worksheet, identify the provision(s) of the local code that match each listed provision, and note the citations.

- If **none** of the provisions listed in the Preliminary Local Codes Assessment Worksheet appears in the local code, the municipality will need to make extensive amendments to existing land use laws and ordinances, and should consider amending applicable regulations as given in the Sample Local Law for Stormwater Management and Erosion & Sediment Control. If a regulated MS4 municipality adopts the Sample Local Law, Gap Analysis will not be needed, unless provisions of the Sample Local Law are moved, or required provisions are deleted, in the final local law.
- If **a few** of the provisions in the Preliminary Local Codes Assessment Worksheet appear in local code, significant amendments will be necessary and adopting the Sample Local Law may be an attractive alternative. Gap Analysis will identify which amendments the MS4 must make and how they should be worded.
- If **most** of the provisions in the Preliminary Local Codes Assessment Worksheet appear in local code, minor amendments will probably bring the code into compliance. Gap Analysis will identify required revisions and ensure that all land development activities are subject to local land use review for stormwater management considerations.

### **Step 3. Conduct Gap Analysis to identify amendments needed to make existing local codes equivalent to the requirements of the Construction Permit and the MS4 Permit.**

If a regulated MS4 municipality decides to achieve compliance by amending existing codes,

complete Gap Analysis Worksheets 1 through 4 to identify the amendments needed. MS4s that have already adopted stormwater management local laws or ordinances should conduct gap analysis to be sure no required provisions are missing.

Using Local Law Gap Analysis Worksheets 1 through 4:

- Identify and record provisions of local land use regulation that are identical to provisions in the Sample Local Law. Mark these in the Yes column, under the heading for the local law or ordinance (Zoning, Subdivision, Site Plan, E&SC, Other) where the identical provision is found.
- Identify provisions of the Sample Local Law that are missing in local code. Place a check in the Legislative Agenda column to add the provision to the list of code amendments needed.
- Identify provisions of local code that are equivalent to those in the Sample Local Law. Place a check in the Equivalence box.

#### **Step 4. Determine equivalence of local code provisions.**

For each individual provision of the Sample Local Law deemed to have an equivalent in local code, prepare a Demonstration of Equivalence of Local Law Provisions worksheet:

- Review the points under the heading, Intent of this Section of the Sample Local Law.
- Cite on the form the existing or proposed local code that contains the equivalent provision and meets the intent of the Sample Local Law.
- Enter on the form the exact language of local code considered equivalent to the Sample Local Law provision.
- State in the space provided how the language of local code meets the intent of the Sample Local Law provision.
- Report in the next Stormwater Management Program Annual Report the number of Demonstration of Equivalence of Local Law Provisions worksheets that were completed.

#### **Step 5. Develop the list of changes to be made to local laws (Legislative Agenda).**

DEC will require that each MS4 report in detail on the development of its stormwater management regulations. A key element of this report will be a Legislative Agenda that details the MS4's plans and schedules for bringing its land use regulatory program into compliance with state and federal stormwater management regulations. The full local stormwater management regulatory program, including local laws and ordinances that comply with state and federal requirements, must be in place by January 8, 2008.

In the Legislative Agenda, the MS4 should:

- List all the language that needs to be added to local land use regulation or other local code,

indicating for each provision which law or ordinance will be amended to include it.

- Develop strategy and timetable for amending local land use and other laws and ordinances. (See Chapter 3 of the Stormwater Management Guidance Manual for Local Officials for guidance on legislative strategies.)
- Report in the next Stormwater Management Program Annual Report the number of items on the Legislative Agenda.

## **Step 6. Include the local code adoption process in MS4 Stormwater Management Program Annual Report.**

Regulated MS4 municipalities must report on their stormwater management code development and adoption process in their Stormwater Management Program Annual Report (SWMPAR). Refer to the SWMPAR and supporting documentation for more information about the annual reporting related to development and adoption of stormwater management laws or ordinances.

When the MS4 accomplishes tasks related to the development and adoption of stormwater management regulations, the applicable section of the annual report should be completed:

### **1. If the MS4 is adopting the unmodified Sample Local Law for Stormwater Management and Erosion & Sediment Control:**

- Indicate language adopted (planned) is the Sample Local Law;
- Indicate number of provisions that are being adopted (planned for adoption); and
- List needed changes to local codes (Legislative Agenda); or

### **2. If the MS4 is adopting the Sample Local Law for Stormwater Management and Erosion & Sediment Control with provisions that were moved, deleted or minimally changed:**

- Indicate language adopted (planned) is the Sample Local Law;
- Determine equivalence of the alterations to the Sample Local Law using the Gap Analysis or equivalent method to ensure that the intent of the law has not been changed;
- Indicate number of provisions that are being adopted (planned for adoption); and
- List needed changes to local codes (Legislative Agenda); or

### **3. If the MS4 is adopting a local law equivalent to Sample Local Law for Stormwater Management and Erosion & Sediment Control, provide information about the following steps of the Gap Analysis process or a similar process used to adopt the local law:**

- Preliminary assessment of how well local codes match the stormwater management requirements;
- Identification of provisions of local codes that are identical, are missing or are not identical but are potentially equivalent, to determine the amendments needed to make existing local codes equivalent to the requirements of the Construction Permit and the MS4 Permit;
- Determination of equivalence of local codes; and

- Listing of needed changes to local codes (Legislative Agenda).

## **Responsiveness Summary**

### **Gap Analysis Workbook for Local Officials**

NYSDEC  
March, 2006

The New York State Department Conservation (DEC) prepared the Gap Analysis Workbook for Local Officials to complement the Stormwater Management Guide for Local Officials. The Workbook employs a “gap analysis” process to help municipalities determine whether their existing land use regulations need upgrading to meet stormwater management requirements.

DEC distributed the draft Workbook, along with three other draft assistance documents, to regulated Municipal Separate Storm Sewer Systems (MS4) municipalities in August, 2005. The public comment period ran from August through December 2005. During that time the DEC conducted a series of workshops on how to use the document as well as the other draft assistance documents.

DEC thanks everyone who took the time to provide us with comments. We believe that in working through the response to comments we have made the document a stronger, better document. Below are responses to the issues raised during the comment period for the Gap Analysis Workbook for Local Officials.

#### **Reason for Gap Analysis**

***Comment:***

*A Commenter asked for federal legislative reference that requires communities to do the gap analysis verification process.*

Federal law [40 CFR 122.34] detailing the six minimum measures of control for NPDES storm water permits requires that all regulated small MS4s develop and implement “an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;” and, “use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law.”

As a delegated NPDES state, DEC administers the NPDES storm water program through the State Pollutant Discharge Elimination System (SPDES) permit program. The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), GP-02-02 (referenced as MS4 Permit) includes requirements and conditions specific to New York State that are tailored to New York State. One of those requirements is that the “ordinance or other regulatory mechanism” be equivalent to the SPDES General Permit for Stormwater Discharge from Construction Activity, GP-02-01 (Stormwater Construction Permit).

To meet the equivalence requirement, DEC and DOS have determined that certain provisions must appear in local stormwater regulation. These provisions are expressed in detail in the MS4 Permit, the Stormwater Construction Permit, the Sample Local Law for Stormwater Management and Erosion & Sediment Control and the Stormwater Management Guidance

Manual for Local Governments. Each MS4 must either adopt the Sample Local Law in its entirety, or evaluate existing provisions of local code for equivalence, and then amend as needed.

### **Simplify Gap Analysis Procedure, Workbook**

***Comments:***

*A Commenter suggested that a simpler procedure than the Gap Analysis Workbook could have been developed.*

In preparing the Gap Analysis Workbook, DEC had to take into account the large variability of stormwater management land use regulations in use across the state. Some municipalities have little or no land use regulation dealing with stormwater, while other municipalities have stringent controls already in place. With that in mind, DEC and DOS developed the workbook to make it easier for MS4s to identify specific changes needed to bring their codes into compliance, and to provide the basis for DEC's assessment of each locality's compliance with its MS4 permit. Under the reporting authority of Part VI (G) of the MS4 permit, DEC requires that MS4 Stormwater Management Program Annual Reports include certain information that is most easily developed through gap analysis.

In the Gap Analysis Workbook for Local Officials, DEC and DOS lay out a road map for gap analysis. The Gap Analysis Workbook provides a place where the MS4 can record its inventory of stormwater management provisions already found in local codes, its provision-by-provision comparison between local codes and the Sample Local Law, and its determination of amendments needed.

### **Requirement to Use Gap Analysis Workbook**

***Comments:***

*Commenters stated that MS4s should be able to use any method they wish to compare their ordinance with the model local law. The gap analysis should be available as a tool but not be mandatory.*

MS4s are not required to use the Gap Analysis Workbook. However, DEC does expect each MS4 to report the results of a detailed comparison of its existing codes with the Sample Local Law, along with proposed changes that will make local codes as strict as the Sample Local Law. The department will not judge local codes to be compliant based on an undocumented assertion that existing or proposed regulatory provisions are equivalent. MS4s must document that all the requirements are present, either as identical language or as language that meets the intent of a required provision of the Sample Local Law. If DEC determines that the local laws do not meet the intent of or are not equivalent to the Sample Local Law, the MS4 will be required to complete the Gap Analysis Workbook. Additionally, the 2008 MS4 permit renewal will likely include a requirement that all MS4s who have not completed their local law review by January 8, 2008 will be required to complete the workbook.

MS4s can use the Gap Analysis Workbook in any way that helps to facilitate their analysis and code development. They are not required to submit worksheets or Demonstration of Equivalence sheets to DEC. However, the workbook can be of material assistance to MS4s with

certain essential tasks:

- The Preliminary Local Codes Assessment Worksheet and the summary tables (Worksheets 1, 2, 3 and 4) will help identify the type and extent of code changes needed.
- The Demonstration of Equivalence sheets support examination and redrafting of each required provision, so that the resulting amended codes will provide effective stormwater runoff control, and also will comply with state/federal requirements.

## **Comparability of Results in Demonstration of Equivalence**

### ***Comment:***

*A Commenter questioned whether the gap analysis would produce consistent results.*

Demonstrating equivalence can only be standardized up to a point. DEC assumes that every municipality conducting gap analysis will approach it intelligently and conscientiously. Reasonable explanations that the local provisions meet state and federal requirements will be given credence.

## **Cost-Benefit for Developing Stormwater Management Local Laws**

### ***Comment:***

*A Commenter was concerned that conducting gap analysis could add to municipalities' workload.*

If local laws and regulations are in compliance with state and federal requirements, reporting that fact should be a fairly straightforward task. If local codes are deficient, or if their applicability is questionable, the locality has a responsibility to perform a detailed analysis of its situation and amend its codes as needed.

If this analysis seems difficult or time-consuming, the MS4 may be correctly anticipating that significant code changes will be needed to comply. Such localities should consider using the Preliminary Assessment Table to make a rough prediction of the extent of required code revisions. If extensive amendments will be required, MS4s have the option of bypassing detailed gap analysis and simply adopting the Sample Local Law as written.

### ***Comment:***

*The Commenter was concerned that the gap analysis may divert time and energy from tasks that are necessary for developing and implementing successful local stormwater management programs.*

An integral part of a successful stormwater management program are the required local laws. To be effective and enforceable, a local stormwater management program must be based on laws and regulations that are adopted as part of the code of the municipality. The Gap Analysis Workbook is a process to help municipalities determine whether their existing land use regulations need upgrading to meet stormwater management requirements.

New York State has determined that a successful program requires clear, comprehensive and enforceable local codes. To further assist municipalities the state has offered MS4s three rounds of funding under the Water Quality Implementation Project to help support development or

amendment of local codes.

## **Eliminating Conflicting Provisions from Local Codes**

### ***Comment:***

*A commenter noted that the workbook does not address the need for elimination or modification of existing provisions that conflict with the MS4 stormwater requirements.*

The reviewer is correct in pointing out that there is no designated section in the worksheets to recommend repealing (eliminating) existing provisions. Based on similar comments during the first Gap Analysis workshop in September 2005, “Notes” sections have been added to the final version of the Preliminary Assessment Table that can be used for the purpose of recording existing provisions that may need to be repealed.

Regarding modification of existing provisions, the intent of the “Demonstration of Equivalence” sheets was that these pages would be used as worksheets to recommend modification of existing code language. Each Demonstration of Equivalence sheet provides reference material on the intent of that particular section of the Sample Local Law.

## **Permit Requirements vs. Recommendations in the Sample Local Law**

### ***Comment:***

*A commenter asked that we distinguish between permit requirements and recommendations in the Sample Local Law.*

Three types of language are included in the Sample Local Law:

1. Provisions that must be included in local codes to comply with permit requirements;
2. Provisions that are needed to provide structure and integrity for a local law;
3. A small number of provisions that are not required but are recommended in the interest of program workability and effectiveness. In response to this comment, in the summary tables of the Gap Analysis Workbook (not the Sample Local Law) we have starred these provisions. It should be noted that these stars do not mean that the analysis of these provisions in comparison to existing local codes is optional, only that MS4s should consult the associated Demonstration of Equivalence sheet for a discussion of recommended versus required language. MS4s should consult with their attorneys to ensure that any alternate language they choose complies with state and federal law. The starred provisions are:
  - Article 1, Sections 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11 (certain Exemptions)
  - Article 2, Section 2.2.3.8 (Maintenance Easements)
  - Article 2, Section 4.2 (Maintenance Easements)
  - Article 6, Sections 1.1.1 - 1.1.8 (list of inspection dates - can be modified)
  - Article 6, Section 2 (Performance Guarantee)
  - Article 6, Section 3.5 (Withholding of Certificate of Occupancy)

- Article 6, Section 3.6 (Restoration of Lands)
- Article 6, Section 4 (Fees for Services)

**Comment:**

*A commenter asked that the Gap Analysis Workbook for Local Officials provide municipalities with a clear presentation of the minimum required applicability and sample language for an overlay stormwater management zone.*

DEC and DOS recommend adopting local laws and ordinances to the municipal boundaries, for these reasons:

- Uniform laws/ordinances are easier for the MS4 to implement and enforce.
- The regulated area within the municipality may expand due to development, requiring revision of the overlay zone.
- Keeping requirements uniform throughout the municipality makes it easier for developers and engineers working within the jurisdiction to comply.
- DEC is considering extending urbanized area requirements to the municipal boundaries of the MS4s in the 2008 MS4 permit renewal.

MS4s wishing to consider an overlay zone may use the following references:

*Well Grounded: Shaping the Destiny of the Empire State - Local Land Use Law and Practice* (Chapter 5) by John R. Nolon;

*Conservation Area Overlay District: A Model Local Law*, Technical Paper Series: No. 3 by the Metropolitan Conservation Alliance. (Note that the Conservation Area Overlay District Model Local Law should be revised to refer to New York State’s updated technical standards: *New York State Stormwater Management Design Manual* and *New York Standards and Specifications for Erosion & Sediment Control*.)

**State Should Indicate Authority for Sample Local Law Provisions**

**Comment:**

*A commenter suggested that DEC prepare an annotated version of the Sample Local Law that documents how each section relates to the MS4 permit and provides alternate language where feasible. They suggested that the Sample Local Law integrate the following information:*

*1) Quote the permit requirement...Quote the Sample Local Law language that fulfills this requirement.*

Every provision of the Sample Local Law represents the best judgment of DEC and DOS about local code language needed to fulfill one or more permit requirements. Recapitulating this reasoning process within the Sample Local Law would make the document very lengthy and complex. MS4s with questions about the permit requirement served by specific provisions can contact:

Barbara Kendall, Stormwater Outreach Specialist  
 Hudson River Estuary Program  
 NYSDEC Region 3  
 21 South Putt Corners Road

New Paltz, NY 12561-1620  
845-256-3163

2) *Provide any explanatory material that might be helpful in assessing equivalence.*

To be equivalent, alternate language must accomplish the same goal as the language in the Sample Local Law. The Demonstration of Equivalence sheets state the goal of each provision of the Sample Local Law and add further explanation in the few cases where it is helpful. MS4s should consult their attorneys in drafting language to meet local goals.

3) *Provide information supporting language that is recommended, rather than required.*

This information is provided on the Demonstration of Equivalence sheets. MS4s should consult their attorneys in drafting language to meet local goals.

4) *Provide alternate language [for making local laws either more or less stringent than the Sample Local Law] where feasible.*

The Demonstration of Equivalence sheets include information that localities could use to revise the recommended language. MS4s should consult their attorneys in drafting language to meet local goals.

## **Stormwater Management Programs in Counties and Non-traditional MS4s**

### ***Comment:***

*A Commenter stated that new laws and/or ordinances associated with Minimum Control Measures 4 and 5 are best served by the local municipalities, towns, cities and villages within a county.*

Stormwater management in New York State is accomplished through local land use regulation. Most New York State counties do not have authority to regulate land use. For this reason, at this time MS4 counties are responsible only for ensuring that their own land development activities meet the requirements of the MS4 permit. Similarly, non-traditional MS4s such as school districts and state agencies lack authority to regulate land use, so are currently responsible only for their own development activities.

DEC is developing annual reporting guidelines pertaining to the local law adoption process in Minimum Control Measure 4 and 5 to help counties and non-traditional MS4s carry out their stormwater management responsibilities.

## **Adding Stormwater Management to the State Building Code**

### ***Comment:***

*A Commenter suggested that another way to ensure these provisions are uniformly defined, executed and enforced is to put the SWPPP terms and conditions in the NYS Building Code.*

Local laws are the best way to implement stormwater management, because they can address issues (such as administration) that are outside the scope of building codes, and can be tailored to

local circumstances.

DOS and DEC are working toward including stormwater controls in the New York State Building Code. In the meantime, for the state to meet its obligations under the Clean Water Act, it is necessary for every MS4 to approve stormwater management provisions.

# Preliminary Local Codes Assessment Worksheet

## Compliance with Stormwater Management Minimum Control Measures 4 and 5

### How to Use the Preliminary Local Codes Assessment

- The left-hand column lists key provisions of the Sample Local Law for Stormwater Management and Erosion & Sediment Control. In the column headed by the type of law or ordinance where the provision appears in the local code, write the section of your local code that contains the required provision. The Notes column is provided for additional comments or questions.

### How to Interpret the Preliminary Local Codes Assessment

- If **none** of the provisions listed in this worksheet appear in the local code, the municipality will need to make extensive amendments to existing laws and should consider amending local land use laws as given in the Sample Local Law for Stormwater Management and Erosion & Sediment Control. If a regulated MS4 municipality adopts the Sample Local Law, Gap Analysis will not be needed.
- If **few** of the provisions in the worksheet appear in local code, significant amendments will be necessary and adopting the Sample Local Law may be an attractive alternative. Gap Analysis will identify which amendments the MS4 must make and how they should be worded.
- If **most** of the provisions in the worksheet appear in local code, minor amendments will probably bring the code into compliance. Gap Analysis will identify required revisions.

<b>Sample Local Law Provision</b> <i>See the referenced section of the full Sample Local Law for complete legislative language.</i>	<b>Local Code Where Provision is Found (Enter Citation)</b>					<b>Notes</b>
	<i>To determine whether local code matches a provision of the Sample Local Law, consult the Demonstration of Equivalence worksheet for that article and section of the Sample Local Law.</i>					
	Zoning	Site Plan	Subdi- vision	E&SC Law	Other	
<b>Sample Local Law, Article 1</b>						
<b>Section 4.1 Applicability.</b> Applicable to all construction activity ... that results in land disturbance equal to or greater than one acre, or activities disturbing less than one acre...that is part of a larger common plan of development or sale....						
<b>4.2 SWPPP Review Procedure.</b> The municipality ... shall accept and review all stormwater pollution prevention plans (SWPPPs). [The stormwater management local law must define the procedure by which the SWPPP is distributed to all land use review boards.]						
<b>4.3 SWPPP Review Requirement.</b> All land development activities subject to review and approval by the (applicable board) under (subdivision, site plan, and/or special permit) regulations shall be reviewed subject to the standards contained in this local law.						

<p style="text-align: center;"><b>Sample Local Law Provision</b>  <i>See the referenced section of the full Sample Local Law for complete legislative language.</i></p>	<p style="text-align: center;"><b>Local Code Where Provision is Found (Enter Citation)</b></p> <p style="text-align: center;"><i>To determine whether local code matches a provision of the Sample Local Law, consult the Demonstration of Equivalence worksheet for that article and section of the Sample Local Law.</i></p>					<p style="text-align: center;"><b>Notes</b></p>
	Zoning	Site Plan	Subdi- vision	E&SC Law	Other	
<p><b>4.4 SWPPP Review Requirement.</b> All land development activities not subject to review as stated in section 4.3 shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP)...</p>						
<b>Sample Local Law, Article 2</b>						
<p><b>Section 2.1 Stormwater Pollution Prevention Plan (SWPPP) Requirement.</b> No application for approval of a land development activity shall be reviewed until the appropriate board has received a SWPPP prepared in accordance with the specifications in this local law.</p>						
<p><b>2.2.2.1 Contents of Stormwater Pollution Prevention Plans.</b> [To comply, the local law must require all 16 items in the SWPPP, 2.2.1.1-16: Project scope; site map/construction drawings; soils description; construction phasing plan; pollution prevention measures; waste controls; soil stabilization, runoff control and sedimentation control measures location and size; specifications; temporary practices to be converted to permanent control measures; implementation schedule; maintenance schedule; receiving waters; implementation responsibilities; description of structural practices; existing runoff data.]</p>						
<p><b>2.2.2 Definition of Land Development Activities Requiring Post-construction Stormwater Controls,</b> must be as stated in sample local law.</p>						

<p align="center"><b>Sample Local Law Provision</b></p> <p align="center"><i>See the referenced section of the full Sample Local Law for complete legislative language.</i></p>	<p align="center"><b>Local Code Where Provision is Found (Enter Citation)</b></p> <p align="center"><i>To determine whether local code matches a provision of the Sample Local Law, consult the Demonstration of Equivalence worksheet for that article and section of the Sample Local Law.</i></p>					<p align="center"><b>Notes</b></p>
	Zoning	Site Plan	Subdi- vision	E&SC Law	Other	
<p><b>2.2.3 Constituents of SWPPP when post-construction stormwater management practices are required.</b> [To comply, the local law must require items 1-7 in the SWPPP, 2.2.3.1-7: The 16 E&amp;SC information requirements, plus description of post-construction practices; site map/construction drawings; hydrologic and hydraulic analysis; comparison of pre- and post-development runoff; post-construction practice specifications; maintenance schedule.]</p>						
<p><b>Section 3.1, Technical Standards.</b> Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:</p> <p><b>3.11 <i>The New York State Stormwater Management Design Manual</i></b> and</p> <p><b>3.12 <i>New York Standards and Specifications for Erosion and Sediment Control.</i></b></p>						
<p><b>Section 4. Maintenance and Repair of Stormwater Facilities During Construction</b></p> <p><b>4.1.1</b> The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control.</p> <p><b>4.1.2</b> Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more.</p>						
<p align="center"><b>Sample Local Law, Articles 3, 4 and 5</b></p> <p align="center"><i>To be in compliance with the Stormwater Management General Permit for MS4s (GP-02-02), localities that have Subdivision Regulations, Site Plan Review Regulations or Erosion and Sediment Control Laws must amend these laws.</i></p>						
<p><b>Article 3. Subdivision Regulation Amendment</b> - Requires Stormwater Pollution Prevention Plans for subdivision approval per requirements in Articles 1 and 2 of the Sample Local Law.</p>						

<p style="text-align: center;"><b>Sample Local Law Provision</b>  <i>See the referenced section of the full Sample Local Law for complete legislative language.</i></p>	<p style="text-align: center;"><b>Local Code Where Provision is Found (Enter Citation)</b></p> <p style="text-align: center;"><i>To determine whether local code matches a provision of the Sample Local Law, consult the Demonstration of Equivalence worksheet for that article and section of the Sample Local Law.</i></p>					<p style="text-align: center;"><b>Notes</b></p>
	Zoning	Site Plan	Subdi- vision	E&SC Law	Other	
<p><b>Article 4. Site Plan Review Regulation Amendment</b> - Requires Stormwater Pollution Prevention Plans for site plan approval per requirements in Articles 1 and 2.</p>						
<p><b>Article 5. Erosion and Sediment Control (E&amp;SC) Law Amendment</b> - Updates an existing law to require Stormwater Pollution Prevention Plans per requirements in Article 2. (Alternatively the E&amp;SC law may be repealed and all stormwater management provisions placed in Zoning and other local land use controls.)</p>						
<b>Sample Local Law, Article 6</b>						
<p><b>Section 1 Construction Inspection and 1.1 Erosion and Sediment Control Inspection.</b> [The MS4 permit requires localities to have procedures for inspecting control measures. Indicate where these procedures are found in local law.]</p>						
<p><b>Section 3.1, 3.2, 3.3 Enforcement Procedures.</b> [The MS4 permit requires localities to have procedures for enforcing control measures. Indicate where these procedures are found in local law.]</p>						
<p><b>Sections 3.4, 3.5, 3.6 Penalties.</b> [The MS4 permit requires municipalities to enact sanctions (penalties) to ensure compliance to the extent allowed by state or local law. Indicate where these penalties are found in local law.]</p>						