

Chapter 46. SANITATION

Refer to: [Article IA. Recycling](#) 46-11

[HISTORY: Adopted by the North Hempstead Town Board 1-22-1991 by L.L. No. 2-1991; *Editor's Note: This local law also repealed former Ch. 46, Sanitation, adopted 7-22-1986 by L.L. No. 7-1986, as amended. amended in its entirety 6-23-2009 by L.L. No. 12-2009. Subsequent amendments noted where applicable.*]

GENERAL REFERENCES

Underground storage of flammable liquids — See Ch. [29A](#).

Junk dealers — See Ch. [31](#).

Littering — See Ch. [34](#).

Deposit of materials — See Ch. [35](#).

Abandonment of personal property — See Ch. [40A](#).

Unsafe structures — See Ch. [63](#).

Article I. General Regulations

§ 46-1. Title.

This chapter shall be known as the "Sanitation Code of the Town of North Hempstead."

§ 46-2. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

ACCEPTABLE WASTE

All Solid Waste generated and collected in the Town that the Commissioner deems acceptable for disposal at a Solid Waste Management Facility, except for Recyclables, Hazardous Waste or Unacceptable Waste.

AUTHORITY

The Town of North Hempstead Solid Waste Management Authority.

AUTHORITY AGREEMENT

The Landfill Concession and Solid Waste Service Agreement dated as of March 15, 1988, between the Authority and the Town, amended from time to time.

BOTTLES

Containers made of Glass that formerly contained only food or beverages.

BULKY ITEMS

Items that may be too large to fit into standard household trash cans or are typically not collected as part of weekly trash collections, such as small household appliances and housewares (microwaves, toasters, irons, pots and pans); painted, laminated and treated wood, including lumber under four feet in length and under 25 pounds, and plywood; furniture (wooden and upholstered); mattresses; textiles; bulky plastics; packing materials; insulation; office equipment; and small machinery, generated within the Town and which have been discarded or rejected as

being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, having served their intended use.

BULKY SCRAP METALS

White goods (stoves, refrigerators, washing machines, dishwashers and hot water heaters), outdoor metal furniture, recognizable, uncontaminated metal vehicle parts, metal pipes, bed frames, metal sheds and other large metal objects, generated within the Town and which have been discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, having served their intended use.

CANS

Containers made of aluminum, tin or steel that contained only food or beverages.

COLLECT

The activity of picking up, gathering or loading of Solid Waste.

COLLECTOR

Each such individual or carting company authorized by valid license issued by the Commissioner to collect, pick up, remove or cause to be collected, picked up or removed any Acceptable Waste and Recyclables generated within the Town and placed at Curbside for collection.

[Amended 4-6-2010 by L.L. No. 2-2010]

COMMERCIAL

Any person, company, corporation, partnership or other entity engaged in a business for profit.

COMMERCIAL WASTE

Acceptable Waste generated by stores, offices, institutions, restaurants, warehouses and nonmanufacturing activities at industrial facilities.

COMMINGLED

Source-Separated, nonputrescible, noncontaminated Recyclables that have been placed in the same container.

COMMISSIONER

The Commissioner of the Department of Solid Waste Management of the Town of North Hempstead, who also serves simultaneously as Executive Director of the Town of North Hempstead Solid Waste Management Authority.

CONSTRUCTION AND DEMOLITION DEBRIS

Uncontaminated Solid Waste resulting from the construction, remodeling, repair or demolition of structures and roads. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles, asphaltic pavement, Glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no Hazardous Waste and metals that are incidental to the above. Solid waste that is not Construction and Demolition Debris (even if resulting from the construction, remodeling, repair or demolition of roads) includes, but is not limited to, asbestos waste, garbage, corrugated paper, electrical fixtures or components (such as fluorescent light ballasts or transformers) that contain hazardous substances, carpeting, furniture, appliances, tires, drums and containers and fuel tanks. Specifically excluded from the definition of "Construction and Demolition Debris" is Solid Waste resulting from any processing technique, other than that employed at a construction and demolition processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding.

CONTAINER

Any portable device in which material is stored, transported, treated, disposed of or otherwise handled.

CONTROLLED SUBSTANCE

Any substance or substances listed in New York State Public Health Law § 3306, as amended, and Section 812 of Title 21 of the United States Code, codified as 21 U.S.C. § 812, as amended, the Controlled Substances Act.

CORRUGATED PAPER

All corrugated cardboard normally used for packing, mailing or shipping of goods or other material, but shall not mean wax-coated or soiled cardboard.

CURBSIDE

The location within five feet from the public street or other designated area at which Acceptable Waste or Recyclables may be set out for collection by a Collector.

[Amended 4-6-2010 by L.L. No. 2-2010]

CURBSIDE RECYCLING PROGRAM

The program established pursuant to § [46-11](#) of this chapter.

DUMPSTER CONTAINER

A container used for the purpose of temporarily holding Construction and Demolition Debris, Solid Waste, Commercial Waste or Recyclables and which generally ranges in size from 1/2 cubic yard to 40 cubic yards.

ECONOMIC MARKETS

Instances in which the full avoided costs of proper collection, transportation and disposal of Source-Separated materials are equal to or greater than the cost of collection, transportation and sale of the materials less the amount received from the sale of the material.

GLASS

All clear (flint), green and brown (amber) colored Glass containers, crystal, ceramics and plate, window, laminated or mirrored Glass, excluding wired Glass.

HAZARDOUS WASTE

Waste that appears on a list or satisfies the criteria promulgated under § 27-0903 of the New York State Environmental Conservation Law and/or Section 1004 of the Federal Resource Conservation and Recovery Act of 1976, as amended, or which any governmental agency or unit having appropriate jurisdiction or the Commissioner shall determine to be harmful, toxic, dangerous or ineligible for disposal at any Solid Waste Management Facility located within the Town, which shall include but not be limited to a Solid Waste or a combination of Solid Wastes that, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

[A.](#) Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating, reversible illness.

[B.](#) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed.

HOUSEHOLD HAZARDOUS WASTE

Household waste that, but for its point of generation, would be a Hazardous Waste.

HOUSEHOLD WASTE

Solid Waste discarded from single or multiple dwellings, hotels, motels, campsites, public and private recreation areas and other residential sources.

LANDFILL

A disposal facility at which Solid Waste or its residue after treatment is intentionally placed and at which such waste shall remain after closure.

LICENSEE

Any Collector licensed pursuant to the provisions of this chapter.

MULTIRESIDENTIAL COMPLEX

Four or more residential units located on a single property or contiguous properties under common ownership, control or management. For this purpose, "residential unit" shall mean an enclosed space consisting of one or more rooms designed for use as a separate residence and shall include, but not be limited to, an apartment, condominium unit, townhouse, cooperative unit, mobile home, living unit in a group home and room or set of rooms in a boardinghouse, but shall not include rooms within a single-family residence, motel or hotel.

MUNICIPALITY

Any municipal corporation, agency, school district, district corporation, special district or improvement district located or having jurisdiction, in whole or in part, within the confines of the Town.

NEWSPAPER

Newsprint and all Newspapers and Newspaper advertisements, supplements, comics and enclosures. "Newspaper" is a Recyclable.

PAPER

All office paper, fine paper, bond paper, xerographic paper, mimeo paper, duplication paper, magazines, paperback books, catalogs, junk mail, computer paper, telephone books and similar material, but shall not mean Newspaper, wax paper, plastic or foil-coated paper, styrofoam, wax-coated food or beverage containers, carbon paper, blueprint paper, food-contaminated paper or corrugated paper.

PERSON

Any natural person, individual, partnership, corporation, association, joint venture, corporation form, trust, estate or any other legal entity, including a municipality.

PHARMACEUTICAL DRUGS

Any over-the-counter medication or any preparation, compound, mixture or substance that requires a prescription or any Controlled Substance that is obtained with a prescription that permits a person to lawfully obtain a Controlled Substance from any person authorized to dispense Controlled Substances.

PLASTIC CONTAINERS

Containers composed of high-density polyethylenes (HDPE), polyethylene terephthalate (PET) or other specific plastics as the Town Board may designate.

POLLUTANTS

Includes but are not limited to aerosol cans; air-conditioning refrigerants; ammonia and solid bowl cleaner; antifreeze; asbestos; bug and rodent killers, including pesticides which have been banned or restricted for use such as 2, 4-D; bleach and disinfectants; chemistry kits; drain cleaners and degreasers; fertilizers with herbicides; household batteries; mercury products; nonlatex paints; paint thinner and brush cleaner; permitted aerosol containers; Pharmaceutical Drugs; photography chemicals; polishes and wood preservatives; swimming pool chemicals; spot removers and other solvents; unused oven cleaners; unused flammable liquids (fire starter); and weed killers.

RECYCLABLE

Any physical material designated by this chapter, the Commissioner, the Town Board from time to time or by the Authority's bylaws, or by any municipality pursuant to the implementation of a recycling program adopted by such municipality, to be segregated from acceptable waste without otherwise processing such Acceptable Waste. "Recyclable" includes Bottles, Cans and Plastic Containers.

RESIDENT

Any Person residing within the Town on a temporary or permanent basis, but excluding Persons residing in hotels or motels. For purposes of this chapter, "resident" does not include Commercial, industrial or institutional establishments.

SOLID WASTE

All putrescible and nonputrescible materials or substances, including but not limited to materials or substances discarded or rejected, whether as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection or for any other reason, which are being accumulated, stored or physically, chemically or biologically treated prior to being discarded; have served their intended use; or are a manufacturing or mining by-product, including but not limited to garbage, Recyclables, Bulk Items, refuse and other discarded solid materials, including such materials resulting from industrial, Commercial, mining and agricultural operations and from community activities, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those gaseous forms, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and waste that appears on the list of Hazardous Wastes promulgated by the Commissioner of Environmental Conservation pursuant to § 27-0903 of the Environmental Conservation Law.

SOLID WASTE MANAGEMENT FACILITY

Any facility employed beyond the initial Solid Waste collection process, including but not limited to transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing Solid Waste volume, facilities for the disposal of Construction and Demolition Debris, plants and facilities for compacting, composting or pyrolyzation of Solid Wastes, and other Solid Waste disposal, reduction or conversion facilities.

SOURCE-SEPARATE

The segregating of Solid Waste into some or all of its component parts at the point of its generation and includes the segregation of Recyclables from the Solid Waste stream.

TOWN

The Town of North Hempstead, Nassau County, New York.

TOWN BOARD

The duly elected and constituted legislative body of the Town of North Hempstead.

UNACCEPTABLE WASTE

That portion of Solid Waste, excluding Hazardous Waste, designated by the Commissioner, in writing, as being unacceptable for treatment at the Solid Waste Management Facility, which designation may include, without limitation, explosives, pathological and biological waste, medical waste, radioactive materials, foundry sand, sewage sludge, cesspool and other human waste, human remains and animal carcasses, motor vehicles, including such major motor vehicle parts as automobile transmissions, differentials, springs, fenders, agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large machinery or equipment.

VILLAGE

Any village located, in whole or in part, within the Town.

YARD WASTE

Organic yard and garden waste, leaves, grass clippings, garden debris and brush.

[§ 46-3. Adoption of rules and regulations.](#)

The Town Clerk and the Commissioner shall adopt such rules and regulations as may be necessary to effectuate the purposes of this chapter, including such regulations as may provide for interim exemptions from certain provisions of this chapter to Persons applying for licenses hereunder.

§ 46-4. Licensing.

A. License required for the collection and/or disposal of Solid Waste.

(1) The following Persons, excluding any Village as described in Subsection A(5) below, shall be required to obtain a license for the collection and/or disposal of Acceptable Waste and/or Recyclables pursuant to this section:

(a) Persons in the business of collecting and/or disposing of Acceptable Waste and/or Recyclables other than the Authority or Persons acting pursuant to contracts with the Authority.

(b) Persons engaged in the collection and/or disposal of Acceptable Waste and/or Recyclables as an accessory to their business.

(c) Commercial establishments that dispose of their own Acceptable Waste and/or Recyclables.

(2) All Collectors shall be licensed under this section.

(3) In addition to obtaining a license as herein provided, each licensed Person shall be required to obtain a permit for each vehicle, compactor, Dumpster Container or open box used by the licensed Person for the collection and/or disposal of Acceptable Waste and Recyclables in the Town and shall be required to display the permit on each vehicle, compactor, Dumpster Container or open box as required by the rules and regulations promulgated by the Commissioner.

(4) Commercial property owners, as well as a tenant, managing agent or merchant making arrangements for the collection of Solid Waste from Commercial property, are responsible for ensuring that such waste is collected by a licensed carter. No Commercial property owner, tenant, managing agent or merchant shall contract for the collection of Acceptable Waste or Recyclables with any Person or entity unless such Person or entity has the license required by this chapter, nor shall any such owner, tenant, managing agent or merchant permit a Dumpster Container or other container used for the collection of Acceptable Waste or Recyclables to be present on its property unless such Dumpster Container or other container has displayed on an exterior side the name, phone number and Town of North Hempstead license number of the licensed carter with whom it has contracted for the collection of waste.

(5) Villages which engage in the collection of Acceptable Waste and/or Recyclables utilizing Village-owned or -leased and -operated vehicles are not required to be licensed but shall provide any information reasonably required pursuant to any rules or regulations promulgated by the Commissioner for any such Village's use of the Authority's Solid Waste Management Facilities.

B. Licenses shall be classified as Type I collection/disposal, Type IR collection/disposal, Type II collection/disposal, Type III disposal and Type IV disposal licenses, depending upon the status and/or type of business of the applicant. The Commissioner shall determine which type of license is applicable.

(1) Type I collection/disposal license. Applicants who are in the business of collecting and/or disposing of Acceptable Waste and Recyclables generated by others are required to have a Type I collection/disposal license to engage in such collection or disposal within the Town. Such Persons include but are not limited to private carting companies and companies and businesses that provide dumpster services.

(2) Type IR collection/disposal license.

(a) Applicants who are engaged in the business of collecting only Source-Separated Recyclables pursuant to contracts with owners or tenants of property are required to obtain a Type IR collection/disposal license to engage in such collection or disposal within the Town.

(b) The holder of a Type IR license may collect materials such as corrugated paper, high-grade paper and Construction and Demolition Debris which has been Source-Separated and placed into a separate container for

collection and recycling or reuse and which will be recycled or reused. Each container used must be plainly marked as being for Recyclables only and may not be used for nonrecyclables. The holder of a Type IR license may not collect any container with nonrecyclables or mixed loads, even if the predominant material in such container is one or more Recyclables.

(3) Type II collection/disposal license. Applicants who are engaged in the collection and/or disposal of Acceptable Waste and Recyclables only as an accessory to their business are required to obtain a Type II collection/disposal license to engage in such collection or disposal within the Town. Such Persons include but are not limited to landscaping businesses and home improvement companies.

(4) Type III disposal license. Commercial establishments, other than those specifically excepted by the Commissioner, which dispose of their own Acceptable Waste and/or Recyclables are required to obtain a Type III disposal license.

(5) Type IV disposal license. Charitable, fraternal and religious organizations which maintain established meeting places within the incorporated or unincorporated areas of the Town of North Hempstead shall also qualify for a Type IV license and not-for-profit property owners' associations operating principally within the Town of North Hempstead.

C. License procedure. Every applicant shall file a written verified application with the Town Clerk in such form and containing such information as the Town Clerk shall prescribe. Such information may include a list of the customers of the applicant, a list and map of the routes of the applicant, the volume of waste collected by it, the identity and relevant information as to the officers, partners and shareholders of an applicant, and the name of any affiliated or related companies engaged or formerly engaged in waste collection.

D. Insurance and deposit. Before a license or permit may be issued by the Town Clerk, each applicant other than a municipality applying for a collection/disposal or disposal license shall file with the Town Clerk the following:

(1) Proof of the following insurance coverage consisting of a certificate of the insurance carrier:

(a) Workers' compensation insurance.

(b) Disability benefits insurance.

(c) Comprehensive general liability/property damage in the combined single limit of, for Type I Licensees, \$5,000,000, or for other licensees, \$1,000,000, naming the Town and the Authority as additional insured.

(d) Automobile bodily injury liability of, for Type I Licensees, \$1,000,000 (per person)/\$1,000,000 (per accident), or for other licensees, \$1,000,000 (per Person)/\$1,000,000 (per accident), and \$1,000,000 property damage.

(e) Certificate cancellation requiring 30 days' written notice to the Town Clerk.

(2) Cash deposit or bond.

(a) A cash deposit or a bond from a surety company that meets the following two criteria:

[1] The company must be an admitted carrier in the State of New York.

[2] The company must have a New York State admitted carrier holding of an "A" rating from AM Best Company or equivalent.

(b) The cash deposit or bond must be in an amount equal to 250% of the average monthly charges for use of a Solid Waste Management Facility by the applicant during the previous year; or if the applicant has not used a Solid Waste Management Facility, the cash deposit or bond shall be in the amount of 250% of the estimated monthly charges to be incurred by the applicant during the current year. The Commissioner or Town Clerk may reduce the amount of the cash deposit or bond required if an applicant demonstrates that it will not have, during the licensing year, contracts for the collection of waste which it held during the prior year and has not obtained other contracts to substantially replace the lost waste. The Commissioner or the Town Clerk may eliminate the amount of the cash deposit or bond required, in the form of a bond waiver, if an applicant demonstrates that its corporation, limited-liability company, partnership and/or sole proprietorship is not in the collection of any Acceptable Waste currently mandated pursuant to this article, to be delivered and disposed of at a publicly owned Solid Waste Management Facility designated by the Commissioner. The Commissioner and Town Clerk

reserve the right to suspend or revoke this bond waiver in the event that the previously exempted Acceptable Waste is subsequently required to be delivered and disposed of at a publicly owned Solid Waste Management Facility designated by the Commissioner pursuant to this article. A bond waiver in a format acceptable to the Town must be completed by the applicant and approved by either the Commissioner or the Town Clerk. The Commissioner or Town Clerk may also require a Licensee to increase its cash deposit or bond during a year to 250% of a monthly charge if it incurs charges in any single month in excess of 40% of the amount of its cash deposit or bond. Notwithstanding the foregoing, the minimum cash deposit or bond shall be in the amount of \$20,000 for a Type I collection/disposal license, \$5,000 for a Type IR collection/disposal license and \$3,000 for Type II and Type III collection/disposal licenses. No deposit will be required from applicants for Type IV disposal licenses.

[Amended 4-6-2010 by L.L. No. 2-2010]

[1] In the event that a penalty is assessed pursuant to the provisions of this chapter, the Commissioner or Town Clerk may deduct the amount of such penalty from the cash deposit.

[2] The Licensee must maintain the required cash deposit or bond at all times, and failure to maintain said cash deposit or bond after three days' notice and demand will allow the Town Clerk to suspend such Person's license. The Town Clerk shall also be entitled to suspend the license of any Licensee which is more than 30 days late on payment of any bill for disposal from the Authority.

E. Every Licensee shall keep such records and accounts as the Commissioner shall require and shall provide the Commissioner with such reports upon a form supplied by the Commissioner.

F. The Commissioner or Town Clerk shall have the right to inspect books of account and records maintained by the Licensee.

G. Issuance of licenses and permits.

(1) Licenses and permits required by this chapter shall be issued by the Town Clerk following a review and approval of an application and upon payment by the applicant of a fee in accordance with the fee schedule set forth below:

(a) Fee for a Type I collection/disposal license. The fee for a Type I collection/disposal license shall be \$600, which will include a permit for one vehicle. For each additional vehicle used by the applicant in the collection, transportation or disposal of Acceptable Waste, the permit fee shall be \$250. The permit fee for each compactor or open box shall be \$35.

(b) Fee for a Type II collection/disposal license. The fee for a Type II collection/disposal license shall be \$135, which will include a permit for one vehicle used by the applicant in the collection, transportation or disposal of Acceptable Waste. For each additional vehicle used by the applicant in the collection, transportation or disposal of Acceptable Waste, the fee will be \$50.

(c) Fee for a Type III disposal license. The fee for a Type III disposal license shall be \$125, which will include a permit for one vehicle used by the applicant in the collection, transportation or disposal of Acceptable Waste. For each additional vehicle used by the applicant in the collection, transportation or disposal of Acceptable Waste, the fee will be \$100.

(d) Fee for a Type IV disposal license. No license fees shall be required of applicants required to obtain Type IV disposal permits.

(e) Fee for a Type IR collection/disposal license. The fee for a Type IR collection/disposal license shall be \$300, which will include a permit for one vehicle. For each additional vehicle used by the applicant in the collection, transportation or disposal of Recyclables, the permit fee shall be \$100. The permit fee for each compactor or open box shall be \$35.

(2) Upon filing of an affidavit and such other proof as may be required by the Commissioner, a substitute permit or replacement of a lost permit may be issued upon the payment of a fee of \$25.

(3) Each vehicle license issued pursuant to this chapter shall be issued as of the date of the granting thereof and shall expire on the 31st day of December next succeeding such date, unless sooner suspended or

revoked. Each license/permit for a Container or open box issued pursuant to this chapter shall expire two years from the 31st day of December in the year in which such license/permit was issued, unless sooner suspended or revoked.

[Amended 4-6-2010 by L.L. No. 2-2010]

(4) No license shall be issued to any applicant if either its Solid Waste license has been revoked or is under a suspension, or if the applicant is affiliated with or under common ownership or control with a company whose Solid Waste license has been revoked or is under a suspension. The Town Clerk shall be entitled to all relevant information, including sworn statements, to ascertain whether an applicant is affiliated with or under common ownership or control with another company. "Control" shall mean either legal or de facto control. Where more than four years have elapsed from the date of a revocation of a license, the Town Board may by resolution waive the prohibition in this Subsection G(4) if it determines that issuance of a license will be in the public interest.

H. Acceptance of license. Acceptance of a license issued under this chapter shall be deemed a contract by the holder thereof to abide by the provisions of this chapter. In the event that the holder shall be in breach of such undertaking, the Town, in addition to all other remedies herein, shall be entitled to such liquidated damages as may be provided for in such license.

§ 46-5. Suspension and revocation of license.

A. Town Board's authority to revoke or suspend. Any license or permit issued hereunder may be suspended or revoked by the Town Board after a hearing upon notice, as set forth below, which establishes the requisite grounds in the discretion of the Town Board. No permit shall be suspended, except as provided in § 46-5D hereof, or revoked hereunder without a hearing thereon upon written notice to the permittee.

B. Grounds for suspension only. The Town Board shall be empowered to suspend a license or permit if the Licensee is indicted or charged, upon an information duly filed with public authorities, for or with the commission of any crime or offense until the Licensee is either convicted or acquitted.

C. Grounds for suspension or revocation. The Town Board, in its discretion, is empowered to either suspend or revoke a license or permit if the Licensee is:

(1) Convicted of any crime.

(2) Convicted of any violation of any:

(a) Provision of this chapter;

(b) Rule or regulation adopted under this chapter;

(c) Authority bylaw;

(d) Town ordinance;

(e) Ordinance or regulation of the state; or

(f) Ordinance or regulation of any municipality within the state.

(3) Guilty of making a false statement or misrepresentation in his application for any permit issued pursuant to this chapter.

D. Temporary suspension of license or permit pending a hearing. The Town Clerk, upon receiving information giving him reasonable cause to believe that any Licensee hereunder violated any provision of this chapter, has been convicted of any violation listed in § 46-5B or C, has been either indicted for or charged with any crime or offense or is guilty of having made a false statement or misrepresentation in his application for any license or permit issued hereunder, may forthwith temporarily suspend such license or permit until the Town Board is able to conduct a hearing.

E. Procedure for hearings.

- (1) Timing. Whenever the Town Board holds a hearing to revoke or suspend a permit issued pursuant to this chapter, such hearing shall be held on a date and at a place and hour designated by the Town Board. Such designation must conform to the time limits established hereunder.
- (2) Notice. A written notice of any hearing to be held by the Town Board for the revocation or suspension of any permit issued pursuant to this chapter shall be given to the permittee either in Person or by registered or certified mail. Any mailing shall be forwarded to the permittee's last known address and shall be postmarked not less than 10 nor more than 30 days prior to the hearing date. The notice shall advise the permittee of the date, place and time designated for the hearing and shall set forth specifically the grounds for complaint.
- (3) Rights of the permittee. The permittee involved shall be entitled to:
- (a) Be represented by legal counsel.
 - (b) Present competent and material testimony.
 - (c) Present any other competent and material evidence in his own behalf as may be relevant to the subject matter of the hearing.
 - (d) Speak on his own behalf.
- (4) Unsworn testimony. There shall be no requirement of sworn testimony by any of the witnesses or the permittee.
- F. Finality of Board determination. The findings of the Town Board at the hearing shall determine whether there are sufficient grounds for suspending a permit, pursuant to § 46-5B or C or for revoking a permit pursuant to § 46-5C. Where the findings establish sufficient grounds for suspension, the Town Board may suspend the permit. Where the findings establish sufficient grounds for either revocation or suspension, the Town Board, in its discretion, may suspend or revoke the permit. The Town Board, after such hearing, shall make such decision or determination as, in its opinion, ought to be made.

§ 46-6. Unlawful activities; enforcement.

A. It shall be unlawful for:

- (1) Any Person, other than a Licensee or a Village not required to be licensed under § 46-4A(5), to collect Acceptable Waste that has been placed at the Curbside for collection pursuant to this chapter.
 - (2) Any Person, other than a Licensee or a Village not required to be licensed under § 46-4A(5), to collect any Recyclable that has been placed at the Curbside for collection or within a recycling collection area pursuant to this chapter.
 - (3) Any Person to violate or to cause or to assist in the violation of any provision of this chapter or any implementing rule or regulation promulgated by the Commissioner.
 - (4) Any Person to hinder, obstruct, prevent or interfere with Town or Authority employees or any other authorized Persons in the performance of any duty under this chapter or in the enforcement of this chapter.
- B. All unlawful conduct set forth in this section shall constitute a violation. Each day or a part of a day on which violation(s) or failure continues shall constitute a separate violation(s). Each violation of this chapter shall constitute a separate offense.

C. It shall be the responsibility of the Commissioner and the Town Clerk, in consultation with the Town Attorney, to enforce the provisions of this chapter and all rules and regulations promulgated hereunder, including regulations of the Commissioner and bylaws of the Authority. Such enforcement shall be by such legal or equitable proceedings, including, without limitation, damages, or for injunction to restrain a violation of this chapter or specific performance brought in the name of the Town of North Hempstead, as may be provided or authorized by law.

§ 46-6.1. Penalties for offenses.

A. Any Person, other than a Village that is located, in whole or part, within the Town, its officers and employees, acting within their municipal duties, who violates any of the provisions of this chapter, other than § 46-14 of this chapter, or who fails to perform any duty imposed by this chapter or any rules or regulations promulgated pursuant to it or any final determination or order of the Commissioner or Town Board made pursuant to this chapter, shall be guilty of a violation and, upon conviction thereof in a court of competent jurisdiction, shall be punished by the following fines:

(1) For conviction of a first offense, by a fine of not less than \$1,000 and not more than \$5,000.

(2) For conviction of the second of two offenses, both of which were committed within a period of two years, by a fine of not less than \$2,500 and not more than \$10,000.

(3) For conviction of a third or subsequent offense of a series of offenses, all of which were committed within a period of five years, by a fine of not less than \$5,000 and not more than \$25,000.

B. Any Person, other than a Village that is located, in whole or part, within the Town, its officers and employees, acting within their municipal duties, who violates § 46-14 of this chapter shall be guilty of a violation and, upon conviction thereof in a court of competent jurisdiction, shall be punished by a fine not to exceed \$5,000 or imprisonment for a period not to exceed 15 days or by a term of community service related to the purpose of this chapter, or any combination of the above penalties. For a conviction of a second offense, both of which were committed within a period of three years, punishment shall be by a fine of not less than \$2,500 nor more than \$10,000 or imprisonment for a period not to exceed 15 days or by a term of community service related to the purpose of the chapter, or any combination of the above penalties. Upon conviction for a third or subsequent offense, all of which were committed within a period of three years, punishment shall be by a fine of not less than \$5,000 nor more than \$25,000 or imprisonment for a period not to exceed 15 days or by a term of community service related to the purposes of the chapter, or any combination of the above penalties.

C. Violations by any Person, other than a Village that is located, in whole or part, within the Town, its officers and employees, acting within their municipal duties, shall be recorded by designated enforcement staff and issued through formal notices of violations and/or uniform appearance tickets. Uniform appearance tickets shall be answerable in District Court.

D. In addition to the penalties provided in this section, licenses or permits shall be subject to suspension or revocation for any of the reasons set forth in § 46-5.

E. In lieu of enforcement of this chapter by way of prosecution, revocation of permits or other means, the Commissioner, or his duly authorized representative, may seek to obtain the voluntary compliance with this chapter by way of notice, warning or educational means, as deemed appropriate in the discretion of the Commissioner, taking into consideration all of the circumstances surrounding such violation. This section shall not be construed to require that such noncompulsory methods must be employed or attempted before proceeding by way of compulsory or other legally prescribed procedures.

F. In the case of violations alleged to have been committed by a Village, its officers, employees or agents, the Town or Commissioner, or duly authorized representative, shall first send a notice of violation to the Village Mayor and Board of Trustees, or other governing body, for consideration of corrective action, prosecution or enforcement. Upon the expiration of 30 days from the giving of such notice and the failure to cure said violation, the Town and the Authority may enforce this chapter by pursuing civil remedies.

§ 46-6.2. Rebuttable presumptions.

[Added 4-6-2010 by L.L. No. 2-2010]

The following shall be rebuttable presumptions in the enforcement and prosecution of the provisions of this chapter:

A. The placement or presence of any Dumpster Container, open box or other container used by a Licensee which is marked or identified with the name, symbol or other indicia of any Licensee, at any location within the

Town, shall be presumptive evidence that said Licensee is providing Solid Waste collection services at said location within the Town as of the date of said placement or presence.

B. Evidence of Solid Waste in a Dumpster Container, open box or other container used by a Licensee located as described in § [46-6.2A](#) above, and subsequent observation of the same Dumpster Container, open box or other container empty, shall be presumptive evidence that Solid Waste was collected from such Dumpster Container, open box or other container by the Licensee whose name, symbol or other indicia is marked or identifiable on such Dumpster Container, open box or other container.

C. The failure to deliver any Solid Waste to a publicly owned Solid Waste Management Facility designated by the Commissioner within three days of the collection of Solid Waste from any location within the Town shall be presumptive evidence that the Solid Waste was disposed of at a location other than a publicly owned Solid Waste Management Facility designated by the Commissioner.

D. Service upon any Person in a manner consistent with the requirements of § [46-5E\(2\)](#) of this chapter shall be presumptive evidence that such notice was received by that Person.

E. The failure of any Person charged under this chapter to rebut the presumption shall not mean that the trier of fact must find the person guilty or that the burden of proof relative to the underlying charge(s) has been shifted upon the accused.

§ 46-7. Fees for acceptance of Solid Waste.

Charges for the acceptance of Solid Waste shall be at such a rate as the Town Board or the Authority, pursuant to the Authority agreement, by resolution, shall determine. Any change of a rate shall be effective as applicable to Licensees 30 days after notice thereof is mailed to such Licensees. As to all other users of the facilities, a change of rate shall be effective upon the action of the Board or the Authority, as the case may be.

Notwithstanding the above, the rate charged to Villages shall only be modified annually as set forth in § [46-21](#).

§ 46-8. Collection vehicles; operations.

A. Collection vehicles. Every collection vehicle shall be maintained, operated and used at all times only in full compliance with all applicable provisions of law, federal, state and local, and of this Sanitation Code and all applicable rules and regulations adopted thereunder. Every collection vehicle shall be loaded at all times in such a manner and by such methods as to prevent the release or discharge of dust and so prevent the spillage of refuse upon the sidewalks or streets, and every operator of a vehicle shall remove immediately from sidewalks or streets all refuse which is spilled, littered or thrown thereon in loading operations or in the handling and return of receptacles or while traveling.

B. Vehicle operations. The following specific regulations regarding collecting Acceptable Waste and the operation of collection vehicles shall be observed:

(1) Solid Waste disposal. It shall be unlawful for any Person to leave, deposit or dump any Solid Waste anywhere in the Town except at any of the Town Solid Waste management facilities designated by the Commissioner. This shall not apply to any Village, and officers and employees thereof acting within their municipal duties, which engages in the collection of Acceptable Waste and/or Recyclables and utilizes Village-owned or -leased and -operated vehicles and which declared itself exempt under § [46-22](#) of this chapter and which has not applied for and been granted reinstatement under § [46-23](#) thereof.

(2) Watertight containers or vehicles required. No Person shall remove any Solid Waste of any kind from the premises of any Person or cart or transport the same through or upon any street, avenue, parkway or highway within the Town except in trucks or wagons securely covered with tarpaulins and having watertight bodies and covered containers.

(3) Careful operation. Operators of all types of collection vehicles shall exercise care at all times to prevent the making of unnecessary or avoidable noise in their operations. Each open-top box-type vehicle body shall be

kept securely and fully covered, except when actually engaged in collection, so as to prohibit any refuse from being discharged while the vehicle is in transit.

(4) Reworking loads. Refuse loaded in or upon collection vehicles shall not be reworked, resorted, picked over or rehandled while the vehicle is on the streets, and refuse shall not be transferred nor reloaded from a vehicle to or into any other vehicle while on the streets. Refuse shall not be carried at any time upon any collection vehicle other than solely within the vehicle body or solely within containers on or in the vehicle body.

(5) Emptying vehicles. After refuse is dumped for disposal, the vehicle body and each container used shall be emptied thoroughly and cleaned of all loose materials.

(6) Cleaning vehicles. Each collection vehicle and each container shall be frequently cleaned and washed and periodically disinfected in order to prevent obnoxious odors, unsightly conditions, vermin infestation and other conditions inimical to the public health, safety and welfare.

(7) Vehicle closure. All loading hoppers, doors, covers and other enclosures of loader openings of all collection vehicles, transfer vehicles, roll-off containers and boxes shall be kept closed and secured at all times, except during actual loading and unloading of the particular opening.

(8) Collecting hours. No collection of Solid Waste shall be made between the hours of 6:00 p.m. and 6:00 a.m., unless authorized by a Village rule, regulation or ordinance.

§ 46-9. Vehicle weight and identification of vehicles and containers.

Each vehicle engaged in the collection and disposal of Acceptable Waste and operating under a permit shall be numbered, lettered and weighed pursuant to the rules and regulations promulgated by the Commissioner. Each Dumpster, container, open box or other container used by a Licensee, except a Village not required to be licensed under § [46-4A\(5\)](#), for the collection of Solid Waste or Recyclables shall display the name, telephone number and Town license number of the Licensee or name of such Village on an exterior side of said container. Except for such Village's vehicles and containers, the Commissioner may promulgate a rule establishing a minimum size for such lettering.

§ 46-10. Hazardous and Unacceptable Waste.

No license for the collection and/or disposal of Acceptable Waste within the Town shall authorize or entitle a Person holding such a license to collect Hazardous Waste or Unacceptable Waste within the Town and/or to dispose of the same at any Solid Waste Management Facility within the Town. Household Hazardous Waste shall be Source-Separated and disposed of pursuant to regulations promulgated by the Commissioner.

Article IA. Recycling

§ 46-11. Policy.

A. The Town Board hereby declares that it is the policy of the Town of North Hempstead to promote recycling and to thereby conserve resources and reduce the amount of Solid Waste which is disposed of at landfills or by incineration.

B. The Town, through this Article IA of Chapter [46](#), Sanitation, and in accordance with the requirements of General Municipal Law § 120-aa, seeks to have all Solid Waste generated in the Town separated into recyclable, reusable or other components for which economic markets for alternate uses exist. For purposes of this article, "components" shall include paper, corrugated paper, Glass, metals, plastics, Yard Waste and any other materials designated by the Town Board.

C. In determining whether Economic Markets for alternate uses exist, the Town Board and, in the case of Commercial, industrial and institutional establishments seeking relief from requirements pursuant to § 46-11.3B, the Commissioner shall give due consideration to:

- (1) Existing source separation in the Town.
- (2) Recycling of non-Source-Separated waste realized pursuant to the Town's Solid Waste management plan.
- (3) The additional effort and expense which will be incurred in meeting any additional source separation requirements.

§ 46-11.1. Mandatory residential source separation and recycling.

A. Upon adequate notice for a garbage and refuse district or for a particular collection area, there shall be a mandatory Curbside Recycling Program pursuant to which all Persons who are owners, lessees or occupants of residential dwellings in the Town (except as provided in § 46-11.2) shall be required to Source-Separate for pickup all components of Solid Waste for which Economic Markets for alternate uses exist.

(1) Mandatory source separation for newspapers, magazines, corrugated paper, Bottles and Cans, plastics and Yard Waste has been enacted for residential dwellings.

(2) The Town Board, by resolution, may expand the mandatory source separation and Curbside Recycling Program to include one or more of the following materials:

(a) Paper or specific types or grades of paper.

(b) Construction and Demolition Debris.

(c) All other Recyclables as designated by resolution of the Town Board.

B. Residents shall separate Recyclables from all other residential Solid Waste and place them for collection in accordance with the following:

(1) Newspapers shall be compacted and securely bagged in paper bags or bundled and tied, in packages not exceeding 50 pounds, with a rope or cord sufficient in strength to facilitate handling. Newspaper shall be placed separately at Curbside for collection on days specified by the Commissioner under the rules and regulations prescribed.

[Amended 4-6-2010 by L.L. No. 2-2010]

(2) Bottles, Cans and plastics shall be cleaned and then placed in a recycling container provided to Residents beside bags or bundles of Newspapers.

(3) Yard Waste shall be separated from other waste and placed in bags or containers and put at the curb for collection on the Yard Waste collection day established for a garbage district or collection area. Nothing herein shall preclude Residents from leaving grass clippings on their lawns or from a Village providing alternative measures for the collection of Yard Waste.

(4) All other Recyclables subject to the Curbside recycling program shall be prepared for collection in accordance with regulations promulgated by the Commissioner.

(5) Corrugated paper shall be compacted and securely bundled and tied, in packages not exceeding 50 pounds, with a rope or cord sufficient in strength to facilitate handling. Corrugated paper shall be placed separately at Curbside for collection on days specified by the Commissioner under the rules and regulations prescribed.

(6) Recyclables that are added to the Curbside recycling program pursuant to Subsection A(2) of this section shall be collected in accordance with a schedule set by the Commissioner and advertised by the Town, after adequate notice has been published, posted and publicized for a garbage district or for a particular collection area.

C. Notwithstanding any other provision of this chapter to the contrary, Residents may dispose of their Recyclables by selling or donating the same to recyclers, but these Recyclables may not be picked up at Curbside.

§ 46-11.2. Mandatory recycling program for multiresidential complexes.

A. In any garbage district or area subject to the mandatory source separation and Curbside Recycling Program pursuant to § 46-11.1 of this article, there is also established a recycling program for the Source Separation, collection and delivery of Recyclables included in the mandatory recycling program from all non-physically-disabled Residents of multiresidential complexes.

B. The owner, manager or superintendent of every multiresidential complex subject to Subsection A of this section shall provide and maintain in a neat and sanitary condition recycling collection areas to receive Recyclables that are generated by Residents of the complex. In cases where a condominium, cooperative, homeowners' or similar association exists, the association shall be responsible for the provision and maintenance of the recycling collection areas. All recycling collection areas shall be constructed and capable of receiving Newspapers, corrugated paper, magazines, Bottles, Cans and plastic containers; and any and all other Recyclables as may be included in or added to the mandatory separation and Curbside Recycling Program within 60 days of such inclusion or in addition to the Curbside Recycling Program. Multiresidential complexes covered by this section shall also be required to separate and recycle Yard Waste collected on the premises of such complex.

[Amended 4-6-2010 by L.L. No. 2-2010]

C. All non-physically-disabled Residents of the complex shall Source-Separate Recyclables and place them in the appropriate containers or areas within the recycling collection area.

D. The number and design of the recycling collection areas required by this section for each multiresidential complex shall be consistent with regulations promulgated by the Commissioner.

E. Recyclables required to be placed in recycling collection areas pursuant to this section shall be prepared for collection in accordance with regulations promulgated by the Commissioner.

§ 46-11.3. Mandatory Commercial, industrial and institutional source separation and recycling program.

A. All Commercial, industrial and institutional establishments within a garbage district or other area of the Town subject to a Curbside Recycling Program established pursuant to § 46-11.1 of this chapter shall Source Separate Solid Waste into recyclable, reusable or other components for which Economic Markets for alternate uses exist and arrange for their collection for recycling. In addition to those materials presently required to be recycled in residential and multiresidential complexes, i.e., Newspapers, Bottles and Cans, plastic and Yard Waste, Commercial establishments shall additionally be required to recycle Construction and Demolition Debris, corrugated paper, magazines and high-grade paper where there exist Economic Markets for alternate uses for such additional components. High-grade paper shall include white letterhead paper, white bond paper, white typing paper, white copier paper, white note pad paper, white writing paper, white envelopes, other nonglossy white office paper without plastic, computer printout paper, computer tab cards and white onion skin paper.

B. A Commercial, industrial or institutional establishment may, upon written application to the Commissioner, request relief from some or all of the requirements of Subsection A above. Upon receipt of such application, the Commissioner shall conduct a survey of such establishment to determine if there is sufficient generation to warrant recycling of the component or components in question and/or Economic Markets for alternate uses. If there is insufficient generation and/or an insufficient economic market for alternate uses of a particular recyclable material, the Commissioner may issue an exemption.

C. The arrangement for collection of separated Recyclables for disposition under the Commercial recycling program shall be the responsibility of the Person who owns, manages or operates the Commercial, industrial or institutional establishment at which the Recyclables are generated ("generator") or the Person contractually obligated to the generator to arrange for collection and disposal of its Solid Waste. These arrangements may

include, without limitation, direct marketing of Recyclables, contracts with Licensees for separate collection of any or all Recyclables, direct delivery to a Solid Waste Management Facility designated by the Commissioner or, in the case of Newspapers, Bottles and Cans and plastics, Curbside collection once per week in accordance with provisions for collection of such components from residential dwellings.

D. The mandatory Commercial, industrial and institutional source separation and recycling program may be expanded by resolution of the Town Board where it determines that Economic Markets for alternate uses exist for such additional components.

E. Generators of recyclable material who use private carters or recyclers for collection and marketing of recyclable materials must be provided with sufficient containers by such carter to allow for source separation of all components being recycled. All containers must be clearly identified as recyclable containers with lettering of at least six inches.

F. A generator which utilizes a private carter or recycler to collect one or more components shall provide written reports on a monthly basis to the Commissioner containing the following information:

(1) The identity of the carter/recycler.

(2) The components being recycled.

(3) The approximate quantity of each such component.

G. Any carter or recycler collecting Source-Separated components from a generator shall provide written reports to the Commissioner on a monthly basis containing the following information:

(1) Gross tons of Recyclables, by type collected.

(2) Locations of all Commercial stops serviced during the particular month of each commodity recycled.

(3) Disposal (marketing) location for Recyclables collected.

H. No carter or recycler may commingle nonrecyclable Solid Waste with any Source-Separated Recyclables.

I. Exemption for Existing Commercial Recycling Programs with Recyclers.

(1) Any Commercial entity having in place a recycling program upon the effective date of this chapter, whereby that entity's Recyclables are collected by or delivered directly by such entity to a recycler, shall be exempt from the recycling requirements of this § [46-11.3](#).

(2) Any such exempt Commercial entity must have registered its recycling program with the Authority and received written confirmation from the Authority of its exemption from this § [46-11.3](#).

(3) Any such exempt Commercial entity shall not place its Recyclables at Curbside for collection by a Collector.

[Amended 4-6-2010 by L.L. No. 2-2010]

J. Notwithstanding any other provision of this chapter to the contrary, Recyclable industrial and Commercial by-products may be sold or donated by an industrial and/or Commercial enterprise to any scrap metal enterprise or recycler. Said by-products cannot be placed at the Curbside for collection by said scrap metal enterprise or recycler.

Article II. Solid Waste Management

§ 46-12. Legislative intent.

A. The Board finds that it is in the best interest of the Town of North Hempstead to make amendments to Chapter [46](#), entitled "Sanitation," in order to conform the existing Code with the recent U.S. Supreme Court decision that upheld the constitutionality of a local government's authority to direct solid waste to a designated publicly owned facility, and to provide for more effective enforcement of the Town's existing solid waste management laws. The intent and purpose of Article [II](#) of this chapter is to provide for the management of all Solid Waste generated within the Town of North Hempstead and municipalities located therein and to authorize the supervision and regulation of the collection, transportation and disposition of all or part of any Acceptable Waste and Recyclables generated within such Town and municipalities so that the same is delivered to publicly

owned Solid Waste Management Facilities or such other publicly owned disposal facilities as may be designated by the Town for processing or for other disposition or handling.

B. The management of Solid Waste is the inherent responsibility of local government, whose authority in this area is derived from its police powers. Town-wide collection and disposition of municipal Solid Waste, more commonly referred to as "flow control," allows for more effective and environmentally responsible waste planning and management and more effective implementation of the Town's integrated Solid Waste management plan. Flow control will serve important environmental and public health and safety objectives.

C. The powers and duties enumerated in Article II of this chapter constitute proper Town purposes intended to benefit the health, welfare and safety of Town Residents. It is hereby found that, in the exercise of control over the collection, transportation and disposition of Solid Waste on a Town-wide basis, the Town is exercising essential and proper governmental functions.

§ 46-13. Authority to supervise and regulate collection of Acceptable Waste.

The Town Board hereby designates the Commissioner to be responsible for the supervision and regulation of the collection, transportation and disposition of all Acceptable Waste which was originated, generated or located within the Town and the municipalities therein. In undertaking such responsibilities, the Commissioner shall act pursuant to the standards established in this chapter.

§ 46-14. Collection and disposal of Acceptable Waste.

A. Requirements for Preparation, Collection, and Disposal of Residential Acceptable Waste. ("Collector," as used in this section, shall include Villages with Village-owned or -leased and -operated sanitation vehicles.)

[Amended 4-6-2010 by L.L. No. 2-2010]

(1) In order to provide for public health and safety, each Resident shall provide for the separation of Acceptable Waste from all other types of waste and shall provide for the placement of such Acceptable Waste into a suitable container at Curbside for collection by a Collector.

(2) All Acceptable Waste placed at Curbside for collection by a Collector must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

(3) All Bulky Scrap Metals must be separately placed at Curbside for collection by a Collector. Such Bulky Scrap Metals must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

B. Requirements for Preparation, Collection and Disposal of Residential Recyclables.

(1) Pursuant to § 46-11.1 of this chapter, Residents shall separate their Recyclables from all other types of waste and shall provide for the placement of such separated Recyclables into separate containers.

(2) All Recyclables placed at Curbside for collection must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

[Amended 4-6-2010 by L.L. No. 2-2010]

(3) All Recyclables prepared in accordance with § 46-11.2 of this chapter and placed at Curbside for collection must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

C. Requirements for Preparation, Collection and Disposal of Residential Yard Waste.

(1) In order to provide for public health and safety, Residents shall prepare Yard Waste for collection in accordance with § 46-11.1 of this chapter.

(2) All Yard Waste placed at Curbside for collection must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

[Amended 4-6-2010 by L.L. No. 2-2010]

(3) This section shall not prohibit private, noncommercial composting of Yard Waste or mulching of leaves, grass clippings and cuttings.

D. Requirements for Preparation, Collection and Disposal of Construction and Demolition Debris.

(1) In order to provide for public health and safety, all Construction and Demolition Debris that has been placed into a Dumpster Container or other suitable container for collection by a Collector or otherwise collected by a Collector must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

(2) In order to facilitate the conservation of vital, natural resources through recycling, each Person shall separate his or her Construction and Demolition Debris from all other types of waste and shall provide for the placement of such separated Construction and Demolition Debris into a Dumpster Container or other separate suitable containers.

[Amended 4-6-2010 by L.L. No. 2-2010]

E. Requirements for Preparation, Collection and Disposal of Commercial Waste.

[Amended 4-6-2010 by L.L. No. 2-2010]

(1) In order to provide for public health and safety, each Commercial entity that generates Commercial Waste shall provide for the separation of such waste into its recyclable and nonrecyclable components and shall provide for the placement of such waste into a Dumpster Container or other suitable container and place such container at Curbside for collection by a Collector.

(2) All such Commercial Waste placed at Curbside for collection by a Collector must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

(3) All Bulky Scrap Metals must be separately placed at Curbside for collection by a Collector. Such Bulky Scrap Metals must be delivered to the publicly owned Solid Waste Management Facility designated by the Commissioner.

F. Requirements for Preparation, Collection and Disposal of Commercial Recyclables.

(1) In order to provide for public health and safety, each Commercial entity shall prepare Recyclables for collection in accordance with § [46-11.3](#) of this chapter.

(2) All Recyclables placed at Curbside for collection must be delivered to a publicly owned Solid Waste Management Facility designated by the Commissioner.

[Amended 4-6-2010 by L.L. No. 2-2010]

(3) The provisions of this section shall not apply to any Commercial entity having in place a recycling program approved by the Authority.

G. Prohibition Against Unauthorized Dumping and Scavenging.

(1) It shall be a violation of this chapter for any Person to place for the purpose of collection Solid Waste, Recyclables or Yard Waste at a property other than the property generating said material.

(2) It shall be a violation of this chapter for any Person to place Solid Waste, Recyclables or Yard Waste in Dumpster Containers and/or containers designated for Solid Waste use by Commercial and/or industrial establishments.

(3) It shall be a violation of this chapter for any Person to bury and/or bury Solid Waste on public or private property, unless authorized by the applicable municipality.

(4) It shall be a violation of this chapter for any Person to throw, dump, deposit or place Solid Waste, Recyclables and/or Yard Waste along the roadside or on public and/or private property within the Town.

(5) It shall be a violation of this chapter for any Person to cause to be thrown, dumped, deposited or placed Solid Waste, Recyclables or Yard Waste along any public or private road or on lands bordering such roads.

(6) It shall be a violation of this chapter for any Person to burn, break, destroy, scatter, scavenge, collect or take any Recyclables without the consent of the owner of such materials.

H. No Person holding or required to hold a license pursuant to § [46-4](#) of this chapter shall deposit, deliver, store or process any Acceptable Waste or Recyclables which were generated or originated within the Town other than at a publicly owned Solid Waste Management Facility designated by the Commissioner.

I. Except as may be provided by the Commissioner and except as provided elsewhere herein, no Person required to hold a license pursuant to § [46-4](#) of this chapter, other than a municipality, may collect any Acceptable Waste or Recyclables within the Town, including the municipalities located wholly or in part therein, without such a license.

J. Except as may be provided by the Commissioner and except as provided elsewhere herein, no Person required to hold a license pursuant to § [46-4](#) of this chapter, other than the Authority and any Person acting pursuant to a contract with the Authority, may dispose of any Acceptable Waste within the Town, including municipalities located wholly or in part therein, without such a license.

K. Nothing contained in this chapter shall be deemed or interpreted to prohibit any municipality located wholly or in part within the Town from itself engaging in the collection or transportation of Acceptable Waste which was originated, generated or located within such municipality; provided, however, that all Acceptable Waste so collected and transported shall be disposed of only at a publicly owned Solid Waste Management Facility designated by the Commissioner.

L. Nothing contained in this chapter shall be deemed or interpreted to prohibit the Town, or municipalities located wholly or in part therein, from adopting or implementing programs to reduce the volume of Solid Waste, including composting and recycling programs.

M. Nothing contained in this chapter shall be deemed or interpreted to exempt any Person from any other applicable permitting or licensing requirements or rules or regulations, not inconsistent with this chapter, of the Town, municipalities within the Town or any other governmental entity.

N. Except as may be provided by the Commissioner, no Person shall enter into a contract for collection or disposal of Acceptable Waste located within the Town, including municipalities located wholly or in part therein, with a Person required to be licensed pursuant to § [46-4](#) of this chapter unless such Person holds such a license.

O. No Person, other than the Authority or a Person acting pursuant to an agreement with the Authority, disposing of Acceptable Waste at any Solid Waste Management Facility located within the Town shall have any interest in recovered materials or energy derived from such Acceptable Waste so disposed.

P. Except as provided by the Commissioner, any Acceptable Waste which was generated, originated or collected outside of the Town may not be deposited or disposed of at any Solid Waste Management Facility located within the Town.

Q. Nothing contained in this chapter shall prevent the Authority or any Person acting pursuant to any agreement with the Authority from delivering and/or disposing of Acceptable Waste or Recyclables that were generated or originated within the Town outside the territorial limits of the Town.

R. It shall be a violation of this chapter for any Person to place at Curbside for collection any appliance containing freon, where such appliance has been crushed or otherwise handled in a manner that allows freon to escape into the atmosphere.

[Amended 4-6-2010 by L.L. No. 2-2010]

§ 46-14.1. Collection, Disposal and Transportation of Pollutants.

A. Requirements for Collection, Disposal and Transportation of Pollutants, inclusive of Pharmaceutical Drugs.

(1) In order to provide for public health and safety, the Town may coordinate Pollutant-collection programs for its Residents at designated locations throughout the Town.

(2) Upon the receipt of any Pharmaceutical Drugs, the Town may use pharmacists to appropriately sort the medication.

[Amended 4-6-2010 by L.L. No. 2-2010]

(3) The Town shall provide for the proper disposal and transportation of Pollutants, as defined herein, collected through Pollutant-collection programs pursuant to applicable laws.

B. In connection with the Pollutant-collection programs, peace officers are authorized to assist in the Collection, Disposal and Transportation of the Pollutants.

(1) Peace officers shall be given the authority to:

(a) Take Pollutants from the public;

(b) Immediately contain leaking containers;

(c) Measure and/or weigh Pollutants;

(d) Place Pollutants in appropriate disposal drums or specified containers;

(e) Log waste identification information pursuant to the Resource Conservation and Recovery Act (RCRA) and complete paperwork thereto;

(f) Label disposal drums;

(g) Load drums into vehicles for transportation;

(h) Properly dispose of all Pollutants collected according to law;

(i) Provide a properly completed claim form listing quantities, description and unit prices; and

(j) Provide the name and location of the ultimate disposal facilities actually utilized for the Pollutants accepted.

(2) Any Controlled Substance(s) received through any Pollutant-collection program shall be under the sole possession and control of the peace officer present at the program. The peace officer shall immediately deliver all Controlled Substance(s) collected to local law enforcement equipped to accept and properly dispose of the Controlled Substance(s).

(3) When illicitly manufactured Controlled Substances are presented for disposal at a Pollutant-collection program, the peace officer will immediately contact local law enforcement to investigate and confiscate the illicit drugs. The peace officer shall cooperate with law enforcement in connection with any investigation and/or prosecution related thereto.

§ 46-15. Solid waste reduction.

It is hereby declared the policy of the Town to reduce the volume of Solid Waste generated within the Town.

§ 46-16. Contracts.

A. Every contract for the collection of Solid Waste, including Acceptable Waste which was generated, originated or located within the Town, including municipalities located wholly or in part therein but excluding the Incorporated Village of Floral Park, entered into, renegotiated or renewed after the effective date of this chapter, between any Person required to be licensed pursuant to § 46-4 of this chapter and any other Person located in whole or in part within the Town, shall provide that such licensed Person shall comply, in all respects and at all times during the term of such contract, with the provisions of this chapter and any rules and regulations hereunder, including, without limitation, those provisions requiring that all Acceptable Waste collected pursuant to such contract be delivered to a Solid Waste Management Facility designated by the Commissioner. The Town shall be deemed a third party beneficiary of such contractual undertaking. Copies of those provisions of such contract purporting to comply with the requirements of this § 46-16 shall be submitted to the Commissioner not less than 10 days prior to the execution of such contract.

B. No renewal of any existing contract upon the expiration of its original term and no new contract for the collection, transportation, processing or purchase of Solid Waste or Recyclables shall be entered into after the effective date of this chapter unless the contract or renewal conforms to the requirements of this chapter.

§ 46-17. Delivery of Hazardous or Unacceptable Waste prohibited.

No Hazardous Waste or Unacceptable Waste shall be delivered by any Person to a Solid Waste Management Facility owned by the Town or the Authority or any other Town disposal facility.

§ 46-18. Effect on other provisions.

Pursuant to Chapter 544 of the Laws of 1983 of the State of New York, this chapter takes precedence over and shall supersede any inconsistent provisions of any local law enacted by any municipality within the Town.

§ 46-19. Severability; repealer.

If any provision of this chapter or the rules and regulations promulgated hereunder or any directive, order or instruction given by anyone authorized to enforce this chapter shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provision, rule or regulation involved. All provisions of any other local law or ordinance that are inconsistent with this chapter are repealed.

§ 46-20. Implementation.

The Commissioner shall cause to be drawn up an implementation schedule or schedules which shall list all portions of this chapter which remain to be implemented. Such schedule or schedules shall be mailed by certified mail, return receipt requested, to the Town Board and to each municipality, addressed to the clerk of each such body. Said schedule or schedules shall be effective upon the date of such mailing.

Article III. Municipal Applicability

§ 46-21. Rate and provision guarantee.

A. All municipal entities covered by the Sanitation Code of the Town of North Hempstead shall be guaranteed the per-ton rates for disposal provided to North Hempstead operated garbage districts. These rates shall include only those disposal costs as outlined in the long-term waste disposal agreement then in effect, plus costs directly associated with the operation and oversight of the North Hempstead solid waste transfer station.

B. The rate guarantee provided herein shall be contained in an intermunicipal agreement duly approved and executed by a Village and the Town and returned to the Commissioner prior to the commencement of the long-term disposal agreement on May 1, 2010. Said intermunicipal agreement shall contain provisions for changes in tipping fees and other rates to be made by the Authority solely on an annual basis with every Village party to the intermunicipal agreement to be notified by the Authority no later than the first day of June of each year of said intermunicipal agreement, or renewal period thereof, and shall also contain a provision that the Town will guarantee that it will abide by the terms of the Sanitation Code of the Town of North Hempstead in effect as of the date of the intermunicipal agreement, as those terms relate to Villages.

§ 46-22. Exemption.

[Amended 11-17-2009 by L.L. No. 17-2009]

A. A Village shall be exempt from the provisions set forth in § 46-14A, through K, N and O of Article II of this chapter, requiring such Village to dispose of all Acceptable Waste, Recyclables, Yard Waste or Construction and Demolition Debris at a Solid Waste Management Facility designated by the Commissioner, where such items are generated within its borders and collected directly by the Village or by a vendor retained by the Village, and from the provisions of § 46-16 of Article II of this chapter, requiring every contract or renewal thereof for the collection, transportation, processing or purchase of Solid Waste or Recyclables made by such Village to conform to said provisions of §§ 46-14 and 46-16, upon filing with the Authority and the North Hempstead Town Clerk a declaration of exemption adopted by the Village Board. Said declaration of

exemption must be made by April 1, 2010, to take effect May 1, 2010, and by May 1, 2014, to take effect on May 1, 2015. The Town shall provide all Villages with written notification of the time limits set forth in this section at least 30 days prior to the first day of May 2014.

[Amended 4-6-2010 by L.L. No. 2-2010]

B. If a Village declares an exemption pursuant to this section, any such declaration shall include a provision indemnifying the Town and the Authority from responsibility or liability under any applicable New York State law, rule or regulation relating to solid waste collection, disposal or recycling activities conducted or authorized by said Village, including but not limited to New York State Environmental Conservation Law § 27-0107 (Local Solid Waste Management Plans) and 6 NYCRR Part 360, Subpart 15 (Comprehensive Solid Waste Management Planning).

C. A Village's declaration of exemption pursuant to this section shall not prevent the Town or the Authority from enforcing the provisions of Article II of this chapter upon Commercial and/or private (nonmunicipal) Collectors.

§ 46-23. Reinstatement.

[Amended 11-17-2009 by L.L. No. 17-2009]

A. Any Village which has been exempted pursuant to § 46-22 of the Sanitation Code of the Town of North Hempstead may submit an application to the Secretary of the Authority requesting the withdrawal of their exemption. Such application shall be in writing and must be received by the Secretary between the first of September and the first of December in any given year in order to go into effect on May 1 of the following year. Such application shall contain a resolution, duly adopted by the Village Board, requesting withdrawal of their exemption and detailing the type and quantity of Acceptable Waste and Recyclables to be covered.

[Amended 4-6-2010 by L.L. No. 2-2010]

B. Withdrawal of the exemption shall be granted upon establishing that disposal of the additional Acceptable Waste and Recyclables at a publicly owned Solid Waste Management Facility designated by the Commissioner does not exceed available capacity at such facility under the existing long-term disposal agreement.

C. The Town and the Authority shall not be responsible for costs associated with such application. This provision does not apply to work performed by full-time Town and Authority personnel.

§ 46-24. When effective.

This chapter, as amended, shall take effect immediately upon filing with the Secretary of State.

Chapter 46A. STORMWATER MANAGEMENT AND SEDIMENT AND EROSION CONTROL

[HISTORY: Adopted by the Town Board of the Town of North Hempstead 12-11-2007 by L.L. No. 11-2007, effective 1-1-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Building Code — See Ch. 7.

Hazardous excavations — See Ch. 17.

Environmental quality review — See Ch. 20.

Floodplain management regulations — See Ch. 21.

Grading and soil removal — See Ch. 25.

Public waterways — See Ch. 42.

Sand bank and pit excavations — See Ch. 45.

Sewers — See Ch. 47.

Water — See Ch. [47A](#).

Illicit discharges to storm sewer system — See Ch. [47B](#).

Town lands, shorefronts and land under water — See Ch. [59](#).

Zoning — See Ch. [70](#).

Article I. General Provisions

§ 46A-1. Findings of fact.

It is hereby determined that:

[A.](#) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition.

[B.](#) This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species.

[C.](#) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat.

[D.](#) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation.

[E.](#) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow.

[F.](#) Substantial economic losses can result from these adverse impacts on the waters of the municipality.

[G.](#) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities.

[H.](#) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

[I.](#) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 46A-2. Purpose.

The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § [46A-1](#) hereof. This chapter seeks to meet those purposes by achieving the following objectives:

[A.](#) Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02 or as amended or revised;

[B.](#) Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

[C.](#) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;

- D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 46A-3. Statutory authority.

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Town Board of North Hempstead has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare and for the protection and enhancement of its physical environment. The Town Board may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

§ 46A-4. Applicability.

- A. This chapter shall be applicable to all land development activities as defined in Article II of this chapter.
- B. The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may:
 - (1) Review the plans;
 - (2) Upon approval by the Town Board, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or
 - (3) Accept the certification of a licensed professional that the plans conform to the requirements of this chapter.
- C. All land development activities subject to review and approval by the Town Board or Board of Zoning Appeals shall be reviewed subject to the standards contained in this chapter.
- D. All land development activities not subject to review as stated in § 46A-4C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer, who shall approve the SWPPP if it complies with the requirements of this chapter.

§ 46A-5. Exemptions.

The following activities may be exempt from review under this chapter:

- A. Agricultural activity as defined in this chapter.
- B. Silvicultural activity, except that landing areas and log haul roads are subject to this chapter.
- C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- D. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the County of Nassau on or before the effective date of this chapter.
- F. Land development activities for which a building permit has been approved on or before the effective date of this chapter.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.

Article II. Stormwater Control

§ 46A-6. Definitions.

The terms used in this chapter or in documents prepared or reviewed under this chapter shall have the meaning as set forth in this section.

AGRICULTURAL ACTIVITY

The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT

A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING

Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING

Any activity that removes the vegetative surface cover.

DEDICATION

The deliberate appropriation of property by its owner for general public use.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN MANUAL

The New York State Stormwater Management Design Manual, most recent version, including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER

A person who undertakes land development activities.

EROSION CONTROL MANUAL

The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book."

GRADING

Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT

A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION

The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND

An area that is 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 DEVELOPMENT ACTIVITY

Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER

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

A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION

Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT

Land development activity.

RECHARGE

The replenishment of underground water reserves.

SEDIMENT CONTROL

Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS

Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER

An order issued which requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER

An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMPs)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground, resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 46A-7. Stormwater pollution prevention plans.

A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this chapter.

B. Contents of stormwater pollution prevention plans.

(1) All SWPPPs shall provide the following background information and erosion and sediment controls:

(a) Background information about the scope of the project, including location, type and size of project;

(b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should be at a scale no smaller than one inch equals 100 feet, should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharge(s);

(c) Description of the soil(s) present at the site;

(d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

(e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;

(f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;

(g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

(h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

(i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

(j) Temporary practices that will be converted to permanent control measures;

(k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

(l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

(m) Name(s) of the receiving water(s);

(n) Delineation of SWPPP implementation responsibilities for each part of the site;

(o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

(p) Any existing data that describes the stormwater runoff at the site.

(2) Land development activities as defined in § 46A-6 of this chapter and meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Subsection B(3), below as applicable:

(a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load

(TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

(b) Condition B: stormwater runoff from land development activities disturbing five or more acres.

(c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.

(3) SWPPP requirements for Conditions A, B and C:

(a) All information in Subsection B(1);

(b) Description of each post-construction stormwater management practice;

(c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;

(d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;

(e) Comparison of post-development stormwater runoff conditions with pre-development conditions;

(f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;

(g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;

(h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;

(i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 46A-9 of this chapter.

C. Plan certification. The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this chapter.

D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

E. Contractor certification.

(1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

F. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 46A-8. Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

A. Technical standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed

and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this chapter:

(1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").

(2) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").

B. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 46A-9. Maintenance and repair of stormwater facilities.

A. Maintenance during construction.

(1) 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 (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(2) The applicant or developer or its representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town 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 shall be recorded by the grantor in the office of the County Clerk after approval by the Town Attorney.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this chapter shall be operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes, as a minimum, the following:

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § [46A-8B](#).

D. Maintenance agreements. The Town Board shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this chapter, entitled "Sample Stormwater Control Facility Maintenance Agreement." *Editor's Note: Schedule B is included at the end of this chapter.* The Town Board, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this chapter and includes

adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

Article III. Administration and Enforcement

§ 46A-10. Construction inspection.

A. Erosion and sediment control inspection.

(1) The Stormwater Management Officer may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this chapter and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Stormwater Management Officer at least 48 hours before commencing any of the following activities:

- (a)** Start of construction;
- (b)** Installation of sediment and erosion control measures;
- (c)** Completion of site clearing;
- (d)** Completion of rough grading;
- (e)** Completion of final grading;
- (f)** Close of the construction season;
- (g)** Completion of final landscaping;
- (h)** Successful establishment of landscaping in public areas.

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

B. Stormwater management practice inspections. The Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

C. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

D. Submission of reports. The Stormwater Management Officer may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.

E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Stormwater Management Officer the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection **C.**

§ 46A-11. Performance guarantees; recordkeeping.

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

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

C. Recordkeeping. The Town may require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

§ 46A-12. Enforcement; penalties for offenses.

A. Notice of violation. When the Town determines that a land development activity is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (1) The name and address of the landowner, developer or applicant;
- (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the land development activity into compliance with this chapter and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.

B. Stop-work orders. The Town may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter.

C. Violations. Any land development activity that is commenced or is conducted contrary to this chapter may be restrained by injunction or otherwise abated in a manner provided by law.

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter, the Stormwater Management Officer may prevent the occupancy of said building or land.

F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 46A-13. Fees for services.

The Town may require any person undertaking land development activities regulated by this chapter to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town or performed by a third party for the Town.

§ 46A-14. Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this chapter.