



## **MEMORANDUM**

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**TO: BMP O&M Verification Work Group**

**FROM: John Fusco, Program Staff**

**DATE: April 2, 2003 (DRAFT)  
May 5, 2003 (FINAL)**

**SUBJECT: Guidance for Implementing Permit Provision C.3.e (Operation and Maintenance of Treatment BMPs), Part 2 -- Ordinance or Policy Language Relating to Inspection and Maintenance of Stormwater Management Systems**

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The purpose of this memorandum is to provide example ordinance or policy language relating to inspection and maintenance of stormwater management systems, to assist Co-permittees in complying with Permit Provision C.3.e (Operation and Maintenance of Treatment BMPs).

### **Background**

The goal of Permit Provision C.3 is to address pollutant discharges and changes in runoff flows from significant new and redevelopment projects, through implementation of post-construction treatment measures, source control and site design measures, to the maximum extent practicable. One requirement of Permit Provision C.3 is the Operation and Maintenance (O&M) of Treatment BMPs (Provision C.3.e). In accordance with this Provision, each Co-permittee is responsible for implementing a program to verify that treatment BMPs on private and public property are being operated and maintained properly.

To assist Co-permittees in implementing an O&M verification program, Program staff conducted a review of existing stormwater management ordinances and policies relating to post-construction stormwater management for new and redevelopment. The purpose of reviewing ordinances and policies was to learn how local entities are requiring private landowners (commercial/industrial property owners, homeowners associations, developers, private residents and other persons) to inspect and maintain stormwater treatment systems.

### **Stormwater Ordinances**

Local regulations are an integral part of urban runoff programs and are typically adopted as ordinances or municipal codes. Unlike other model ordinances enacted by local governments, operation and maintenance ordinance language is not "stand-alone." It is usually one aspect of a local stormwater ordinance. When stormwater management ordinances are developed, it is necessary to include very detailed program requirements which assure long term maintenance and operation of stormwater management systems.

The purpose of a stormwater management ordinance or policy with operation and maintenance language is to ensure that: a) designs facilitate easy maintenance and b) regular inspection and maintenance activities are completed by the landowner. Maintenance and operation ordinances usually consist of concise language requiring or detailing maintenance easements agreements, inspection and maintenance agreements or covenants, inspections, right-of-entry for inspection, failure to maintain practices, recordkeeping, enforcement and penalties. A flow chart showing the elements of a stormwater

ordinance is provided in Attachment 1. Additional attachments to this memorandum include information relating to post-construction runoff controls, maintenance agreements/arrangements and performance bonds (Attachment 2); and example ordinance language (compiled by the Watershed Management Institute, Inc.) for local stormwater management regulations (Attachment 3).

### **Example Language- Inspection and Maintenance of Stormwater Management Systems (Post-Construction)**

Program staff has prepared a guidance document (Attachment 4) containing example ordinance or policy language relating to inspection and maintenance of stormwater management systems (post-construction). The example language was extracted from the following existing ordinances and was not modified in any way.

- Metropolitan North Georgia Water Planning District- [Final Model Stormwater Management Ordinances](#) (Adopted October 3, 2002);
- [Fauquier County, Virginia Stormwater Management Ordinance](#) (September 16, 2002)
- [Maryland Model Stormwater Management Ordinance, July 2000](#)

Sections relating to the following elements are provided (within the example language) for your review and consideration: inspection and maintenance agreements, maintenance easement agreements, performance securities, maintenance securities and ongoing inspection and maintenance of stormwater management systems. Example language detailing the content of an on-site Stormwater Management Plan for a development project and definitions are also provided. On-site Stormwater Management Plans usually require the submittal of agreements and securities prior to stormwater management system construction.

The language provided within the guidance document illustrates portions of the content of three post-construction stormwater management ordinances adopted within the United States. It is not all inclusive of the content that may be found within a post-construction stormwater management ordinance or policy. Additional ordinances, policies, agreements and other relevant information relating to the creation of a BMP O & M Verification Program may be found on the Program's website ([www.scvurppp.org](http://www.scvurppp.org)).

Program staff suggests that the Co-permittees strongly consider this very-detailed language when developing post-construction ordinances or policies relating to inspection and maintenance of stormwater management systems. Program staff also emphasizes that it is up to each Co-permittee to determine what local legal authority is necessary to require O&M of BMPs and decide whether to develop or update existing ordinances or policies to include inspection and maintenance language

### **Suggestions for Complying with Permit Provision C.3.e**

#### **Permit Provision C.3.e.i**

*This permit provision states that the Co-permittees are responsible for “compiling a list of properties (public and private) and responsible operators for all treatment BMPs. In addition, the Dischargers shall inspect a subset of prioritized treatment measures for appropriate operation and maintenance, on an annual basis, with appropriate follow-up and correction.”*

Program staff recommends that each Co-permittee begin compiling a list of properties (public and private) and responsible owners or operators for any stormwater management system that has been recently approved or is currently part of the development project approval process. This list should only include stormwater management systems that will be implemented after July 15, 2003. In addition, this list should be provided in the FY 02-03 Annual Report submitted to the Regional Board on September 15, 2003.

Currently, Program staff is developing guidance which details an approach for identifying and prioritizing the frequency of stormwater management system inspection. Useful criteria for prioritizing inspections includes land use, need for vector control, potential for contamination, associated maintenance costs, likelihood of failure and the history of compliance. Guidance relating to inspection prioritization will be provided in a future memorandum. In addition, BMP O & M fact sheets which detail suggested inspection

and maintenance activities will be provided to the Co-permittees. Program staff developed a list of approximately twenty-two stormwater management BMPs that may potentially be used in the Santa Clara Valley. Sixteen of the twenty-two BMP O & M fact sheets are from the updated California Municipal BMP Handbook, available mid-April 2003. Program staff will develop the remaining six fact sheets following the format provided within the Municipal BMP Handbooks.

Permit Provision C.3.e.ii

This permit provision states that “*verification at a minimum shall include: Where a private entity is responsible for O&M, the developer’s signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either*

1. *A signed statement from the public entity assuming post-construction responsibility for treatment BMP maintenance and that the BMP meets all local agency design standards; or*
2. *Written conditions in the sales or lease agreement, which require the recipient to assume responsibility for maintenance consistent with this provision; or*
3. *Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the treatment BMPs; or*
4. *Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of post-construction treatment BMPs.”*

Suggestions regarding each option are provided below.

Option 1- Assumption of Post-Construction Responsibility by Public Entity

Two options exist for managing stormwater management systems. The major difference between the options is the level of responsibility placed on individual property owners (private maintenance) and the local entity (public maintenance).

Initial discussions with the BMP O & M Verification Work Group indicated that private maintenance of stormwater management systems is the preferred option. With this option, private landowners are responsible for every aspect of maintenance (routine maintenance and major repair). Local government responsibilities under this option include inspection, education programs, maintenance tracking and enforcement. With the public maintenance option, the local government assumes BMP maintenance. This option may be the appropriate for assuring the long term operation and routine inspection and maintenance of stormwater management systems serving large residential subdivisions or multi-family housing developments. For example, King County, Washington has a policy of taking over the inspection and maintenance of stormwater detention basins in residential developments, and requires the developer to dedicate the land containing the basin as a public right-of-way.

Option 2- Written Conditions in the Sales or Lease Agreement Requiring the Recipient to Assume Responsibility for Maintenance; and

Option 3- Written Text in Project Conditions, Covenants and Restrictions (CCRs) for Residential Properties Assigning Maintenance Responsibilities to the Homeowners Association

The language found within the example inspection and maintenance agreements **may be** placed into written conditions in the sales or lease agreement, which require the recipients to assume maintenance responsibilities (Option 2); and into written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to homeowners associations (Option 3). Since both agreements are legally binding on all subsequent owners of land served by the stormwater management system, Program staff suggests entering into a separate formal inspection and maintenance agreement and maintenance easement agreement. In addition, Program staff believes that the execution of both agreements will reduce staff time preparing and filing paper work since the agreements are only executed once. As a result, both agreements will clearly eliminate the need to include written conditions requiring inspection and maintenance into every sale or lease agreement.

As mentioned, Program staff suggests that the Co-permittees strongly consider adopting a post-construction stormwater management ordinance or policy that requires private landowners to submit

and/or execute (with the Co-permittee) stormwater management plans, inspection and maintenance agreements, maintenance easement agreements and performance/maintenance securities prior to any land development activity. An inspection and maintenance agreement and maintenance easement agreement are legally binding on all subsequent owners of land served by the stormwater management system. Together, they require routine inspection, maintenance and/or access to the stormwater management system. A complete description of the content of an inspection and maintenance agreement and maintenance easement agreement is provided below. Example agreements developed by other stormwater programs are attached to this memorandum.

#### Option 4- Other Legally Enforceable Agreements Assigning Responsibility for Post-Construction Inspection and Maintenance

- Inspection and Maintenance Agreements

To encompass every possible private landowner who may own or have maintenance responsibility for post-construction stormwater management systems, Program staff recommends Permit Provision C.3.e.ii (4) as the primary BMP O & M verification agreement or mechanism. To accomplish Option 4, it is necessary to adopt a post-construction stormwater management ordinance or policy that requires the execution of an inspection and maintenance agreement between the private landowner (including any homeowners associations) and the Co-permittee. As mentioned, this agreement is binding on all subsequent owners of land served by an on-site stormwater management system.

The intent of an inspection and maintenance agreement is to ensure that specific inspection and maintenance functions are performed in exchange for permission to develop property. It can be an effective tool for ensuring long-term maintenance of stormwater management systems. The most important aspect of any maintenance agreement is the clear delineation of responsibilities of each party entering the agreement. A description of the basic language typically incorporated into an inspection and maintenance agreement is provided in the memorandum entitled *Draft Guidance for BMP Operation and Maintenance Verification Programs (Permit Provision C.3.e)* dated January 27, 2003. To assist Co-permittees in developing inspection and maintenance agreements, example agreements developed by other stormwater programs ([Virginia Beach, VA](#) and [Snellville, GA](#)) are attached to this memorandum as Attachments 5 and 6. The Snellville, GA example also includes an example maintenance easement agreement and example performance security agreements. Several other example inspection and maintenance agreements are available on the Program's website ([www.scvurppp.org](http://www.scvurppp.org)) or from Program staff by request.

- Maintenance Easement Agreements

To ensure access from the public right-of-way and ample space to inspect and maintain (if necessary) stormwater management measures, Program staff suggests that the Co-permittees strongly consider adopting a post-construction stormwater management ordinance or policy requiring the execution of a maintenance easement agreement between the private landowner, including any homeowners associations and the Co-permittee. A maintenance easement agreement, which is separate from an inspection and maintenance agreement, is legally binding with all current and future landowners served by the stormwater management measure. The maintenance easement agreement should be recorded with the local government's land records.

In some instances, Co-permittees may include easement requirements into an inspection and maintenance agreement. This inclusion reinforces a Co-permittee's right to enter, inspect and maintain a stormwater management system. To assist Co-permittees in developing maintenance easement agreements, example easement agreements developed by other stormwater programs are attached to this memorandum as Attachment 7. Other example easement agreements are available on the Program's website ([www.scvurppp.org](http://www.scvurppp.org)) or from Program staff by request.

#### Permit Provision C.3.e.iii

This permit provision provides the requirements for O & M Reporting. They include the following:

*O&M Reporting: The Dischargers shall report on their Treatment BMPs Operation and Maintenance Verification program in each Annual Report. The Annual Report shall contain: a description of the organizational structure of the Discharger's O&M Verification program; an evaluation of the Discharger's O&M verification program's effectiveness; summary of any planned improvements in O&M Verification; and a list or summary of treatment BMPs that have been inspected that year with inspection results.*

In accordance with this permit provision, Co-permittees are **required** to provide information (in each Annual Report) on how their BMP O & M Verification Programs are structured and how effective they are in ensuring the inspection and maintenance of stormwater management systems. As part of this effectiveness evaluation, Co-permittees are expected to provide a summary of any planned improvements which will enhance their BMP O & M Verification Programs.

Within each Annual Report, Co-permittees are also required to provide a list of stormwater management systems which have been inspected that year with the inspection results. To assist the Co-permittees with this task, Program staff will create a model Microsoft® Access Database for Co-permittee use. The database will house pertinent information regarding inspection results and any follow-up/enforcement information. Reports detailing inspection results will be developed and submitted with each Annual Report. Options for data management and the need for a Program-wide database will be discussed with the Work Group.

### **Recommended Next Steps**

This memorandum provides example ordinance or policy language relating to inspection and maintenance of stormwater management systems and to provide information and suggestions for complying with Permit Provision C.3.e (Operation and Maintenance of Treatment BMPs). Each Co-permittee should determine what direction they should take to ensure that private landowners are responsible for the inspection and maintenance of stormwater management systems. Post-construction stormwater ordinances or policies, inspection and maintenance agreements and maintenance easement agreements are some important elements of a successful O&M verification program.

### **Attachments and References**

Fauquier County Stormwater Management Ordinance (September 16, 2002). [Online] Available: <http://www.fauquiercounty.gov/documents/departments/commdev/pdf/SWMOrdinance.pdf> , January 12, 2003.

Maryland Model Stormwater Management Ordinance, July 2000. [Online] Available: <http://www.mde.state.md.us/assets/document/sedimentstormwater/modelordinance.pdf> , January 9, 2003.

Metropolitan North Georgia Water Planning District: Final Model Stormwater Management Ordinances (Adopted October 3, 2002). [Online] Available: <http://www.northgeorgiawater.com/deliverables>, February 24, 2003.

Montgomery County, Maryland: Department of Environment Protection. Stormwater Management and Right-of-Way Agreement. [Online] Available: <http://www.epa.gov/owow/nps/ordinance/documents/d2c-row.pdf> , January 12, 2003.

Snellville, Georgia: Stormwater BMP Maintenance Agreement. [Online] Available: <http://www.snellville.org/plandev/pdfs/CertificateDevelopmentConformanceB.pdf> , January 22, 2003.

Stormwater Manager's Resource Center. Post-Construction Runoff Controls. [Online] Available: [http://www.stormwatercenter.net/Model%20Ordinances/Post%20Construction%20Stormwater%20Management/post\\_construction\\_runoff\\_control.htm](http://www.stormwatercenter.net/Model%20Ordinances/Post%20Construction%20Stormwater%20Management/post_construction_runoff_control.htm) , March 12, 2003.

Stormwater Manager's Resource Center. Performance Bonds. [Online] Available:

[http://www.stormwatercenter.net/Manual\\_Builder/Maintenance\\_Manual/3Performance\\_Bonds/performance%20bond%20intro.htm](http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/3Performance_Bonds/performance%20bond%20intro.htm), March 12, 2003.

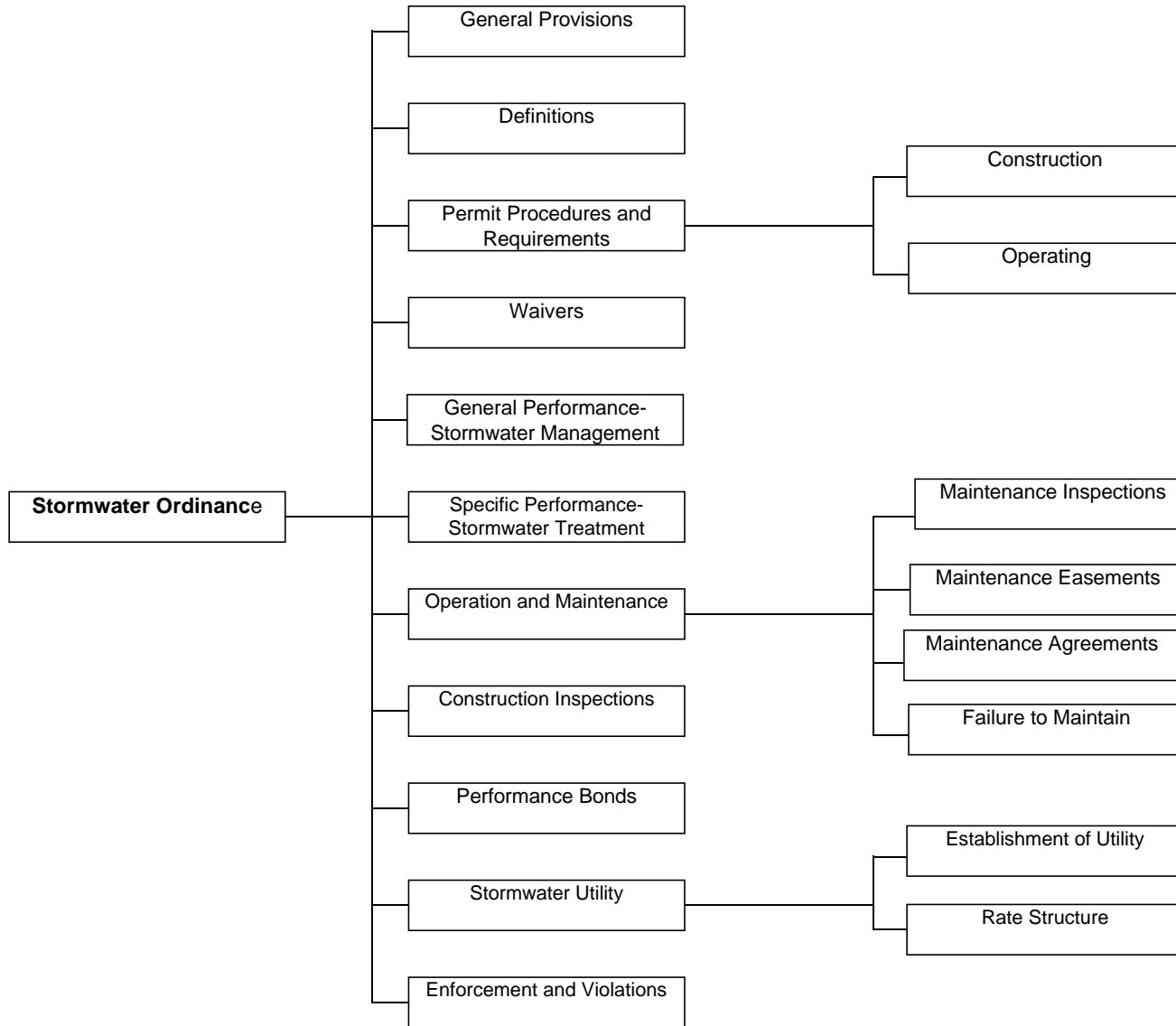
Stormwater Manager's Resource Center. Maintenance Agreements and Arrangements. [Online] Available:

[http://www.stormwatercenter.net/Manual\\_Builder/Maintenance\\_Manual/4Maintenance\\_Agreements/Maintenance%20Agreements%20Introduction.htm](http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/4Maintenance_Agreements/Maintenance%20Agreements%20Introduction.htm), January 8, 2003.

Virginia Beach, Virginia: Stormwater Management Facilities Maintenance Agreement. [Online] Available: <http://www.vbgov.com/dept/planning/dsc/forms/Stormwtr.doc> , January 24, 2003.

Watershed Management Institute, Inc. *Operation, Maintenance, and Management of Stormwater Management Systems*, August 1997.

Figure 1- Elements of a Stormwater Ordinance



ID	Reference	Source
<b>Introduction</b>		
1 Maintenance Agreements and Arrangements (www.stormwatercenter.net)	<a href="http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/4Maintenance_Agreements/Maintenance%20Agreements%20Introduction.htm">http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/4Maintenance_Agreements/Maintenance%20Agreements%20Introduction.htm</a>	
<b>Maintenance Agreements</b>		
1 Stormwater Management Facilities Maintenance Agreement (Virginia Beach, VA) - 2002	<a href="http://www.vbgov.com/dept/planning/dsc/forms/stormwtr.doc">http://www.vbgov.com/dept/planning/dsc/forms/stormwtr.doc</a>	
2 Stormwater BMP Maintenance Agreement (Snellville, GA)	<a href="http://www.snellville.org/plandev/pdfs/CertificateDevelopmentConformanceB.pdf">http://www.snellville.org/plandev/pdfs/CertificateDevelopmentConformanceB.pdf</a>	
3 Stormwater/BMP Maintenance Agreement (Fauquier County, Virginia)	<a href="http://www.fauquiercounty.gov/forms/departments/commdev/mswordfile/swm_bmpagreement.doc">http://www.fauquiercounty.gov/forms/departments/commdev/mswordfile/swm_bmpagreement.doc</a>	
4 Maintenance Agreement- Stormwater Design Manual (Griffin, GA)	<a href="http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/4Maintenance_Agreements/Griffin.pdf">http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/4Maintenance_Agreements/Griffin.pdf</a>	
5 Chapter C -- Stormwater Treatment Device Access and Maintenance Agreement	<a href="http://www.sacstormwater.org/const/manuals/pdf/on-site_z_AppendixC.pdf">http://www.sacstormwater.org/const/manuals/pdf/on-site_z_AppendixC.pdf</a>	
6 Georgia Stormwater Management Manual Volume 1: Stormwater Policy Guidebook First Edition – August 2001-Appendix C- Example Stormwater Facility Maintenance Agreement pages 157-158	<a href="http://www.georgiastormwater.com/vol1/gsmmvol1.pdf">http://www.georgiastormwater.com/vol1/gsmmvol1.pdf</a>	
<b>Maintenance Easement Agreement</b>		
1 Stormwater Management and Right-of-Way Agreement (Montgomery County, MD Department of Environmental Protection)	<a href="http://www.stormwatercenter.net/Model%20Ordinances/operat_maint_montgomery.htm">http://www.stormwatercenter.net/Model%20Ordinances/operat_maint_montgomery.htm</a>	

ID	Reference	Source
<b>Ordinance Information</b>		
1	EPA - Post Construction Controls	<a href="http://www.epa.gov/nps/ordinance/postcons.htm">http://www.epa.gov/nps/ordinance/postcons.htm</a>
2	Model Ordinance for the Control of Post Construction Stormwater Runoff (www.stormwatercenter.net)- Version 1	<a href="http://www.stormwatercenter.net/Model%20Ordinances/Post%20Construction%20Stormwater%20Management/Final%20Model%20Stormwater%20Control.htm">http://www.stormwatercenter.net/Model%20Ordinances/Post%20Construction%20Stormwater%20Management/Final%20Model%20Stormwater%20Control.htm</a>
<b>Ordinances</b>		
1	Model Ordinance for Post-Development Stormwater Management for New Development and Redevelopment -- Final Model Stormwater Management Ordinance (Adopted 10-03-02)	<a href="http://www.northgeorgiawater.com/pdfs/modordfin-task10/tab2.pdf">http://www.northgeorgiawater.com/pdfs/modordfin-task10/tab2.pdf</a>
2	Maryland Department of the Environment Model Stormwater Management Ordinance July 2000	<a href="http://www.mde.state.md.us/assets/document/sedimentstormwater/model_ordinance.pdf">http://www.mde.state.md.us/assets/document/sedimentstormwater/model_ordinance.pdf</a>
3	Stormwater Management Ordinance (Fauquier County, VA)	<a href="http://www.fauquiercounty.gov/documents/departments/commdev/pdf/SWMOrdinance.pdf">http://www.fauquiercounty.gov/documents/departments/commdev/pdf/SWMOrdinance.pdf</a>
4	Stormwater Management Ordinance (Frederick County, MD)	<a href="http://www.co.frederick.md.us/dpw/storm_water/CleanedSWMCode.PDF">http://www.co.frederick.md.us/dpw/storm_water/CleanedSWMCode.PDF</a>
5	Stormwater Management Ordinance (Cecil County, MD)	<a href="http://www.ccgov.org/dpw/stormwater">http://www.ccgov.org/dpw/stormwater</a>
6	County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance NO. 9424	<a href="http://www.projectcleanwater.org/html/model_ordinance.html">http://www.projectcleanwater.org/html/model_ordinance.html</a>

ID	Reference	Source
<b>Information</b>		
1	Center for Watershed Protection- Stormwater Practice Maintenance	<a href="http://www.cwp.org/Maintenance_0702.htm">http://www.cwp.org/Maintenance_0702.htm</a>
2	EPA - Post-Construction Storm Water Management in New Development & Redevelopment	<a href="http://cfpub.epa.gov/npdes/stormwater/menuofbmps/post_22.cfm">http://cfpub.epa.gov/npdes/stormwater/menuofbmps/post_22.cfm</a>
3	EPA - Stormwater Control Operation & Maintenance	<a href="http://www.epa.gov/nps/ordinance/stormwater.htm">http://www.epa.gov/nps/ordinance/stormwater.htm</a>
4	Stormwater Facility Maintenance Definitions (Washington County, WA)	<a href="http://www.co.washington.wi.us/lcd/Pages_Programs/Regulatory/Chapter%2017/Cert.Process_M.A/exhibit%20b-1.pdf">http://www.co.washington.wi.us/lcd/Pages_Programs/Regulatory/Chapter%2017/Cert.Process_M.A/exhibit%20b-1.pdf</a>
<b>Operation / Maintenance</b>		
1	Maintenance Inspection Checklists, Notifications and Reminders	<a href="http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/8-%20Maintenance%20Inspection%20Checklists%20Notifications%20and%20Reminders/Maintenance%20Inspection%20Checklist%20Introduction.htm">http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/8-%20Maintenance%20Inspection%20Checklists%20Notifications%20and%20Reminders/Maintenance%20Inspection%20Checklist%20Introduction.htm</a>
2	Draft #2 Stormwater Maintenance Plan -- San Diego County	<a href="http://www.sdcounty.ca.gov/dpw/stormwater/maintenance.html">http://www.sdcounty.ca.gov/dpw/stormwater/maintenance.html</a>
3	Operations and Maintenance of Stormwater BMPs -- Chapter 7 (Eugene, OR)	<a href="http://www.ci.eugene.or.us/PW/storm/bmp/">http://www.ci.eugene.or.us/PW/storm/bmp/</a>
<b>Policies</b>		
1	Stormwater Management Policy (Commonwealth of Massachusetts)	<a href="http://www.state.ma.us/dep/brp/stormwtr/files/2103ch.pdf">http://www.state.ma.us/dep/brp/stormwtr/files/2103ch.pdf</a>
2	Stormwater Runoff Management Policy (Morrisville, NC)	<a href="http://www.ci.morrisville.nc.us/engineering/stormwater.pdf">http://www.ci.morrisville.nc.us/engineering/stormwater.pdf</a>
<b>Performance Bonds</b>		
1	Performance Bonds (The below three links can be found at this web address)	<a href="http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/3Performance_Bonds/performance%20bond%20intro.htm">http://www.stormwatercenter.net/Manual_Builder/Maintenance_Manual/3Performance_Bonds/performance%20bond%20intro.htm</a>
2	Erosion and Sediment Control and/or Stormwater Management Performance Bond, City of Virginia Beach, VA	<a href="#">Virginia Beach esswmbond.pdf</a>
3	Standard Maintenance Bond, City of Melbourne, FL	<a href="#">Melbourne_FL_STANDARD_MAINTENANCE_BOND.pdf</a>
4	Irrevocable Letter of Credit, City of Greenacres, FL	<a href="#">Greenacres_Letter_of_credit.pdf</a>
5	Performance Bond Agreement (State of Colorado)	<a href="http://www.epa.gov/owow/nps/ordinance/documents/D2e-Stormwater.pdf">http://www.epa.gov/owow/nps/ordinance/documents/D2e-Stormwater.pdf</a>