

2017

CODE OF THE TOWN OF MILO  
Yates County • New York

*Chapter 331*  
*Wastewater Management*

FINAL FORM

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## **PART 1. GENERAL PROVISIONS.**

### **ARTICLE I. Title, scope, purpose and authority.**

§331-1. Title. This Chapter shall be known as the Wastewater Management Law of the Town of Milo, hereinafter referred to as “this Chapter.”

§331-2. Scope. This Chapter shall govern the design, construction, installation, quality of materials, location, operation, repair and maintenance or use of all on-site individual wastewater treatment systems (hereinafter referred to as an “On-Site Wastewater Treatment System” [OWTS]) that are located within the Town of Milo, which are outside the limits of the Village of Penn Yan.

Exemption(s):

- A. OWTS that are the subject of continuous licensing or regulations by the New York State Department of Environmental Conservation (NYSDEC) or New York State Department of Health (NYSDOH).
- B. OWTS that are owned by Yates County, New York State (hereinafter referred to as “NYS”) or the federal government.
- C. OWTS that are owned by a public school district or Board of Cooperative Education Services (BOCES).

§331-3. Purpose. The purpose of this Chapter is to promote the health, safety and general welfare of the community, including the protection and preservation of the property of its inhabitants, by regulating OWTS so that wastewater is disposed of in a manner that will not create a health hazard, adversely affect the environment, create a nuisance, or impair the enjoyment or use of the property.

§331-4. Authority. This Chapter is adopted pursuant to Article 2 of the Municipal Home Rule Law of New York State and Article 3 of the Public Health Law of New York State.

§331-5. Due process. Nothing in this Chapter shall be construed as authorizing any authority having jurisdiction responsible for the administration and enforcement of this Chapter to do so in a manner that deprives any person or entity of due process of law.

### **ARTICLE III. Abbreviations, acronyms and definitions.**

§331-6. General.

- A. Scope. Unless otherwise expressly stated, the following abbreviations, acronyms and definitions shall, for the purpose of this Chapter, have the meanings shown in this Chapter.
- B. Interchangeability. Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.
- C. Terms defined in the Keuka Watershed Improvement Cooperative’s Policies and Procedures Manual. Where the terms are not defined in this Chapter and are defined in the Keuka Watershed Improvement

Cooperative's Policies and Procedures Manual, such terms shall have the meanings ascribed to them as in such manual.

- D. Terms defined in other laws. Where the terms are not defined in this Chapter and are defined in local, state or federal law, such terms shall have the meanings ascribed to them as in such law.
- E. Terms not defined. Where terms are not defined by the methods authorized by this Chapter, such terms shall have the ordinarily accepted meanings such as the context applies.

§331-7. Abbreviations and acronyms.

ABBREVIATION / ACRONYM	TERM
AHJ	Authority Having Jurisdiction
CFR	Code of Federal Regulations
FEMA	Federal Emergency Management Agency
KWIC	Keuka Watershed Improvement Cooperative
MHWL	Mean High Water Level
NYCRR	New York Codes, Rules and Regulations
NYS	New York State
NYSDEC	NYS Department of Environmental Conservation
NYSDOH	NYS Department of Health
OTN	NYS Onsite Training Network
OWTS	Onsite Wastewater Treatment System

§331-8. General definitions.

*AGENT* – A person who shall have charge, care or control of any land, structure, work and/or use on behalf of the Owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the Owner. Any such person representing the actual Owner shall be bound to comply with the provisions of this Chapter to the same extent as if that person was the Owner.

*APPROVED* – Acceptable to the AHJ.

*APPROVED AGENCY* – An established and recognized agency regularly engaged in conducting tests or furnishing inspection and/or review services, when such agency has been approved by the AHJ. Examples of an Approved Agency are but shall not be limited to:

- A. The Registered Design Professional involved in the design of an OWTS or portion thereof is permitted to act as an Approved Agency and their personnel are permitted to act as special inspectors for the work designed by them, provided they qualify as special inspectors.
- B. An OTN Inspector.

*AUTHORITY HAVING JURISDICTION (AHJ)* – The Code Enforcement Officer, Health Officer, KWIC Manager, Watershed Inspector or other official(s) designated by the Town, or other regulatory agency (e.g., NYSDEC, NYSDOH, etc.), having the responsibility to administer and enforce the provisions of this Chapter.

*CHANGE OF USE* – A use of land with an associated building and OWTS that is modified so as to likely cause an increase in hydraulic loading (e.g., change from a residential use to a nonresidential use; change of a nonresidential use to a different type of nonresidential use) as determined by the AHJ.

*CODE ENFORCEMENT OFFICER* – A public officer designated by the Town Board whom has successfully fulfilled the training requirements for Code Enforcement Officials pursuant to Title 19 NYCRR Part 1208.

*CONSTRUCTION DOCUMENTS* – All the written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of the project necessary for obtaining a permit. The construction drawings shall be drawn to an appropriate scale.

*CONVEYANCE OF REAL PROPERTY* – The transfer of the title of real estate from one to another, in the form of a deed or other legal instrument, filed in the Office of the County Clerk.

*COUNTY* – Yates County, New York.

*ENHANCED TREATMENT UNIT (ETU)* – This term shall bear the same meaning as “supporting deposition” that is defined in Appendix 75-A of Title 10 Part 75 of the NYCRR.

*FAILED ONSITE WASTEWATER TREATMENT SYSTEM (FAILED OWTS)* – An OWTS that is not functioning properly as prescribed in the KWIC Policies and Procedures Manual.

*FLOOD DAMAGE PREVENTION LAW* – The Flood Damage Prevention Law of the Town of Milo, as currently in effect and as hereafter amended from time to time.

*JUSTIFIABLE CAUSE* – A reasonable ground for belief that certain alleged facts exist and those facts would induce a prudent public officer, acting within the scope of his or her duties, to believe a cause for the extension of an application, certificate, notice, order or permit is appropriate and proper.

*KEUKA WATERSHED IMPROVEMENT COOPERATIVE (KWIC)* – The Keuka Watershed Improvement Cooperative.

*KWIC POLICIES AND PROCEDURES MANUAL* – A manual adopted by each member municipality of KWIC to ensure the coordinated and uniform enforcement of wastewater regulations. Such manual shall also be approved by resolution of the Town Board prior to its administration and enforcement. Such manual shall be filed with the Town Clerk and may be amended from time to time upon resolution by the Town Board.

*MEAN HIGH WATER LEVEL (MHWL)* – The average springtime high water level. According to the NYSDEC, Division of Environmental Permits, the mean high water level is 715.3 feet for Keuka Lake and 447.25 feet for Seneca Lake.

*MINOR ALTERATIONS* – The routine maintenance and repairs to an OWTS as prescribed in the KWIC Policies and Procedures Manual.

*NEW OWTS* – The installation of a new OWTS serving any use at a lot of record requiring the installation of an and currently not utilizing the same.

*NOTICE OF VIOLATION* – An order issued pursuant to this Chapter.

*NUISANCE* – Public nuisance as known in common law or equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building, structure or premises is not sufficiently ventilated, sewerred, drained, cleaned or lighted, in reference to its intended use; and whatever renders the air, human food, drink or water supply unwholesome.

*NYSDEC WASTE TRANSPORTER* – A person engaged in the transportation of regulated waste generated or disposed of within NYS and possess a valid New York State Part 364 Waste Transporter Permit. Specific requirements for persons transporting regulated waste are prescribed in 6 NYCRR Part 364. Such transporter shall be approved by the Watershed Manager to engage in such transportation activities within the Town.

*OCCASIONALLY OCCUPIED STRUCTURE* – A structure that is only occasionally occupied such as but not limited to a hunting and fishing cabin, has no water under pressure or provisions for wastewater discharge, and is not classified as a dwelling or any other type of residential use as prescribed by the Uniform Code.

*ONSITE TRAINING NETWORK (OTN)* – The NYS Onsite Training Network (OTN).

*ONSITE TRAINING NETWORK INSPECTOR (OTN INSPECTOR)* – Industry professional who has been trained and has successfully completed the course for inspecting an OWTS and has received a registration number from the OTN indicating such. In the event that the OTN stops registering inspectors, the Watershed Manager shall administer a training program and publish a list of approved inspectors for the public.

*ONSITE WASTEWATER TREATMENT SYSTEM (OWTS)* – A complete system of piping, watertight vessels and/or other facilities for the onsite collection, transport and/or treatment of wastewater.

*ONSITE WASTEWATER TREATMENT SYSTEM CERTIFICATE TO OPERATE (OWTS CERTIFICATE TO OPERATE)* – A certificate issued pursuant to this Chapter.

*ONSITE WASTEWATER TREATMENT SYSTEM PERMIT (OWTS PERMIT)* – A permit issued pursuant to this Chapter.

*OWNER* – Any person, agent, operator, firm or business entity having a legal or equitable interest in the property as recorded in the official records of the County as holding title to the property.

*PERSON* – A natural person, heirs, executors, administrators or assigns, and includes a firm or business entity, its or their successors or assigns, or the agent of any of the aforesaid.

*REGISTERED DESIGN PROFESSIONAL* – An individual who is a registered architect (RA) in accordance with Article 147 of the Education Law of NYS or a licensed professional engineer (PE) in accordance with Article 145 of the Education Law of NYS, and acting within the scope of his or her practice to design an OWTS.

*STOP WORK ORDER* – An order issued pursuant to this Chapter.

*SUPPORTING DEPOSITION* – This term shall bear the same meaning as “supporting deposition” that is defined in §100.20 of the Criminal Procedure Law of NYS.

*TOP OF WATERCOURSE BANK* – The primary edge of the ordinary high water mark, or break in slope for a watercourse, which maintains the integrity of the watercourse.

*TOWN* – The Town of Milo, New York.

*TOWN ASSESSOR* – The Town Assessor of the Town.

*TOWN ATTORNEY* – The Town Attorney of the Town.

*TOWN BOARD* – The Town Board of the Town.

*TOWN CLERK* – The Town Clerk of the Town.

*TOWN ENGINEER* – The Town Engineer of the Town.

*UNIFORM CODE* – The NYS Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

*USE* – The activity occurring on a lot of record for which land or a structure is arranged, designed or intended, or for which land or a structure is or may be occupied.

*WATERSHED INSPECTOR* – A person qualified to perform the duties assigned to such position as prescribed within the KWIC Policies and Procedures Manual and shall be employed by the Town.

*WATERSHED MANAGER* – A person qualified to perform the duties assigned to such position as prescribed within the KWIC Policies and Procedures Manual and shall be employed by KWIC.

*WORKMANSHIP* – Work of such character that will fully secure the results sought in all the sections of this Chapter and any other applicable laws governing the design, construction, installation, quality of materials, location, operation, repair and maintenance or use of OWTS.

*ZONING LAW* – The Flood Damage Prevention Law of the Town of Milo, as currently in effect and as hereafter amended from time to time.

## **PART 2. STANDARDS AND WATER QUALITY PROTECTION ZONES.**

### **ARTICLE III. Standards.**

§331-9. Abandoned systems. An abandoned OWTS shall be plugged or capped in an approved manner. Abandoned treatment tanks and seepage pits shall have the contents pumped and discarded in an approved manner. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be filled immediately.

§331-10. Approved devices, equipment and/or materials.

- A. Devices, equipment and/or materials approved by the AHJ shall be constructed and installed in accordance with such approval.
- B. The use of used devices, equipment and/or materials that meet the requirements of this Chapter and/or any other applicable law for new devices, equipment and/or materials is permitted. Used devices, equipment and/or materials shall be permitted to be reused subject to approval by the AHJ.

§331-11. Change in use. It shall be unlawful to make any change in the use of any structure without an inspection of the existing OWTS and approval of the AHJ. The AHJ shall inspect the existing OWTS and determine if such change of use will require an addition, alteration, replacement or repair of such system.

§331-12. Design standards.

- A. Installation of a new OWTS. A new OWTS shall be designed to conform to the applicable standards prescribed in the KWIC Policies and Procedures Manual.
- B. Work proposed on existing OWTS. Work being proposed on an existing OWTS shall be designed to conform to the applicable standards prescribed in the KWIC Policies and Procedures Manual.

§331-13. Discharge into OWTS.

- A. It shall be unlawful to discharge anything but sewage into an OWTS. Surface and subsurface water including roof, cellar, foundation and storm drainage shall not be discharged into an OWTS and shall be disposed of so as to in no way affect the proper functioning of the system.
- B. Material such as ashes, cinders or rags; flammable, poisonous or explosive liquids or gases; oil, grease or other insoluble material that is capable of obstructing, damaging or overloading an OWTS, or is capable of interfering with the normal operation of the OWTS, shall not be deposited, by any means, into such systems.
- C. Where a food waste disposal unit discharges into an OWTS, the OWTS shall be designed to accommodate the solids loading from such disposal unit.
- D. Water softener or iron filter discharge into an OWTS shall be installed in such a way that they pose no problems for an OWTS.

§331-14. Disposal of human excreta.

- A. No untreated wastewater from an OWTS shall be deposited or allowed to escape into any watercourse, or allowed to be surfaced or be washed over the ground.
- B. No human excreta, either raw or partially decomposed, shall be removed from an OWTS and placed in or on the ground without obtaining approval from the NYSDEC.

§331-15. ETUs. An ETU is required to have a service contract with a certified manufacturer's representative, which provides for annual inspections or inspections at intervals specified by the manufacturer, whichever is more restrictive, as well as subsequent necessary adjustments by adjustments by a certified manufacturer's representative for the life of the ETU. Within fourteen (14) business days of an inspection, a written report shall be sent to the AHJ that documents the result of the inspection and provided written certification from the certified manufacturer's representative that the ETU is fully functional and operating properly, an is under a service contract. Failure to hold a service contract, complete the required inspections, send inspection reports to the AHJ as well as fulfilling the certified manufacturer's representative's maintenance schedule shall be deemed a violation of this Chapter.

§331-16. Failed OWTS. It shall be unlawful to use any failed OWTS as determined by the AHJ. A failed OWTS shall be corrected or use of such system shall be discontinued within that period of time required by the AHJ but such period shall not exceed one (1) year.

§331-17. Floodplain damage prevention.

- A. A OWTS Permit shall be considered a floodplain development permit as prescribed and regulated by the Flood Damage Prevention Law. The AHJ shall be classified as a local administrator as it pertains to granting or denying such permit for work being undertaken in areas of special flood hazard in the Town.
- B. A new, relocated or replacement OWTS shall not be located lower than the 10-year flood level.
- C. Should there be any encroachment into a regulatory floodway as defined by the Flood Damage Prevention Law from a new, relocated or replacement OWTS, the floodway encroachment requirements of such law shall be obeyed and an engineering analysis by a Registered Design Professional shall be submitted to the AHJ.
- D. A new, relocated or replacement OWTS located within Zone A on the Town's FHBM or FIRM shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters as mandated by 44 CFR §60.3(a)(6)(i).

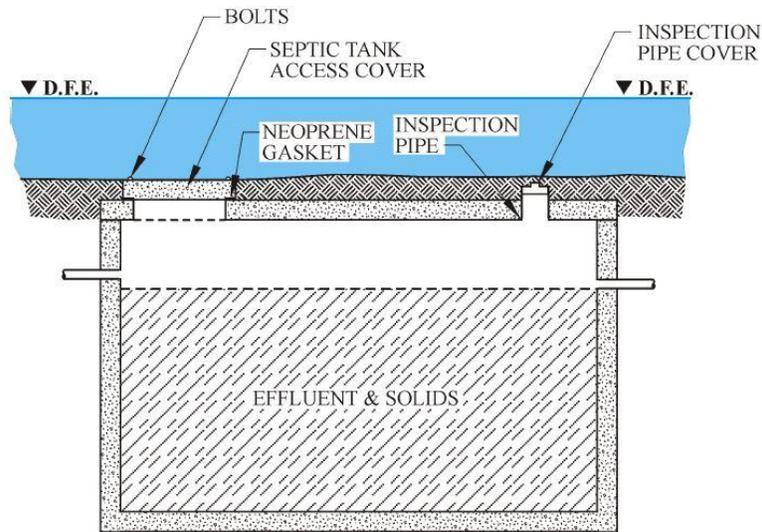
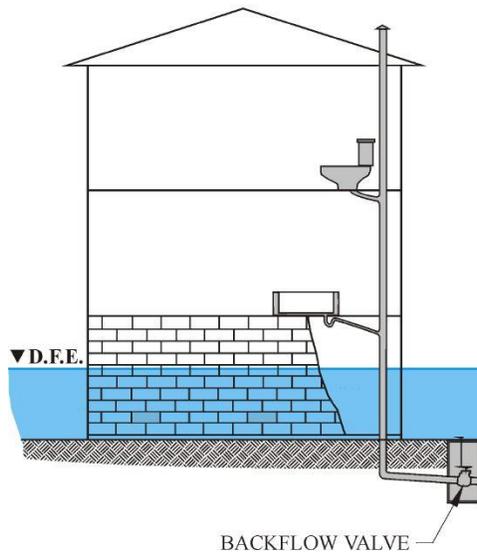


Figure 1 – Example of a Sealed Septic Tank with Lid and Access Cover

- E. New, relocated or replacement OWTS located within Zone A on the Town's FHBM or FIRM shall be designed to avoid impairment to them or contamination from them during flooding as mandated by 44 CFR §60.3(a)(6)(ii).



**Figure 2 – Example of Backflow Valve between Building and OWTS**

§331-18. Holding tanks.

- A. Installation of a new holding tank. A new holding tank shall be designed to conform to the applicable standards prescribed in the KWIC Policies and Procedures Manual.
- B. Work proposed on existing holding tank. Work being proposed on an existing holding tank shall be designed to conform to the applicable standards prescribed in the KWIC Policies and Procedures Manual.

§331-19. Maintenance. An OWTS, its materials and appurtenances, both existing and new, and all parts thereof shall be maintained in proper operating condition in accordance with its original design in a safe and sanitary condition. Devices or safeguards that are required by this Chapter or any applicable law shall be maintained in compliance with such law under which they were installed. The Owner shall be responsible for maintenance of an OWTS.

§331-20. Occasionally occupied structure. The AHJ may allow a non-waterborne system as prescribed in Appendix 75-A of Part 75 of Title 10 of NYCRR for an occasionally occupied structure at a lot of record.

§331-21. Onsite activities and/or conditions. There shall be no activities and/or conditions permitted that would interfere with the proper operation of an OWTS. It is specifically prohibited to construct or place anything that would negatively impact the absorption area as determined by the AHJ such as but not limited to: buildings, structures, paving, trees or shrubs, fill, the parking or crossing by vehicles, aboveground pools, driveways or parking areas.

§331-22. Public sewer system. All plumbing fixtures shall be connected to a public sewer system where available. Determination of whether a public sewer system is available shall be made by the AHJ.

§331-23. Relocated OWTS. An existing OWTS that is relocated on a lot of record shall comply with the provisions of this Chapter for new installations.

§331-24. Workmanship. Additions, alterations, installations, maintenance work, repairs and/or replacements of OWTS that are caused directly or indirectly by the enforcement of this Chapter shall be executed and installed in a

workmanlike manner, and installed in accordance to the manufacturer's installation instructions and/or applicable standard(s).

#### **ARTICLE IV. Water Quality Protection Zones**

##### **§331-25. Water Quality Protection Zones.**

###### **A. Water Quality Protection Zone 1.**

1. This zone shall include any OWTS that is located within the Town, which is outside the Village of Penn Yan, and is within two hundred (200) feet of the MHWL of Keuka Lake or Seneca Lake.
2. This zone shall include any OWTS that is located within Town, which is outside the Village of Penn Yan, and is two hundred (200) feet from a watercourse that is listed as impaired and threatened waters (e.g., streams, rivers, lakes, etc.) pursuant to Section 303(d) of the Federal Clean Water Act or by resolution of the Town Board. Distance shall be measured from the top of such watercourse's bank to an OWTS or portion thereof.

###### **B. Water Quality Protection Zone 2.**

1. This zone shall include any OWTS that is located within the Town of Milo, which is outside the limits of the Village of Penn Yan, but such system is not located within Zone 1.

### **PART 3. OWTS PERMIT.**

#### **ARTICLE V. General requirements.**

§331-26. Required. Any Owner who intends to install a new OWTS or to conduct an alteration, addition, change of use, relocation or replacement of an existing OWTS, or to cause any such work to be done, shall first make an application for an OWTS Permit to the AHJ and obtain such permit.

§331-27. Work exempt from a permit. Exemptions from an OWTS Permit shall not be deemed to grant authorization for any work to be done in a manner in violation of any applicable provision of this Chapter or any other law. An OWTS Permit is not required for the following:

###### **A. Minor alterations.**

§331-28. AHJ. The AHJ responsible for reviewing an application for an OWTS Permit and issuing an OWTS Permit as prescribed in the KWIC Policies and Procedures Manual.

§331-29. Application for permit. Each application for an OWTS Permit, with the required fee, shall be filed with the AHJ on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall contain a description of the type of system, the system location, the occupancy of all parts of the structure and all portions of the site or lot not covered by the structure, and such additional information as is required by the AHJ. The maximum number of bedrooms for residential occupancies shall be indicated.

§331-30. Construction documents. An application for an OWTS Permit shall be accompanied by construction documents drawn to scale, with sufficient clarity and detail dimensions showing the nature and character of the work to be performed. The type and amount of construction documents is prescribed in the KWIC Policies and Procedures Manual.

- A. Registered Design Professional. Construction documents shall be prepared, signed and sealed by a Registered Design professional if required by law or deemed necessary by the AHJ.

§331-31. Time limitation of application. An application for an OWTS permit for any proposed work shall be deemed to have been abandoned one hundred and eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the AHJ shall have the authority to grant one or more extensions of time for additional periods not exceeding one hundred and eighty (180) days each. The extension shall be requested in writing and justifiable cause demonstrated.

§331-32. Previous approvals. This Chapter shall not require changes in the construction documents, construction or use of an OWTS for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within one hundred and eighty (180) days after the effective date of this Chapter and has not been abandoned.

§331-33. Site plan. A site plan shall be included as part of the construction documents and conform to the applicable provisions prescribed in the KWIC Policies and Procedures Manual.

§331-34. Issuance. The application, construction documents and other data filed by an applicant for an OWTS Permit shall be reviewed by the AHJ. If the AHJ finds that the proposed work conforms to the requirements of this Chapter and all laws applicable thereto, and that the fees have been paid, an OWTS Permit shall be issued to the Owner. An OWTS Permit shall not be transferable.

§331-35. Accepted construction documents. When the AHJ issues an OWTS Permit where construction documents are required, the construction documents shall be endorsed in writing and marked with a stamp affirming the approval of the OWTS. Such accepted construction documents shall not be changed, modified or altered without authorization from the AHJ. Work shall be done in accordance with the accepted construction documents. The AHJ shall have the authority to issue an OWTS Permit for the construction of a part of an OWTS before the construction documents for the whole system has been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this Chapter or all laws applicable thereto. The holder of such permit shall proceed at his or her own risk without assurance that an OWTS Permit for the entire system will be granted.

§331-36. Conditions. The AHJ may include in an OWTS such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of this Chapter or any other pertinent law.

§331-37. Validity. The issuance of an OWTS Permit or acceptance of construction documents shall not be construed to be a permit for, or an approval of, any violation of any applicable provision of this Chapter or other law. No permit presuming to give authority to violate or cancel any applicable provision of this Chapter or other law shall be valid. The issuance of a permit based on construction documents and other data shall not prevent the AHJ from thereafter requiring the correction of errors in said construction documents and other data or from preventing OWTS operations being carried on thereunder when in violation of any applicable provision of this Chapter or any other law.

§331-38. Expiration. An OWTS Permit issued by the AHJ under the applicable provision of this Chapter shall expire within one (1) year from the date of the permit.

§331-39. Extensions. An Owner shall have the right to apply for an extension of the time within which the work authorized by an OWTS Permit when work cannot be completed within the time required by this Chapter. The AHJ shall extend the time for completion by the Owner for a period not exceeding one (1) year if there is justifiable cause. No permit shall be extended more than four times.

§331-40. Revocation. The AHJ shall have the authority to revoke an OWTS Permit issued under the provisions of this Chapter wherever the permit is issued in error or based on incorrect, inaccurate or incomplete information, or in violation of any applicable provision of this Chapter or other law.

§331-41. Posting of permit. An OWTS Permit or a copy shall be kept on the site until the completion of the work.

## **PART 4. OWTS CERTIFICATE TO OPERATE.**

### **ARTICLE VI. General requirements.**

§331-42. Required. No OWTS shall be used and no change in use to the existing occupancy classification of a building or structure or portion thereof being served by an OWTS shall be made until the AHJ has issued an OWTS Certificate to Operate as provided herein. Issuance of such certificate shall not be construed as an approval of a violation of any applicable provision of this Chapter or other law.

§331-43. Construal. An OWTS Certificate to Operate shall not be construed as a guarantee by the AHJ that the OWTS will function satisfactorily nor shall it in any way restrict action of the AHJ in the enforcement of any applicable provision of this Chapter or other law.

§331-44. OWTS Permit. Any work conducted on an OWTS shall be in accordance with the construction documents accepted in the OWTS Permit.

§331-45. Notification. The AHJ and/or the Registered Design Professional, if the construction documents were prepared, signed and sealed by one, shall be notified when work on an OWTS is ready for inspection. No part of the system shall be covered until inspected and found to be in compliance with the accepted construction documents and/or any conditions prescribed within the OWTS Permit. Whenever considered necessary by the AHJ and/or Registered Design Professional, any covered work shall be uncovered at the expense of the owner to permit proper inspection.

§331-46. Issuance. An OWTS Certificate to Operate shall be issued by the AHJ upon a satisfactory inspection of the completed work by such AHJ and/or a letter from the Registered Design Professional noting compliance with the accepted construction documents and any conditions prescribed within the OWTS Permit.

§331-47. Conditions. The AHJ may include in an OWTS Certificate to Operate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of this Chapter or any other pertinent law.

§331-48. Revocation. The AHJ is authorized to, in writing, suspend or revoke a OWTS Certificate to Operate issued under the provisions of this Part wherever such certificate is issued in error, or based on incorrect information

supplied, or where it is determined that the OWTS or portion thereof is in violation of any applicable provision of this Chapter or any other law.

## **PART 5. INSPECTIONS.**

### **ARTICLE VII. General requirements.**

§331-49. Inspections and Application. The AHJ shall make all of the required and voluntary inspections, or shall accept reports of inspection by Approved Agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such Approved Agency or by the responsible individual. The AHJ is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the Town Board; an Application for an OWTS Permit shall include a section requiring consent by the parcel owner to permit the AHJ to enter upon the premises without a search warrant to inspect the work, which is the subject matter of the Permit Application.

- A. Access and Administrative Search Warrant. The Owner or Agent shall make such arrangements as will enable the AHJ to safely inspect all parts of the system when an OWTS is ready. The Owner or Agent shall provide the proper apparatus and equipment for conducting the inspection and furnish such assistance as is necessary to conduct the inspection. If a parcel Owner fails to complete an inspection required by this local law or to allow access to the parcel for the required inspection, the AHJ shall apply to a Court of competent jurisdiction for an Administrative Search Warrant.
- B. Approval required. The AHJ, upon notification, shall make the required inspections and shall either indicate to the Owner or Agent that the OWTS or portion thereof is satisfactory or fails to comply with an applicable provision of this Chapter or other law. Any OWTS or portion thereof that does not comply shall be corrected in a workmanlike manner and shall not be covered or concealed until authorized by the AHJ.
- C. Construal. An inspection by the AHJ shall not be construed as a guarantee that the OWTS will function satisfactorily nor shall it in any way restrict action of the AHJ in the enforcement of any law or regulation.
- D. Covering of work. An OWTS or part thereof shall not be backfilled until such system has been inspected and approved. Any system that has been covered before being inspected and approved shall be uncovered as required by the AHJ.
- E. Minimum notice. The Owner or Agent shall provide at least forty-eight (48) hours' notice for scheduling any required inspection with the AHJ. Required or voluntary inspections shall be scheduled during normal business hours unless approved otherwise by the AHJ.
- F. Owner or Agent to be present. The Owner or Agent scheduling a required or voluntary inspection shall be present for such inspection.
- G. Report of findings. Upon completion of an inspection, the AHJ shall document all procedures and furnish the Owner or Agent with a report of findings.
- H. Scheduling inspections. It shall be the duty of the Owner or Agent to schedule any required inspection with the AHJ when an OWTS or portion thereof is ready for inspection.

- I. Winter inspections. The AHJ has the right to only conduct inspections when the area is free of snow and frozen ground. A partial inspection of the septic tank and exposed components may be conducted by the AHJ for conveyance of real property inspections and a conditional acceptance issued; provided, however, that a full inspection is completed when weather conditions permit.

§331-50. Testing. Where there is insufficient evidence of compliance with any applicable provision of this Chapter or other law, or evidence that a material or method does not conform to any applicable provision of this Chapter or other law, the AHJ shall have the authority to require testing as evidence of compliance at no expense to the Town.

- A. Test methods. Test methods shall be as specified by recognized and accepted test standards. In the absence of recognized and accepted test methods, the AHJ shall approve the testing procedures.
- B. Testing agency. Tests shall be performed by an Approved Agency.
- C. Test reports. Reports of tests shall be retained by the AHJ for the period required for retention of public records.

§331-51. Apparatus, instruments, material and labor for inspections and/or tests. Apparatus, instruments, material and labor required for inspecting and/or testing an OWTS or portion thereof shall be furnished by the Owner or Agent.

#### **ARTICLE VIII. Required inspections.**

§331-52. Conveyance of real property.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.
- B. An OTN System Inspection Information Request form shall be completed by the Owner or Agent, and submitted to the AHJ prior to scheduling an inspection of an OWTS.
- C. The AHJ shall conduct inspections of an OWTS involved in a conveyance of real property as prescribed in the KWIC Policies and Procedures Manual. A record of all such inspections shall be maintained by the AHJ.

§331-53. Holding tanks.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.
- B. The AHJ shall conduct inspections of a holding tank as prescribed in the KWIC Policies and Procedures Manual. A record of all such inspections shall be maintained by the AHJ.

§331-54. OWTS Permit.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.

- B. The AHJ shall conduct inspections as prescribed in the KWIC Policies and Procedures Manual during and upon completion of the work for which an OWTS Permit has been issued. A record of all such inspections shall be maintained by the AHJ.

§331-55. Water Quality Protection Zone 1.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.
- B. The AHJ shall conduct inspections of an OWTS located in a Water Quality Protection Zone 1 as prescribed in the KWIC Policies and Procedures Manual. A record of all such inspections shall be maintained by the AHJ.

§331-56. Reserved.

**ARTICLE IX. Voluntary inspections.**

§331-57. Voluntary inspections.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.
- B. The Owner of an OWTS has the right to request an inspection of such system by the AHJ.
- C. An OTN System Inspection Information Request form may be required to be completed by the Owner or Agent, and submitted to the AHJ prior to scheduling an inspection of an OWTS.
- D. The AHJ shall conduct voluntary inspections of an OWTS as prescribed in the KWIC Policies and Procedures Manual. A record of all such inspections shall be maintained by the AHJ.

**PART 6. COMPLAINTS.**

**ARTICLE X. Complaints.**

§331-58. Complaints.

- A. The AHJ is prescribed in the KWIC Policies and Procedures Manual.
- B. The AHJ shall review and investigate complaints that claim the existence of conditions or activities that fail to comply with any applicable provision of this Chapter or other law. However, such authority shall not review and/or investigate any complaint pertaining to a violation of law that is enforced by another AHJ (i.e., EPA, NYSDEC, NYSDOH, NYSDOT, etc.). Lastly, the process for receiving and responding to a complaint is prescribed in the KWIC Policies and Procedures Manual.

**PART 7. ADMINISTRATION AND ENFORCEMENT.**

**ARTICLE XI. Code Enforcement Officer.**

§331-59. General. The Code Enforcement Officer is hereby authorized and directed to administer and enforce the provisions of this Chapter that is assigned to such officer by the KWIC Policy and Procedures Manual.

§331-60. Powers and duties. The Code Enforcement Officer shall have the powers and duties assigned to him or her to administer and enforce the provisions of this Chapter as prescribed in the Code of the Town and the KWIC Policies and Procedures Manual.

§331-61. Approved Agencies. The Code Enforcement Officer shall have the authority to accept reports of application reviews, tests or inspections conducted by Approved Agencies that document compliance with this Chapter and any other applicable law. Such reports shall be in writing and be certified by a responsible officer of such Approved Agency or by the responsible individual. The Code Enforcement Officer is authorized to engage such expert opinion as deemed necessary to document compliance with this Chapter or any other applicable law.

- A. Report of findings. Upon completion of the inspection, the Approved Agency shall document all procedures and furnish the Code Enforcement Officer with a report of findings.

§331-62. Technical assistance. To determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation or use of an OWTS or OWTS subject to inspection, the Code Enforcement Officer is authorized to require the Owner or agent to provide, without charge to the Town, a technical opinion and report. The opinion and report shall be prepared by a Registered Design Professional, qualified laboratory or other Approved Agency that shall analyze the design, operation or use of an OWTS and appurtenances situated thereon, and to recommend necessary changes. The Code Enforcement Officer is authorized to require design submittals to be prepared by, and bear the signature and stamp of a Registered Design Professional.

§331-63. Identification. The Code Enforcement Officer shall carry proper identification when inspecting OWTS in the performance of his or her duties as prescribed by this Chapter.

§331-64. Right of entry. Whenever it is necessary to make an inspection to enforce the provisions of this Chapter, or whenever the Code Enforcement Officer has reasonable cause to believe that there exists an OWTS that has conditions or violations of this Chapter or any other applicable law which make such system unsafe, dangerous or hazardous, such officer shall have the authority to enter the lot of record at all reasonable times to inspect or to perform the duties imposed upon such officer by this Chapter. If such lot of record is occupied, the Code Enforcement Officer shall present credentials to the occupant and request permission to inspect the OWTS. If such lot is unoccupied, the Code Enforcement Officer shall first make a reasonable effort to locate the Owner or other person having charge or control of the lot of record and request entry. If entry is not granted, the Code Enforcement Officer has recourse to every remedy provided by law to secure entry.

§331-65. Records. The Code Enforcement Officer shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, complaints received, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

## **ARTICLE XII. Watershed Manager.**

§331-66. General. The Watershed Manager is hereby authorized and directed to administer and enforce the provisions of this Chapter that is assigned to such manager by the KWIC Policy and Procedures Manual.

§331-67. Powers and duties. The Watershed Manager shall have the powers and duties assigned to him or her to administer and enforce the provisions of this Chapter as prescribed in the KWIC Policies and Procedures Manual.

§331-68. Approved Agencies. The Watershed Manager shall have the authority to accept reports of application reviews, tests or inspections conducted by Approved Agencies that document compliance with this Chapter and any other applicable law. Such reports shall be in writing and be certified by a responsible officer of such Approved Agency or by the responsible individual. The Watershed Manager is authorized to engage such expert opinion as deemed necessary to document compliance with this Chapter or any other applicable law.

- A. Report of findings. Upon completion of the inspection, the Approved Agency shall document all procedures and furnish the Watershed Manager with a report of findings.

§331-69. Technical assistance. To determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation or use of an OWTS or OWTS subject to inspection, the Watershed Manager is authorized to require the Owner or agent to provide, without charge to the Town, a technical opinion and report. The opinion and report shall be prepared by a Registered Design Professional, qualified laboratory or other Approved Agency that shall analyze the design, operation or use of an OWTS and appurtenances situated thereon, and to recommend necessary changes. The Watershed Manager is authorized to require design submittals to be prepared by, and bear the signature and stamp of a Registered Design Professional.

§331-70. Identification. The Watershed Manager shall carry proper identification when inspecting OWTS in the performance of his or her duties as prescribed by this Chapter.

§331-71. Right of entry. Whenever it is necessary to make an inspection to enforce the provisions of this Chapter, or whenever the Watershed Manager has reasonable cause to believe that there exists an OWTS that has conditions or violations of this Chapter or any other applicable law which make such system unsafe, dangerous or hazardous, such manager shall have the authority to enter the lot of record at all reasonable times to inspect or to perform the duties imposed upon such manager by this Chapter. If such lot of record is occupied, the Watershed Manager shall present credentials to the occupant and request permission to inspect the OWTS. If such lot is unoccupied, the Watershed Manager shall first make a reasonable effort to locate the Owner or other person having charge or control of the lot of record and request entry. If entry is not granted, the Watershed Manager has recourse to every remedy provided by law to secure entry.

§331-72. Records. The Watershed Manager shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, complaints received, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

### **ARTICLE XIII. Watershed Inspector.**

§331-73. General. The Watershed Inspector is hereby authorized and directed to administer and enforce the provisions of this Chapter that is assigned to such inspector by the KWIC Policy and Procedures Manual.

§331-74. Powers and duties. The Watershed Inspector shall have the powers and duties assigned to him or her to administer and enforce the provisions of this Chapter as prescribed in the KWIC Policies and Procedures Manual.

§331-75. Approved Agencies. The Watershed Inspector shall have the authority to accept reports of application reviews, tests or inspections conducted by Approved Agencies that document compliance with this Chapter and any

other applicable law. Such reports shall be in writing and be certified by a responsible officer of such Approved Agency or by the responsible individual. The Watershed Inspector is authorized to engage such expert opinion as deemed necessary to document compliance with this Chapter or any other applicable law.

- A. Report of findings. Upon completion of the inspection, the Approved Agency shall document all procedures and furnish the Watershed Inspector with a report of findings.

§331-76. Technical assistance. To determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation or use of an OWTS or OWTS subject to inspection, the Watershed Inspector is authorized to require the Owner or agent to provide, without charge to the Town, a technical opinion and report. The opinion and report shall be prepared by a Registered Design Professional, qualified laboratory or other Approved Agency that shall analyze the design, operation or use of an OWTS and appurtenances situated thereon, and to recommend necessary changes. The Watershed Inspector is authorized to require design submittals to be prepared by, and bear the signature and stamp of a Registered Design Professional.

§331-77. Identification. The Watershed Inspector shall carry proper identification when inspecting OWTS in the performance of his or her duties as prescribed by this Chapter.

§331-78. Right of entry. Whenever it is necessary to make an inspection to enforce the provisions of this Chapter, or whenever the Watershed Inspector has reasonable cause to believe that there exists an OWTS that has conditions or violations of this Chapter or any other applicable law which make such system unsafe, dangerous or hazardous, such inspector shall have the authority to enter the lot of record at all reasonable times to inspect or to perform the duties imposed upon such inspector by this Chapter. If such lot of record is occupied, the Watershed Inspector shall present credentials to the occupant and request permission to inspect the OWTS. If such lot is unoccupied, the Watershed Inspector shall first make a reasonable effort to locate the Owner or other person having charge or control of the lot of record and request entry. If entry is not granted, the Watershed Inspector has recourse to every remedy provided by law to secure entry.

§331-79. Records. The Watershed Inspector shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, complaints received, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

#### **ARTICLE XIV. Program review and reporting.**

§331-80. Annual report to Town Board. The Watershed Manager shall submit to the Town Board a written annual report and summary of all business conducted, including a report and summary of all transactions and activities described in this Chapter.

#### **ARTICLE XV. Stop Work Orders.**

§331-81. Authority. Whenever the Watershed Manager or Watershed Inspector finds any work is being performed in a manner either contrary to the provisions of this Chapter or any other applicable law, or is dangerous or unsafe, such manager or inspector is authorized to issue a Stop Work Order.

§331-82. Issuance. The Stop Work Order shall be in writing and shall be given to the Owner involved, or to the agent, or to the person doing the work. Upon issuance of a Stop Work Order, the cited work shall immediately

cease. The Stop Work Order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

§331-83. Service of Stop Work Orders. The Watershed Manager or Watershed Inspector shall cause the Stop Work Order, or a copy thereof, to be served on the Owner of the affected OWTS personally or by certified mail. Such manager or inspector shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, tenant, contractor, subcontractor, construction superintendent, Registered Design Professional or their agents, or any other person taking part or assisting in work affected by the Stop Work Order, personally or by certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

§331-84. Imminent danger. Where an imminent danger exists, the Watershed Manager or Watershed Inspector shall not be required to give a written notice prior to stopping the work.

§331-85. Unlawful continuance. Any person who shall continue any work after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be culpable of a violation of this Chapter.

#### **ARTICLE XVI. Violations.**

§331-86. Violations unlawful. It shall be unlawful for any Owner to abandon, alter, install, relocate, replace or use an OWTS or portion thereof in violation of any applicable provision of this Chapter or other law, or fail in any manner to comply with any notice, directive or order of the Code Enforcement Officer, Watershed Manager or Watershed Inspector.

§331-87. Public nuisance. Any condition caused or permitted to exist in violation of any applicable provision of this Chapter or other law shall be deemed a public nuisance and shall be abated as such by the Owner in accordance with any applicable provision of this Chapter or any other law.

§331-88. Notice of Violation. The Code Enforcement Officer shall issue a Notice of Violation upon receipt of a written request by the Watershed Manager to issue a Notice of Violation against an Owner for failing to comply with any applicable provision of this Chapter or other law. Such request shall include a Supporting Deposition if the Code Enforcement Officer did not observe the violation(s), photographs and documentary evidence, and a statement identifying the section(s) of law determined to be violated by such Owner. The Code Enforcement Officer has the right to have the Town Attorney review such request and documents prior to issuing a Notice of Violation to ensure compliance with any applicable law. A Notice of Violation shall be prepared in accordance with all of the following:

- A. Be in writing.
- B. Include a description of the real property sufficient for identification.
- C. Include a statement of the violation(s) and why the notice is being issued.
- D. Include an order to remedy allowing a reasonable time for the Owner to take the necessary actions required to bring any OWTS into compliance with any applicable provision of this Chapter or other law.
- E. Inform the Owner of the right to appeal.

F. Include a statement of any applicable penalties and the right to file a lien in accordance with this Chapter.

§331-89. Method of service. A Notice of Violation shall be deemed to be properly served if a copy thereof is:

- A. Delivered to the Owner personally;
- B. Sent by certified mail addressed to the Owner at the address prescribed in the records of the Town Assessor with the return receipt requested; or
- C. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the real property affected by such notice.

§331-90. Compliance with notices. A Notice of Violation issued or served as provided by this Article shall be complied with by the Owner, operator, occupant and other person responsible for the condition or violation to which the Notice of Violation pertains.

§331-91. Voluntary Code Compliance Agreement. The Code Enforcement Officer, Watershed Manager and/or Watershed Inspector has the authority to enter into a written voluntary compliance agreement with the Owner in order to gain voluntary compliance in correcting a confirmed violation. The agreement shall include time limits for compliance and shall be binding on the Owner. Such officer, manager and/or inspector shall abate further processing of the alleged violation during the time allowed in the voluntary compliance agreement for the completion of the necessary corrective action. The Code Enforcement Officer, Watershed Manager and/or Watershed Inspector shall take no further action concerning the alleged violation if all terms of the voluntary compliance agreement are satisfied, other than steps necessary to terminate the waiver. The failure to comply with any term of the voluntary compliance agreement constitutes a separate violation and shall be handled in accordance with the procedures established by this Chapter, except no further notice after the voluntary compliance agreement has been signed need be given before the such officer, manager and/or inspector may also proceed on the alleged violation that gave rise to the voluntary compliance agreement.

§331-92. Abatement of unlawful acts. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any applicable provision of this Chapter or other law, or a notice or order issued by the Code Enforcement Officer, Watershed Manager or Watershed Inspector pursuant to the applicable provision of this Chapter. In particular, but not by way of limitation, where the violation of any applicable provision of this Chapter or other law, or a notice or order issued by such officer, manager and/or inspector pursuant to the applicable provision of this Chapter, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the abandonment or termination of use of an OWTS or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board.

§331-93. Prosecution of a violation. If the Notice of Violation is not complied within the period of time prescribed within such notice, the Code Enforcement Officer is authorized to request the Town Board to authorize the Town Attorney to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the abandonment or termination of use of an OWTS in violation of the provisions of this Chapter or of the notice or order made pursuant thereto.

§331-94. Penalties and restoration.

- A. Civil penalty. Any person who undertakes any action regulated by this Chapter, or who violates, disobeys or disregards any provision of this Chapter, shall be liable to the Town for civil penalty not to exceed three hundred dollars (\$300) per day for every such violation. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- B. Criminal penalty. Any violation of any part of this Chapter shall constitute a "Violation" as defined in the Penal Law of NYS, and shall be punishable by a fine not to exceed two hundred fifty dollars (\$250), or fifteen (15) days' imprisonment, or both such fine and/or imprisonment. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. The criminal penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- C. Restoration. A court of competent jurisdiction may order or direct a violator to restore the affected land to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the AHJ, Code Enforcement Officer or his/her designate.

§331-95. Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this Article, and each remedy or penalty specified in this Article shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this Article, in any other section of this Chapter, or in any other applicable law. Any remedy or penalty specified in this Article may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Article, in any other section of this Chapter, or in any other applicable law.

#### **ARTICLE XVII. Fees, incurred expenses and assessment.**

§331-96. Payment of fees and incurred expenses. No inspection shall be conducted or permit issued pursuant to this Chapter until all applicable fees and incurred costs have been paid.

§331-97. Fees. Fees in the amounts set forth in a fee schedule established from time to time by resolution of the Town Board shall be submitted with the application.

§331-98. Incurred costs. In addition to the fees required in this section, the Owner shall reimburse the Town for the cost of professional consultation fees and other expenditures attributable to any application or inspection. The Town may also require the Owner to deposit a lump sum in order to retain such consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Town may require additional deposits. Such payment(s) shall:

- A. Be deposited with the Town Clerk who shall establish a line item for this purpose. Expenditures from this line item may be made at the direction of the Town Clerk without further appropriation.
- B. Pay only for the expenditures rendered in connection with the work for which an application has been submitted or inspection requested by the Owner.

- C. At the completion of the proposed action, any excess amount in the line item attributable to an application or inspection shall be repaid to the Owner. A final report of said line item shall be made available to the Owner by the Town Clerk if requested.
- D. The Town reserves the right to refuse the issuance of any certificate and/or permit until payment has been received by the Town Clerk for all expenditures in connection with the work for which an application has been submitted or inspection requested by the Owner.

§331-99. Refunds. Any payment of a fee or incurred cost to this Town is not refundable regardless of whether or not an inspection has been conducted or a permit has been issued pursuant to this Chapter.

§331-100. Assessment. The failure of the Owner to pay any fee, penalty or expense incurred by the Town in connection with the enforcement and administration of this Chapter shall be assessed against the land subject to any action prescribed within this Chapter and shall be levied and collected in the same manner as provided in the Town Law of NYS for the levy and collection of Town taxes or special ad valorem levies.

#### **ARTICLE XVIII. Appeal procedure.**

§331-101. Application for Appeal. Any person directly affected by an Order, Requirement, Decision, Interpretation, or Determination of the Milo Code Enforcement Officer, Watershed Manager, or Watershed Inspector, or a notice of such Requirement, Decision, Interpretation, or Determination issued by such officer, except those that pose an imminent risk to public health or safety, shall have the right to Appeal to the Town of Milo Zoning Board of Appeals, pursuant to "Zoning Law of the Town of Milo" (Chapter 350, Article XV "Appeal" of the Code of the Town of Milo), or its successor legislation. An Appeal may be made by any aggrieved person and must be filed within sixty (60) days of the Order, Requirement, Decision, Interpretation, or Determination referred to above.

- A. Limitations on authority. An application for an appeal shall be based on a claim that the intent of this Chapter or the rules legally adopted herein has been incorrectly interpreted, the provisions of this Chapter do not fully apply, or an equivalent method of construction, which such method shall be prepared by, and bear the signature and seal of a Registered Design Professional, is proposed. The Zoning Board of Appeals of the Town shall have no authority to waive any standard prescribed by law (e.g., Appendix 75-A of Title 10 Part 75 of NYCRR).

§331-102. Stays of enforcement. Appeals of a determination, notice and/or order by the Code Enforcement Officer, Watershed Manager or Watershed Inspector shall stay the enforcement of the determination, notice and/or order until the appeal is heard and a final determination made by the Zoning Board of Appeals of the Town.

§331-103. Town Engineer. The Zoning Board of Appeals of the Town has the right to have an application for an appeal reviewed by the Town Engineer and request such engineer to provide a written recommendation(s) prior to making any determination on such application.

#### **ARTICLE XIX. Variance procedure.**

§331-104. State or federal law. A request for a variance from any provision of a NYS or federal law shall be processed pursuant to such law.

§331-105. Local law. The Owner shall have the right to apply for a variance from a provision of this Chapter, which is not prescribed in any other law, to the Zoning Board of Appeals of the Town pursuant to Zoning Law.

§331-106. Town Engineer. The Zoning Board of Appeals of the Town has the right to have an application for a variance reviewed by the Town Engineer and request such engineer to provide a written recommendation(s) prior to making any determination on such application.

§331-107. Criteria. The Zoning Board of Appeals of the Town shall consider the following criteria in lieu of the criteria prescribed in the Zoning Law and make applicable findings regarding:

- A. Whether the variance being requested by the Owner is in harmony with the purpose and intent of this Chapter; and
- B. Whether a substantial change will be produced in the general condition of the water quality or a substantial risk to groundwater quality or quantity will be created by the granting of the variance; and
- C. Whether the hardship or difficulty can be alleviated by some other method that is feasible for the Owner to pursue; and
- D. Whether the variance requested is the minimum variance necessary to afford relief; and
- E. Whether the hardship or difficulty has been created by the Owner.

A negative finding(s) in any one of the criterion prescribed herein does not necessarily mandate denial of an application for a variance by the Zoning Board of Appeals of the Town.

## **ARTICLE XX. Miscellaneous.**

§331-108. Prior Wastewater Management Law of the Town. This law repeals, supersedes, and replaces Chapter 331, the Wastewater Management Law of the Town, adopted March 21, 2011, and its subsequent amendments.

§331-109. Other laws. The provisions of this Chapter shall not be deemed to nullify any provisions of local, state or federal law.

§331-110. Responsibility of Owners. An Owner shall be responsible for compliance with any applicable provision of this Chapter or other law regardless of any agreement between or among contractors, lessors, operators, occupants, tenants or other persons as to which party shall be responsible. It shall be the duty of every Owner who performs or causes to perform work for the abandonment, alteration, installation, relocation, repair or replacement of an OWTS to comply with any applicable provision of this Chapter or other law.

- A. The adoption of this local law shall not affect or impair any act done, offense committed or right accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this local law takes effect.

§331-111. Responsibility for safety. Nothing in this Chapter shall be construed to relieve persons engaged in work on an OWTS from complying with other applicable provisions of law, nor is it intended to alter or diminish any obligation otherwise imposed by law on the Owner, construction manager, general contractor, contractors, materialmen, Registered Design Professionals, or other party involved in work on an OWTS to engage in sound

design and engineering, safe construction or demolition practices including but not limited to debris removal, and to act in a reasonable and responsible manner to maintain a safe construction or demolition site.

§331-112. Liability. The Code Enforcement Officer, Watershed Manager, Watershed Inspector, member of the Zoning Board of Appeals or employee charged with the enforcement of this Chapter, while acting for the Town in good faith and without malice in the discharge of the duties required by this Chapter or other pertinent law, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties.

- A. Legal defense. Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Chapter shall be defended by the legal representatives of the Town until the final termination of the proceedings. Such officer or employee shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this Chapter.

§331-113. Indemnity. An Owner shall be required to execute a written agreement, which shall be approved by the Town Attorney, prior to the AHJ issuing any certificate or permit, or conducting any inspection as prescribed in this Chapter. Such Owner shall agree to indemnify, defend and hold harmless the Town and its officers, employees, agents and/or representatives from all claims, demands, lawsuits, liability, damage or judgments arising out of or in any way connected with the issuance of a certificate or permit, or conducting any inspection as prescribed in this Chapter.

§331-114. Intermunicipal agreements. The Town Board of this Town may, by resolution, authorize the Supervisor of this Town to enter into an agreement, in the name of this Town, with other governments to carry out the terms of this Chapter, provided that such agreement does not violate any applicable provision of this Chapter or other law.

#### **ARTICLE XXI. Conflict of Law, Severability, Interpretation & Effective Date.**

§331-115. Conflict of Law. In any case where a provision of this local law is found to be in conflict with a provision of any ordinance or local law, or with a provision of any statute, rule, regulation, or order of the State of New York, the provision which established the higher standard for the promotion of the health, welfare and safety of the citizens of the municipality shall prevail. In any case where a provision of this local law is found to be in conflict with a provision of any other ordinance or local law existing on the effective date of this local law, which established a lower standard for the promotion of the health, welfare and safety of the citizens of the municipality, the provisions of this local law shall be deemed to prevail.

§331-116. Severability. If any clause, sentence, paragraph, section or a part of this local law shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or a part thereof directly involved in a controversy in which such judgment shall have been rendered.

§331-117. Interpretation. This local law shall be interpreted in such a way wherever possible so that the meaning of the words and phrases and sections herein shall make them valid and legal in their effect. Whenever the requirements of this law are at variance with the requirements of other lawfully adopted rules, regulations or laws, the law with the most restrictive provisions or those imposing the higher standards shall govern.

§331-118. Effective date. This Local Law shall be operative immediately and effective upon being filed with the NYS Secretary of State pursuant to §27 of the Municipal Home Rule Law of the NYS.