

Clearinghouse Rule 17-097

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING, AND REPEALING AND RECREATING RULES

The statement of scope for this rule, WT-04-17, was approved by the Governor on March 7, 2017, published in Register No. 735 A2 on March 13, 2017, and approved by the Natural Resources Board on May 24, 2017. This rule was approved by the governor on .

The Wisconsin Natural Resources Board proposes an order to amend ch. NR 152 Wis. Adm. Code, repeal and recreate ch. NR 152 Appendix A and Appendix B, relating to model ordinances for construction site erosion and sediment control and post-construction storm water management.

WT-04-17

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted:

Sections 281.33 and 281.16, Stats.

2. Statutory Authority:

Sections 227.11, 281.16(2), 281.33(3)(d), and 281.33(4), Stats.

3. Explanation of Agency Authority:

Section 281.33(4), Stats., directs the department to prepare model ordinances for construction site erosion and storm water management in the form of an administrative rule.

Section 281.16(2), Stats., directs the department by administrative rule to prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices.

Section 281.33(3)(a)1, Stats., requires the department to establish by rule uniform statewide standards rather than minimum standards for construction site erosion control and storm water management. Section 281.33(3)(d), Stats., provides that if the department determines that the non-agricultural performance standards prescribed by rule pursuant to s. 281.16(2), Stats., meet the requirements for establishing the uniform statewide standards under s. 281.33(3)(a)1., Stats., then the non-agricultural performance standards suffice as the uniform statewide standards. (In October 2014, the department determined through program guidance ((#3800-2014-03) that the non-agricultural performance standards prescribed in ch. NR 151, Wis. Adm. Code, are the uniform statewide standards pursuant to s. 81.33(3)(d), Stats.)

4. Related Statutes or Rules:

This rule is directly related to the statewide non-agricultural performance standards pursuant to ch. NR 151, Wis. Adm. Code, and s. 281.33(4), Stats., directing the department to prepare model ordinances for construction site erosion and storm water management in the form of an administrative rule.

5. Plain Language Analysis:

The purpose of this proposed rule change is to incorporate the non-agricultural performance standards that were updated in 2011 by removing obsolete language and promoting statewide consistency with implementation of the performance standards.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Federal regulations do not require states to create model ordinances for the regulation of construction site erosion control and post-construction storm water management. This rule revision is solely to fulfill a state statutory requirement to prepare the model ordinances by administrative rule.

7. Comparison with Similar Rules in Adjacent States:

Each of the neighboring states has some variation of construction site erosion control and/or post-construction storm water model ordinance in the form of guidance available to their local units of government. None of the neighboring states require their departments to develop construction site erosion control or post-construction storm water management model ordinances for local units of government by state statute. However, other states do require that the regulated community (Municipal Separate Sewer System Storm Water Permittees) to develop a construction site runoff control ordinance to require proper soil erosion and sediment control.

*Illinois Department of Natural Resources developed "Model Stormwater Management Ordinance"
https://www.dnr.illinois.gov/WaterResources/Documents/IL_Model_Stormwater_Ordinance.pdf)

*The "Iowa Model Construction Site Erosion and Sediment Control Model Ordinance" was prepared by the Iowa Association of Municipal Utilities in coordination with the Iowa Stormwater Partnership and funded from a grant by the Iowa Department of Natural Resources
(http://www.iowastormwater.org/documents/filelibrary/files/ordinances/EandSC_Model_Ordinance_User_Guide_4E908F51DA014.pdf)

*Minnesota Pollution Control Agency "Model Erosion and Sediment Control Ordinance"
(<https://www.pca.state.mn.us/sites/default/files/wq-strm2-16b.pdf>).

*Michigan does not have a soil erosion and sediment control model ordinance, but has a low impact development storm water model ordinance developed and reviewed by environmental consultants in their "Low Impact Development Manual for Michigan"
(<http://www.semcog.org/Reports/LID/index.html#474>).

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

This rule does not invoke or create any new authority. Ch. NR 152, Wis. Adm. Code, uses the prescribed non-agricultural performances standards of ch. NR 151, Wis. Adm. Code.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The department is providing a comment period on this economic impact analysis whereas all local governmental units will have the opportunity to participate in the development of this EIA.

10. Effect on Small Business (initial regulatory flexibility analysis):

While this rule is to assist local governments in developing ordinances consistent with ch. NR 151, Wis. Adm. Code, performance standards, an ordinance in and of itself will impact development in the community where it is enacted. The impact is still expected to be minimal as this rule is only tangentially involved. The authority for complying with an ordinance is found in state statute. This rule does not invoke or create any new authority.

The primary entities who will be directly affected by the proposed rule are local government units. Ch. NR 152, Wis. Adm. Code, has minimal fiscal impact on either state or local governments. The only state fiscal impact anticipated is that associated with the development, printing, and distribution of the ordinances. These costs were anticipated to be done as part of the workload identified in the fiscal estimates in the 2011 ch. NR 151, Wis. Adm. Code, updates. There is no impact to local units of government as adoption of the ordinance is not required by this rule. Changes in this rule package simply codify existing practices outlined in ch. NR 151, Wis. Adm. Code, performance standards.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to the contact information listed above.

Hearing dates and the comment submission deadline are to be determined.

The consent of the Attorney General will be requested for the incorporation by reference of **[insert description of material to be incorporated]**.

SECTION 1. Chapter NR 152 (title) is amended to read:

MODEL ORDINANCES FOR CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL AND POST-CONSTRUCTION STORM WATER MANAGEMENT

SECTION 2. NR 152.01 is amended to read:

NR 152.01 Purpose. (1) This chapter includes 2 model ordinances that the department is required to prepare under s. 281.33 (4), Stats. One is a model ordinance for construction site erosion and sediment control ~~at sites where construction activities do not include the construction of a building.~~ The other is a model ordinance for post-construction storm water management. The purpose of making these model ordinances available to local units of government is to secure so far as practicable the voluntary uniformity of local regulations regarding construction site erosion and sediment control and storm water management, to further the purpose of s. 281.33 (1), Stats., and to promote consistency with state non-agricultural performance standards authorized under s. 281.16 (2) (a), Stats. Ch. NR 152 Appendix A, contains the state model construction site erosion and sediment control zoning ordinance and ch. NR 152 Appendix B, contains the state model post-construction storm water management zoning ordinance.

(2) The department shall distribute a copy of the model construction site erosion and sediment control zoning ordinance or a copy of the model post-construction storm water management zoning ordinance, or both to any city, village, county or town that submits a request for the document, as required by s. 281.33 (4), Stats.

Note: Adoption by a city, county, village or town of either model ordinance in its entirety is voluntary. However, there are other administrative rules, such as chs. NR 120, 153 and 216, which require consistency of local regulations with the performance standards of ch. NR 151. These performance standards are incorporated in the model ordinances. Requests for printed or electronic copies of the model ordinances may be submitted to the Wisconsin Department of Natural Resources, Runoff Management Section, Box 7921, Madison, WI 53707-7921.

SECTION 3. NR 152 Appendix A is repealed and recreated to read:

APPENDIX A: MODEL CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL ORDINANCE

Note to Users: *The “Users” in this document are the municipalities that use this guidance in developing their ordinances. “Note to Users” appears in italics throughout these model ordinances and should not be included in the final ordinance. This model ordinance includes the use of brackets [] around phrases that are to be filled in by the municipality. For example, the*

*phrase [administering authority] is frequently used. Where the municipality chooses to have the ordinance administered by the City Engineer, the phrase [administering authority] should be replaced by "City Engineer." In a few places, the model ordinance includes phrases in brackets that are underlined [_____]. In these cases, one of the underlined phrases should be selected verbatim. For example, if the phrase includes statutory citations, several underlined choices may be given such as [59.693, 60.627, 61.354, or 62.234]. A county would replace the phrase in brackets with "59.693," since that is the appropriate citation for a county to use. Some sections and subsections are optional for users to include in the ordinance and will be identified as such in a "Note to Users." An asterisk (*) denotes subsequent numbering and references to numbered sections or subsections that would be affected by exclusion of the optional text.*

TABLE OF CONTENTS

Foreword

S. 01 Authority

S. 02 Findings of Fact

S. 03 Purpose

S. 04 Applicability and Jurisdiction

- (1) Applicability
- (2) Jurisdiction
- (3) Exclusions

S. 05 Definitions

S. 055 Applicability of Maximum Extent Practicable

S. 06 Technical Standards

S. 07* Performance Standards for Construction Sites Under One Acre (Optional)

- (1) Responsible Party
- (2) Erosion and Sediment Control Practices
- (3) Location
- (4) Implementation

S. 08* Performance Standards for Construction Sites of One Acre or More

- (1) Responsible Party
- (2) Erosion and Sediment Control Plan
- (3) Erosion and Other Pollutant Control Requirements
- (4) Implementation

S. 09* Permitting Requirements, Procedures, and Fees

- (1) Permit Required

- (2) Permit Application and Fees
- (3) Permit Application Review and Approval
- (4) Surety Bond
- (5) Permit Requirements
- (6) Permit Conditions
- (7) Permit Duration
- (8) Maintenance

S. 10* Erosion and Sediment Control Plan, Statement, and Amendments

- (1) Erosion and Sediment Control Plan Statement
- (2) Erosion and Sediment Control Plan Requirements
- (3) Erosion and Sediment Control Plan Amendments

S. 11* Fee Schedule

S. 12* Inspection

S. 13* Enforcement

S. 14* Appeals

- (1) Board of [Appeals or Adjustment]
- (2) Who May Appeal

S. 15* Severability

S. 16* Effective Date

***Note to Users:** An asterisk (*) denotes subsequent numbering and references to numbered sections or subsections that would be affected by exclusion of the optional text.*

MODEL CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL ORDINANCE

AN ORDINANCE TO CREATE CHAPTER [NUMBER] OF THE [CODE OR ORDINANCE] OF THE [NAME OF MUNICIPALITY] RELATING TO THE CONTROL OF CONSTRUCTION SITE EROSION AND SEDIMENTATION RESULTING FROM LAND DISTURBING CONSTRUCTION ACTIVITIES

FOREWORD.

Use of this ordinance will foster consistent, statewide application of the construction site performance standards for new development and redevelopment contained in sub. III and IV of ch. NR 151, Wis. Adm. Code.

The [governing body (town board of supervisors, county board of supervisors, city council, village board of trustees, or village council)] of the [name of municipality] does hereby ordain that

Chapter [number] of the [code or ordinance] of the [name of municipality] is created to read as follows:

[CHAPTER]
CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

S. 01 AUTHORITY.

- (1) This ordinance is adopted under the authority granted by s. [59.693 (for counties); 60.627 (for towns); 61.354 (for villages); or 62.234 (for cities)], Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. [59.69, 60.62, 61.35, or 62.23], Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. [59.693, 60.627, 61.354, or 62.234], Wis. Stats., s. [59.69, 60.62, 61.35, or 62.23], Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

***Note to Users:** There may be instances when this ordinance does not supersede other ordinances relating to construction erosion control previously adopted by the governing body.*

- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the [governing body].
- (3) The [governing body] hereby designates the [administering authority] to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not preempt more stringent erosion and sediment control requirements that may be imposed by any of the following:
- (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals, including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

S. 02 FINDINGS OF FACT.

The [governing body] acknowledges that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in [name of municipality].

S. 03 PURPOSE.

It is the purpose of this ordinance to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the [name of municipality].

S. 04 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) Except as provided under par. (b), this ordinance applies to any construction site as defined under S. 05 (6).

(b) This ordinance does not apply to any of the following:

1. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.

Note to Users: *Transportation facility projects directed and supervised by Wisconsin Department of Transportation are not subject to this ordinance. Notwithstanding this ordinance, a municipality is required to comply with the construction site transportation facility performance standards in subch. IV of ch. NR 151, Wis. Adm. Code, for its own transportation-related projects. If a municipality has regulatory authority over the activities of another local unit of government, it may be appropriate to include the construction site transportation facility performance standards in ss. NR 151.225 (3) and 151.23 (4m), Wis. Adm. Code, in its ordinance if those types of projects occur.*

2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination

system permit issued under ch. 40, Code of Federal Regulations, part 122, for land disturbing construction activity.

3. Nonpoint discharges from agricultural facilities and practices.
 4. Nonpoint discharges from silviculture activities.
 5. Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- (c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size that, as determined by the [administering authority], are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or transporting of particulate.

Note to Users: *The municipality may want to consider separate legal authority to address situations when persons other than the responsible party destroy or render ineffective Best Management Practices (BMPs) constructed to meet the performance standards of this ordinance.*

(2) JURISDICTION.

This ordinance applies to [land disturbing construction activity on lands within the boundaries and jurisdiction of the [name of municipality];

or

land disturbing construction activities on lands within the boundaries and jurisdiction of the [name of municipality], as well as the extraterritorial division of land subject to an ordinance enacted pursuant to s. 236.45 (2) and (3), Wis. Stats.;

or

land disturbing construction activities on lands within the boundaries and jurisdiction of the [name of municipality], as well as all lands located within the extraterritorial plat approval jurisdiction of [name of municipality], even if plat approval is not involved].

Note to Users: *These options differ in the amount of land area covered by this ordinance and may have ramifications for enforcement authority. For counties, the first option is the only option since counties do not have extraterritorial authority. Under s. 59.693 (10),*

Wis. Stats., if a county ordinance exists at the time of annexation, then the municipal ordinance must be at least as restrictive as the county ordinance.

(3) **EXCLUSIONS.**

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats.

S. 045 SUBDIVISION AND NUMBERING OF THIS ORDINANCE; WORD USAGE

(1) This ordinance is divided into sections designated by boldface numerals and abbreviated "S.". Sections may be divided into subsections designated by numerals in parentheses and abbreviated "sub." Subsections may be divided into paragraphs designated by lower case letters in parentheses and abbreviated "(par.)." Paragraphs may be divided into subdivisions designated by numerals followed by a period and abbreviated "subd." Subdivisions may be further subdivided into paragraphs designated by lower case letters followed by a period and those paragraphs may lowercase Roman numerals, which are abbreviated in the form "subd. 1. a." and "subd. 1. a. i.," respectively. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

(2) The singular includes the plural, and the plural includes the singular. The present tense of a verb includes the future when applicable. The future perfect tense includes past and future tenses.

S. 05 DEFINITIONS. In this ordinance:

- (1) "Administering authority" means a governmental employee, or a regional planning commission empowered under s. [59.693, 60.627, 61.354, or 62.234], Wis. Stats., that is designated by the [governing body] to administer this ordinance.
- (2) "Agricultural facilities and practices" has the meaning in s. 281.16 (1), Wis. Stats.
- (3) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.
- (4) "Business day" means a day the office of the [administering authority] is routinely and customarily open for business.

- (5) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the [administering authority].
- (6) "Construction site" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale when multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.
- (7) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (8)* "Division of land" means the creation from one parcel of [number] or more parcels or building sites of [number] or fewer acres each in area when such creation occurs at one time or through the successive partition within a 5-year period.

Note to Users: This definition is only needed depending on the type of jurisdiction selected under S. 04 (2) above.

- (9) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (10) "Erosion and sediment control plan" means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (11)* "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

Note to Users: This definition is only needed depending on the type of jurisdiction selected under S. 04 (2) above.

- (12) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas

and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

- (13) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.
- (14) "Landowner" means any person holding fee title, an easement or other interest in property that allows the person to undertake cropping, livestock management, land disturbing construction activity, or maintenance of storm water BMPs on the property.
- (15) "Maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 055 of this ordinance.
- (16) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (17) "Permit" means a written authorization made by the [administering authority] to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (18) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (19) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (20) "Responsible party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement.
- (21) "Runoff" means storm water or precipitation including rain, snow, or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (22) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.
- (23) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

- (24) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- (25) "Stop work order" means an order issued by the [administering authority] that requires that all construction activity on the site be stopped.
- (26) "Technical standard" means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method.
- (27) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes, such as harbor improvements under s. 85.095 (1) (b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to s. 281.33, Wis. Stats.
- (28) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.
- (29) "Wis. Adm. Code" means the Wisconsin Administrative Code, published under s. 35.93, Wis. Stats.
- (30) "Wis. Stats." means the Wisconsin Statutes published under s. 35.18 of the Wisconsin Statutes.

S. 055 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the [administering authority]'s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

S. 06 TECHNICAL STANDARDS.

All BMPs required for compliance with this ordinance shall meet design criteria, standards, and specifications based on any of the following:

- (1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subch. V of ch. NR 151, Wis. Adm. Code.
- (2) Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.

Note to Users: *The USLE and its successors RUSLE and RUSLE2, utilize an R factor that has been developed to estimate annual soil erosion, averaged over extended time periods. The R factor can be modified to estimate monthly and single-storm erosion.*

- (3) Technical standards and methods approved by the [administering authority].

Note to Users: *The following section, S. 07, "Performance Standards for Construction Sites Under One Acre," is optional.*

S. 07 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES UNDER ONE ACRE.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section.
- (2) EROSION AND SEDIMENT CONTROL PRACTICES. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
 - (a) The deposition of soil from being tracked onto streets by vehicles.
 - (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
 - (c) The discharge of sediment from disturbed areas into adjacent waters of the state.
 - (d) The discharge of sediment from drainage ways that flow off the site.
 - (e) The discharge of sediment by dewatering activities.

- (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 - (g) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
- (3) LOCATION. The BMPs shall be located so that treatment occurs before runoff enters waters of the state.
- (4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:
- (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - (b) Erosion and sediment control practices shall be maintained until final stabilization.
 - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

S. 08* PERFORMANCE STANDARDS FOR CONSTRUCTION SITES OF ONE ACRE OR MORE.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with S. 10*.
- (2) EROSION AND SEDIMENT CONTROL PLAN. A written site-specific erosion and sediment control plan shall be developed in accordance with S. 10* of this ordinance and implemented for each construction site.

Note to Users: *The written plan may be that specified within s. NR 216.46, Wis. Adm. Code, the erosion and sediment control portion of a construction plan or other plan.*

- (3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS. The erosion and sediment control plan required under sub. (2) shall include all of the following:
- (a) *EROSION AND SEDIMENT CONTROL PRACTICES.* Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
1. The deposition of soil from being tracked onto streets by vehicles.
 2. The discharge of sediment from disturbed areas into on-site storm water inlets.
 3. The discharge of sediment from disturbed areas into adjacent waters of the state.
 4. The discharge of sediment from drainage ways that flow off the site.
 5. The discharge of sediment by dewatering activities.
 6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 7. The discharge of sediment from erosive flows at outlets and in downstream channels.
 8. The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
 9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.
- (b) *SEDIMENT PERFORMANCE STANDARDS.* In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
3. Notwithstanding subd. 1., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(c) **PREVENTIVE MEASURES.** The erosion and sediment control plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
2. Minimization of soil compaction and preservation of topsoil.
3. Minimization of land disturbing construction activity on slopes of 20 percent or more.
4. Development of spill prevention and response procedures.

(d) **LOCATION.** The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state.

Note to Users: While regional treatment facilities are appropriate for control of post-construction pollutants, they should not be used for construction site sediment removal.

(4) **IMPLEMENTATION.** The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed in S. 08* (2).
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
- (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

S. 09* PERMITTING REQUIREMENTS, PROCEDURES, AND FEES.

- (1) PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the [administering authority].
- (2) PERMIT APPLICATION AND FEES. The responsible party that will undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit, an erosion and sediment control plan that meets the requirements of S. 10*, and shall pay an application fee to the [administering authority] in the amount specified in S. 11*. By submitting an application, the applicant is authorizing the [administering authority] to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (3) PERMIT APPLICATION REVIEW AND APPROVAL. The [administering authority] shall review any permit application that is submitted with an erosion and sediment control plan and the required fee. All of the following approval procedure shall be used:
 - (a) Within [number] business days of the receipt of a complete permit application, as required by sub. (2), the [administering authority] shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this ordinance.

- (b) If the permit application and erosion and sediment control plan are approved, the [administering authority] shall issue the permit.
 - (c) If the permit application or erosion and sediment control plan is disapproved, the [administering authority] shall state in writing the reasons for disapproval.
 - (d) The [administering authority] may request additional information from the applicant. If additional information is submitted, the [administering authority] shall have [number] business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
 - (e) Failure by the [administering authority] to inform the permit applicant of a decision within [number] business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) SURETY BOND. As a condition of approval and issuance of the permit, the [administering authority] may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (5) PERMIT REQUIREMENTS. All permits shall require the responsible party to do all of the following:
- (a) Notify the [administering authority] within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the [administering authority] of completion of any BMPs within 14 days after their installation.
 - (c) Obtain permission in writing from the [administering authority] prior to any modification pursuant to S. 10* (3) of the erosion and sediment control plan.
 - (d) Install all BMPs as identified in the approved erosion and sediment control plan.
 - (e) Maintain all road drainage systems, storm water drainage systems, BMPs, and other facilities identified in the erosion and sediment control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site inspection log.

- (g) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more that results in runoff during active construction periods and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (h) Allow the [administering authority] to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan.
 - (i) Keep a copy of the erosion and sediment control plan at the construction site.
- (6) PERMIT CONDITIONS. Permits issued under this section may include conditions established by [administering authority] in addition to the requirements set forth in sub. (5), when needed to assure compliance with the performance standards in S. 07* or S. 08*.
- (7) PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The [administering authority] may grant one or more extensions not to exceed 180 days cumulatively. The [administering authority] may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this ordinance.
- (8) MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

S. 10* EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS.

- (1) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. For each construction site identified under S. 04 (1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the [administering authority]. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the ordinance. A site map shall also accompany the erosion and sediment control plan statement.

(2) EROSION AND SEDIMENT CONTROL PLAN REQUIREMENTS.

- (a) An erosion and sediment control plan shall be prepared and submitted to the [administering authority].
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in S. 07*, S. 08*, and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, all of the following items:
 - 1. Names and addresses of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - 2. Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - 3. Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - 4. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
 - 5. Calculations to show the compliance with the performance standard in S. 08 (3)(b)1.
 - 6. Existing data describing the surface soil as well as subsoils.
 - 7. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information when available.
 - 8. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.

- (d) The erosion and sediment control plan shall include a site map. The site map shall include all of the following items, shall be at a scale not greater than 100 feet per inch, and at a contour interval not to exceed five feet:
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes, and floodways shall also be shown.
 2. Boundaries of the construction site.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.
 4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
 6. Location of areas where stabilization BMPs will be employed.
 7. Areas that will be vegetated following land disturbing construction activities.
 8. Areas and locations of wetland on the construction site, and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
 9. Areas used for infiltration of post-construction storm water runoff.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
- (e) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, all of the following minimum requirements:
1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved when attainable and that disturbed portions of the site are stabilized.

2. Description of structural practices to divert flow away from exposed soils, store flows, or otherwise limits runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the [administering authority], structural measures shall be installed on upland soils.
3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
4. Trapping of sediment in channelized flow.
5. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
6. Protection of downslope drainage inlets where they occur.
7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
8. Clean up of off-site sediment deposits.
9. Proper disposal of building and waste material.
10. Stabilization of drainage ways.
11. Installation of permanent stabilization practices as soon as possible after final grading.
12. Minimization of dust to the maximum extent practicable.

- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

Note to Users: *The erosion and sediment plan requirements of this subsection will meet the erosion control plan requirements of s. NR 216.46, Wis. Adm. Code, when prepared in accordance with good engineering practices and the design criteria, standards, and specifications published by the Wisconsin Department of Natural Resources under subch. V of ch. NR 151, Wis. Adm. Code.*

- (3) EROSION AND SEDIMENT CONTROL PLAN AMENDMENTS. The applicant shall amend the erosion and sediment control plan if any of the following occur:

- (a) There is a change in design, construction, operation or maintenance at the site that has the reasonable potential for the discharge of pollutants to waters of the

state and that has not otherwise been addressed in the erosion and sediment control plan.

- (b) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (c) The [administering authority] notifies the applicant of changes needed in the erosion and sediment control plan.

S. 11* FEE SCHEDULE.

The fees referred to in other sections of this ordinance shall be established by the [administering authority] and may from time to time be modified by resolution. A schedule of the fees established by the [administering authority] shall be available for review in [location].

S. 12* INSPECTION.

If land disturbing construction activities are occurring without a permit required by this ordinance, the [administering authority] may enter the land pursuant to the provisions of ss. 66.0119 (1), (2), and (3), Wis. Stats.

S. 13* ENFORCEMENT.

- (1) The [administering authority] may post a stop work order if any of the following occurs:
 - (a) Land disturbing construction activity regulated under this ordinance is occurring without a permit.
 - (b) The erosion and sediment control plan is not being implemented in good faith.
 - (c) The conditions of the permit are not being met.

Note to Users: *The [administering authority] should inspect any construction site that holds a permit under this chapter at least once a month between March 1 and October 31, and at least 2 times between November 1 and February 28 to ensure compliance with the approved erosion and sediment control plan.*

- (2) If the responsible party does not cease activity as required in a stop work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the [administering authority] may revoke the permit.

- (3) If the responsible party, when no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the [administering authority], or if a responsible party violates a stop work order posted under sub. (1), the [administering authority] may request the [district attorney, city attorney, town attorney, village attorney or county corporation counsel] to obtain a cease and desist order in any court with jurisdiction.
- (4) The [administering authority, board of appeals, or board of adjustment] may retract the stop work order issued under sub. (1) or the permit revocation under sub. (2).
- (5) After posting a stop work order under sub. (1), the [administering authority] may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The [administering authority] may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the [administering authority], plus interest at the rate authorized by [administrative authority] shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.
- (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than [amount] nor more than [amount] and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

Note to Users: *Injunctive orders are authorized pursuant to s. 59.69 (11), 61.35, or 62.23 (8), Wis. Stats., for counties, villages and towns with village powers, and cities respectively.*

S. 14* APPEALS.

- (1) BOARD OF [APPEALS or ADJUSTMENT]. The board of [appeals or adjustment] created pursuant to section [number] of the [county's, town's, city's or village's] ordinance pursuant to s. [59.694, 60.65, 61.354 (4) (b) or 62.23 (7) (e)], Wis. Stats.:

- (a) Shall hear and decide appeals when it is alleged that there is error in any order, decision or determination made by the [administering authority] in administering this ordinance except for cease and desist orders obtained under S. 13* (3);
 - (b) May authorize, upon appeal, variances from the provisions of this ordinance that are not contrary to the public interest and when owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) WHO MAY APPEAL. Appeals to the board of [appeals or adjustment] may be taken by any aggrieved person or by any office, department, board, or bureau of the [name of municipality] affected by any decision of the [administering authority].

S. 15* SEVERABILITY.

If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.

S. 16* EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the [governing body] of the [name of municipality] on the [number] day of [month], [year].

Approved: _____

Attested: _____

Published on [day, month, and year].

SECTION 4. NR 152 Appendix B is repealed and recreated to read:

APPENDIX B: MODEL POST-CONSTRUCTION STORM WATER MANAGEMENT ORDINANCE

Note to Users: *The “Users” in this document are the municipalities that use this guidance in developing their ordinances. “Note to Users” appears in italics throughout these model ordinances and should not be included in the final ordinance. This model ordinance includes the use of brackets [] around phrases that are to be filled in by the municipality. For example, the phrase [administering authority] is frequently used. When the municipality chooses to have the ordinance administered by the City Engineer, the phrase [administering authority] should be replaced by "City Engineer." In a few places, the model ordinance includes phrases in brackets that are underlined [_____]. In these cases, one of the underlined phrases should be selected verbatim. For example, if the phrase includes statutory citations, several underlined choices may be given such as [59.693, 60.627, 61.354, or 62.234]. A county would replace the phrase in brackets with "59.693," since that is the appropriate citation for a county to use. Some sections and subsections are optional for users to include in the ordinance and will be identified as such in a “Note to Users.” An asterisk (*) denotes subsequent numbering and references to numbered sections or subsections that would be affected by exclusion of the optional text.*

TABLE OF CONTENTS

Foreword

S. 01 Authority

S. 02 Findings of Fact

S. 03 Purpose and Intent

- (1) Purpose
- (2) Intent

S. 04 Applicability and Jurisdiction

- (1) Applicability
- (2) Jurisdiction
- (3) Exclusions

S. 05 Definitions

S. 055 Applicability of Maximum Extent Practicable

S. 06 Technical Standards

S. 07 Performance Standards

- (1) Responsible Party
- (2) Storm Water Management Plan
- (3) Maintenance of Effort
- (4) Requirements
 - (a) Total Suspended Solids

- (b) Peak Discharge
 - (c) Infiltration
 - (d) Protective Areas
 - (e) Fueling and Maintenance Areas
 - (f)* Swale Treatment for Transportation Facilities
- (5) General Consideration for Storm Water Management Measures
- (6) BMP Location
- (7) Additional Requirements
- S. 08 Permitting Requirements, Procedures, and Fees**
 - (1) Permit Required
 - (2) Permit Application and Fees
 - (3) Permit Application Review and Approval
 - (4) Permit Requirements
 - (5) Permit Conditions
 - (6) Permit Duration
- S. 09 Storm Water Management Plan**
 - (1) Storm Water Management Plan Requirements
 - (2) Alternate Requirements
- S. 10 Maintenance Agreement**
 - (1) Maintenance Agreement Required
 - (2) Agreement Provisions
- S. 11 Financial Guarantee**
 - (1) Establishment of the Guarantee
 - (2) Conditions for Release
- S. 12 Fee Schedule**
- S. 13 Enforcement**
- S. 14 Appeals**
 - (1) Board of Appeals or Adjustment
 - (2) Who May Appeal
- S. 15 Severability**
- S. 16 Effective Date**

Note to Users: An asterisk (*) denotes subsequent numbering and references to numbered sections or subsections that would be affected by exclusion of the optional text.

MODEL POST-CONSTRUCTION STORM WATER MANAGEMENT ORDINANCE

AN ORDINANCE TO CREATE CHAPTER [NUMBER] OF THE [CODE OR ORDINANCE] OF THE [NAME OF MUNICIPALITY] RELATING TO THE CONTROL OF POST-CONSTRUCTION RUNOFF

FOREWORD.

The intent of this ordinance is to reduce the discharge of pollutants carried in storm water runoff to waters of the state. Use of this ordinance by municipalities will foster the consistent, statewide application of post-construction performance standards for new development and redevelopment contained in subch. III and IV of ch. NR 151, Wis. Adm. Code.

The [governing body (town board of supervisors, county board of supervisors, city council, village board of trustees, or village council)] of the [name of municipality] does hereby ordain that Chapter [number] of the [code or ordinance] of the [name of municipality] is created to read as follows:

**[CHAPTER]
POST-CONSTRUCTION STORM WATER MANAGEMENT**

S. 01 AUTHORITY.

- (1) This ordinance is adopted by the [governing body] under the authority granted by s. [59.693 (for counties); 60.627 (for towns); 61.354 (for villages); or 62.234 (for cities)], Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. [59.69, 60.62, 61.35, or 62.23], Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. [59.693, 60.627, 61.354, or 62.234], Wis. Stats., s. [59.69, 60.62, 61.35, or 62.23], Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

Note to Users: *There may be instances when this ordinance does not supersede other ordinances relating to construction erosion control previously adopted by the governing body.*

- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the [governing body].

- (3) The [governing body] hereby designates the [administering authority] to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not preempt more stringent storm water management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

S. 02 FINDINGS OF FACT.

The [governing body] acknowledges that uncontrolled, post-construction runoff has a significant impact upon water resources; the health, safety, and general welfare of the community; and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can do all of the following:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows, and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, and recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens, and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property, and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.

S. 03 PURPOSE AND INTENT.

- (1) **PURPOSE.** The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare, and the aquatic environment. Specific purposes are to do all of the following:
 - (a) Further the maintenance of safe and healthful conditions.

- (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
 - (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.
- (2) **INTENT.** It is the intent of the [governing body] that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The [governing body] recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices, or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. When such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the [governing body], it is the intent of this ordinance that the approved storm water management plan be used to identify post-construction management measures acceptable for the community.

S. 04 APPLICABILITY AND JURISDICTION.

- (1) **APPLICABILITY.**
 - (a) Except as provided under par. (b), this ordinance applies to a post-construction site on which one acre or more of land disturbing construction activity occurs during construction.

***Note to Users:** The one acre land disturbance threshold is consistent with state and federal laws regarding applicability of construction site erosion control permits. The municipality may apply its ordinance to sites of less than one acre.*
 - (b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance:

1. A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.
 2. Agricultural facilities and practices.
 3. Underground utility construction, but not including the construction of any above ground structures associated with utility construction.
- (c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the [administering authority], are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.

(2) JURISDICTION.

This ordinance applies to post-construction sites within the boundaries and jurisdiction of the [name of the municipality];

or

post-construction sites within the boundaries and jurisdiction of the [name of municipality], as well as the extraterritorial division of land subject to an ordinance enacted pursuant to s. 236.45 (2) and (3), Wis. Stats.;

or

post-construction sites within the boundaries and jurisdiction of the [name of the municipality], as well as all lands located within the extraterritorial plat approval jurisdiction of the [name of municipality], even if plat approval is not involved].

Note to Users: *These options differ in the amount of land area covered by this ordinance and may have ramifications for enforcement authority. For counties, the first option will be the only option since counties do not have extraterritorial authority. Under s. 59.693 (10), Wis. Stats., if a county storm water management ordinance exists at the time of annexation, then the municipal ordinance must be at least as restrictive as the county ordinance.*

(3) EXCLUSIONS.

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats.

S. 045 SUBDIVISION AND NUMBERING OF THIS ORDINANCE

- (1) This ordinance is divided into sections designated by boldface numerals and abbreviated “S.”. Sections may be divided into subsections designated by numerals in parentheses and abbreviated “sub.” Subsections may be divided into paragraphs designated by lower case letters in parentheses and abbreviated “(par.).” Paragraphs may be divided into subdivisions designated by numerals followed by a period and abbreviated “subd.” Subdivisions may be further subdivided into paragraphs designated by lower case letters followed by a period and those paragraphs may lowercase Roman numerals, which are abbreviated in the form “subd. 1. a.” and “subd. 1. a. i.”, respectively. Reference to a “section,” “subsection,” “paragraph,” or “subdivision” includes all divisions of the referenced section, subsection, paragraph, or subdivision.
- (2) The singular includes the plural, and the plural includes the singular. The present tense of a verb includes the future when applicable. The future perfect tense includes past and future tenses.

S. 05 DEFINITIONS. In this ordinance:

- (1) “Adequate sod or self-sustaining vegetative cover” means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
- (2) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. [59.693; 60.627; 61.354; or 62.234], Wis. Stats., that is designated by the [governing body] to administer this ordinance.
- (3) “Agricultural facilities and practices” has the meaning given in s. 281.16 (1), Wis. Stats.
- (4) “Atlas 14” means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (5) “Average annual rainfall” means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

- (6) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
- (7) "Business day" means a day the office of the [administering authority] is routinely and customarily open for business.
- (8) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the [administering authority].
- (9) "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
- (10) "Connected imperviousness" means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
- (11) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (12) "Development" means residential, commercial, industrial, or institutional land uses and associated roads.
- (13) "Direct conduits to groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.
- (14)* "Division of land" means the creation from one parcel of [number] or more parcels or building sites of [number] or fewer acres each in area when such creation occurs at one time or through the successive partition within a 5-year period.

Note to Users: *This definition is only needed depending on the type of jurisdiction selected under S. 04 (2) above.*

- (15) "Effective infiltration area" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms, or pretreatment.
- (16) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (17) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
- (18)* "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and a half miles of a fourth class city or village.

Note to Users: This definition is only needed depending on the type of jurisdiction selected under S. 04 (2) above.

- (19) "Filtering layer" means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.
- (20) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (21) "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the [administering authority] by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.
- (22) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel or paved parking lots and streets are examples of areas that typically are impervious.
- (23) "In-fill" means an undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.
- (24) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (25) "Infiltration system" means a device or practice such as a basin, trench, rain garden, or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns, or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.
- (26) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

- (27) "Landowner" means any person holding fee title, an easement or other interest in property that allows the person to undertake cropping, livestock management, land disturbing construction activity, or maintenance of storm water BMPs on the property.
- (28) "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management practices.
- (29) "Maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 055 of this ordinance.
- (30) "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (31) "NRCS MSE3 or MSE4 distribution" means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (32) "Off-site" means located outside the property boundary described in the permit application.
- (33) "On-site" means located within the property boundary described in the permit application.
- (34) "Ordinary high-water mark" has the meaning given in s. NR 115.03 (6), Wis. Adm. Code.
- (35) "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.
- (36) "Percent fines" means the percentage of a given sample of soil that passes through a # 200 sieve.
- (37) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (38) "Permit" means a written authorization made by the [administering authority] to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (39) "Permit administration fee" means a sum of money paid to the [administering authority] by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (40) "Pervious surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests, or other similar vegetated areas are examples of surfaces that typically are pervious.
- (41) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (42) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (43) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.

- (44) "Pre-development condition" means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (45) "Preventive action limit" has the meaning given in s. NR 140.05 (17), Wis. Adm. Code.
- (46) "Protective area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.
- (47) "Redevelopment" means areas where development is replacing older development.
- (48) "Responsible party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement. "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (49) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains that meets all of the following criteria:
 - (a) Is designed or used for collecting water or conveying runoff.
 - (b) Is not part of a combined sewer system.
 - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
 - (d) Discharges directly or indirectly to waters of the state.
- (51) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (52) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
- (53) "Stop work order" means an order issued by the [administering authority] that requires that all construction activity on the site be stopped.
- (54) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone final stabilization, following completion of the construction activity.
- (55) "Storm water management system plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (56) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device, or method.

- (57) "Top of the channel" means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (58) "Total maximum daily load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (59) "TP-40" means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (60) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, that is incorporated by reference for this chapter.
- (61) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1) (b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to s. 281.33, Wis. Stats.
- (62) "TSS" means total suspended solids.
- (63) "Type II distribution" means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973."
- (64) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.
- (65) "Wis. Adm. Code" means the Wisconsin Administrative Code, published under s. 35.93, Wis. Stats.
- (66) "Wis. Stats." means the Wisconsin Statutes published under s. 35.18 of the Wisconsin Statutes.

S. 055 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the [administering authority]'s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

S. 06 TECHNICAL STANDARDS.

The following methods shall be used in designing the water quality, peak discharge, and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

- (1) Consistent with the technical standards identified, developed, or disseminated by the Wisconsin Department of Natural Resources under subch. V of ch. NR 151, Wis. Adm. Code.
- (2) When technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the [administering authority].

Note to Users: *Pollutant loading models such as DETPOND, WinSLAMM, P8, or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Use the most recent version of the model, rainfall files, and other parameter files identified for Wisconsin users unless directed otherwise by the regulatory authority.*

S. 07 PERFORMANCE STANDARDS.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section.
- (2) STORM WATER MANAGEMENT PLAN. A written storm water management plan in accordance with S. 09 shall be developed and implemented for each post-construction site.
- (3) MAINTENANCE OF EFFORT. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards

of ch. NR 151, Wis. Adm. Code, in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.

(4) REQUIREMENTS. The storm water management plan required under sub. (2) shall include all of the following:

(a) *TOTAL SUSPENDED SOLIDS.* BMPs shall be designed, installed, and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

Note to Users: Under s. 281.33 (6) (a) 2., Wis. Stats., the municipality may enact and enforce provisions of an ordinance that are stricter than the TSS performance standards in ch. NR 151, Wis. Adm. Code, if the stricter provisions are necessary to comply with federally-approved total maximum daily load requirements.

1. BEST MANAGEMENT PRACTICE DESIGN. BMPs shall be designed in accordance with Table 1. or to the maximum extent practicable as provided in subd. 2. The design shall be based on an average annual rainfall, as compared to no runoff management controls.

Table 1. TSS Reduction Standards	
Development Type	TSS Reduction
New Development	80 percent
In-fill development	80 percent
Redevelopment	40 percent of load from parking areas and roads

2. MAXIMUM EXTENT PRACTICABLE. If the design cannot meet a total suspended solids reduction performance standard of Table 1., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.

Note to Users: Pollutant loading models such as DETPOND, WinSLAMM, P8 or equivalent methodology may be used to evaluate the

efficiency of the design in reducing total suspended solids. Use the most recent version of the model, rainfall files, and other parameter files identified for Wisconsin users unless directed otherwise by the regulatory authority.

3. OFF-SITE DRAINAGE. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) PEAK DISCHARGE.

Note to Users: *Under s. 281.33 (6) (a) 1., Wis. Stats., the municipality may enact and enforce provisions of an ordinance that are stricter than the peak discharge performance standards in ch. NR 151, Wis. Adm. Code, if the stricter provisions are necessary to control storm water quantity or control flooding.*

1. By design, BMPs shall be employed to maintain or reduce the 1-year, 24-hour; the 2-year, 24-hour post-construction peak runoff discharge rates to the 1-year, 24-hour; and the 2-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable. The runoff curve numbers in Table 2. shall be used to represent the actual pre-development conditions. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS Wisconsin MSE3 or MSE4 precipitation distribution. On a case-by-case basis, the [administering authority] may allow the use of TP-40 precipitation depths and the Type II distribution.

Note to Users: *For determining compliance with the peak flow requirement, the Wisconsin Department of Natural Resources recommends use of the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation Frequency Estimates for precipitation depth. The Natural Resources Conservation Service (NRCS) –Wisconsin has calculated county-specific Atlas 14 precipitation depths and they are to be used in combination with the appropriate NRCS MSE3 or MSE4 precipitation distribution. The NRCS calculated county-specific Atlas 14 precipitation depths and MSE3 and MSE4*

precipitation distributions are available at:

http://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/engineering/?cid=nrcs142p2_025417.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
Runoff Curve Number	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

Note to Users: When the pre-development condition is a combination of woodland, grassland, or cropland, the runoff curve number should be pro-rated by area.

2. This subsection of the ordinance does not apply to any of the following:
 - a. A post-construction site where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.
 - b. Except as provided under S. 07 (3), a redevelopment post-construction site.
 - c. An in-fill development area less than 5 acres.

Note to Users: The intent of the peak discharge standard is to minimize stream bank erosion, under bank-full conditions. For water quantity concerns, the post-development peak flow rate for the 10-, 25-, 50-, and 100-year – 24-hour storm events should also be controlled either at or below pre-development discharge rates. This has not been addressed in this model ordinance but may need to be included in the local ordinance to address local flood control issues.

(c) INFILTRATION.

1. BEST MANAGEMENT PRACTICES. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:

a. *Low imperviousness.* For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.

b. *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

c. *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

2. PRE-DEVELOPMENT. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this ordinance.

3. SOURCE AREAS.

a. *Prohibitions.* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the

requirements of this section unless demonstrated to meet the conditions identified in S. 07 (4)(c)6.:

- i. Areas associated with a tier 1 industrial facility identified in s. NR 216.21 (2)(a), Wis. Adm. Code, including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
- ii. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21 (2)(b), Wis. Adm. Code.

Note to Users: *Runoff from the employee and guest parking and rooftop areas of a tier 2 facility may be infiltrated but runoff from the parking area may require pretreatment.*

- iii. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
- b. ***Exemptions.*** Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
- i. Parking areas and access roads less than 5,000 square feet for commercial development.
 - ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par a.
 - iii. Except as provided under S. 07 (3), redevelopment post-construction sites.
 - iv. In-fill development areas less than 5 acres.
 - v. Roads on commercial, industrial, and institutional land uses; and arterial residential roads.

4. LOCATION OF PRACTICES.

- a. ***Prohibitions.*** Infiltration practices may not be located in the following areas:

- i. Areas within 1000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.
 - ii. Areas within 400 feet of a community water system well as specified in s. NR 811.16 (4), Wis. Adm. Code, or within the separation distances listed in s. NR 812.08, Wis. Adm. Code, for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses, or regional devices for one- and two-family residential development.
 - iii. Areas where contaminants of concern, as defined in s. NR 720.03 (2), Wis. Adm. Code, are present in the soil through which infiltration will occur.
- b. *Separation distances.*
- i. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3:

Table 3. Separation Distances and Soil Characteristics		
Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- ii. Notwithstanding subd 4. b. ii, applicable requirements for injection wells classified under ch. NR 815, Wis. Adm. Code, shall be followed.

- c. *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under any of the following conditions is optional:
 - i. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - ii. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
- 5. ALTERNATE USE. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
- 6. GROUNDWATER STANDARDS.
 - a. Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding subd. 6. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
- 7. PRETREATMENT. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in

commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.

8. MAXIMUM EXTENT PRACTICABLE. Where the conditions of subds. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of S. 07 (4) (c) shall be met to the maximum extent practicable.

(d) *PROTECTIVE AREAS.*

1. DEFINITION. In this section, "protective area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of any of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.
 - a. For outstanding resource waters and exceptional resource waters, 75 feet.
 - b. For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to par. e. or f., 50 feet.
 - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetland dominated by

invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

- g. In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03, Wis. Adm. Code.
- h. Wetland boundary delineation shall be made in accordance with s. NR 103.08 (1m), Wis. Adm. Code. This subd. 1. h. does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
- i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
- j. Notwithstanding subd. 1. a. to i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.

Note to Users: A stream or lake is not eligible for a lower protective area width even if contiguous to a less susceptible wetland.

- 2. **APPLICABILITY.** This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
- 3. **REQUIREMENTS.** All of the following requirements shall be met:
 - a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the

protective area, the storm water management plan shall contain a written, site-specific explanation.

- b. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

Note to Users: *It is recommended that seeding of non-invasive vegetative cover be used in the protective areas. Some invasive plants that should not be used are listed in ch. NR 40, Wis. Adm. Code. Flood and drought-tolerant vegetation that can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover may be measured using the line transect method described in the University of Wisconsin extension publication number A3533, titled "Estimating Residue Using the Line Transect Method."*

- c. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

Note to Users: *Other laws, such as ch. 30, Wis. Stats., and ch. NR 103, 115, 116, and 117, Wis. Adm. Code, and their associated review and approval processes may apply in the protective area.*

- 4. EXEMPTIONS. This section does not apply to any of the following:
 - a. Except as provided under S. 07 (3), redevelopment post-construction sites.

- b. In-fill development areas less than 5 acres.
- c. Structures that cross or access surface water such as boat landings, bridges, and culverts.
- d. Structures constructed in accordance with s. 59.692 (1v), Wis. Stats.
- e. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

Note to Users: *A vegetated protective area to filter runoff pollutants from post-construction sites described in par. (e) is not necessary since the runoff at that location is treated prior to entering the surface water. Other practices necessary to meet the requirements of this section, such as a swale or pond, will need to be designed and implemented to reduce runoff pollutants prior to runoff entering a surface water of the state.*

- (e) **FUELING AND MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.

Note to Users: *A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.*

Note to Users: *The following subsection, "Swale Treatment for Transportation Facilities," is optional.*

- (f) **SWALE TREATMENT FOR TRANSPORTATION FACILITIES.**

1. REQUIREMENT. Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:

- a. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

Note to Users: *It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.*

- b. Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Swale Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Swale," dated September 2016, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

2. OTHER REQUIREMENTS.

- a. Notwithstanding subd. 1., the [administering authority] may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

- i. An outstanding resource water.
- ii. An exceptional resource water.
- iii. Waters listed in section 303 (d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.

iv. Water where targeted performance standards are developed pursuant to s. NR 151.004, Wis. Adm. Code.

b. The transportation facility authority shall contact the [administering authority] to determine if additional BMPs beyond a water quality swale are needed under this subsection.

(5) GENERAL CONSIDERATIONS FOR STORM WATER MANAGEMENT MEASURES. All of the following considerations shall be observed in on-site and off-site runoff management:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(6) BMP LOCATION.

- (a) To comply with the performance standards required under S. 07 of this ordinance, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003, Wis. Adm. Code.

Note to Users: *This section does not supersede any other applicable federal, state or local regulation such as ch. NR 103, Wis. Adm. Code, and ch. 30, Wis. Stats.*

- (b) The [administering authority] may approve off-site management measures provided that all of the following conditions are met:
 - 1. The [administering authority] determines that the post-construction runoff is covered by a storm water management system plan that is approved by the [name of municipality] and that contains management requirements consistent with the purpose and intent of this ordinance.
 - 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.
 - b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would

be afforded by on-site practices meeting the performance standards of this ordinance.

- c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.

- (c) Where a regional treatment option exists such that the [administering authority] exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the [administering authority]. In determining the fee for post-construction runoff, the [administering authority] shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

- (7) **ADDITIONAL REQUIREMENTS.** The [administering authority] may establish storm water management requirements more stringent than those set forth in this ordinance if the [administering authority] determines that the requirements are needed to control storm water quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

S. 08 PERMITTING REQUIREMENTS, PROCEDURES, AND FEES.

- (1) **PERMIT REQUIRED.** No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the [administering authority] prior to commencing the proposed activity.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the [administering authority] a permit application on a form provided by the [administering authority] for that purpose, subject to all of the following:
 - (a) Unless otherwise excluded by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement, and a non-refundable permit administration fee.
 - (b) The storm water management plan shall be prepared to meet the requirements of S. 07 and S. 09, the maintenance agreement shall be prepared to meet the requirements of S. 10, the financial guarantee shall meet the requirements of S. 11, and fees shall be those established by the [governing body] as set forth in S. 12.

- (3) **PERMIT APPLICATION REVIEW AND APPROVAL.** The [administering authority] shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
- (a) Within [number] business days of the receipt of a complete permit application, including all items as required by sub. (2), the [administering authority] shall inform the applicant whether the application, storm water management plan, and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
 - (b) If the storm water permit application, storm water management plan, and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the [administering authority] shall issue the permit.
 - (c) If the storm water permit application, storm water management plan, or maintenance agreement is disapproved, the [administering authority] shall detail in writing the reasons for disapproval.
 - (d) The [administering authority] may request additional information from the applicant. If additional information is submitted, the [administering authority] shall have [number] business days from the date the additional information is received to inform the applicant that the storm water management plan and maintenance agreement are either approved or disapproved.
 - (e) Failure by the [administering authority] to inform the permit applicant of a decision within [number] business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to all of the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The [administering authority] may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the [administering authority] to suspend or revoke this permit may be appealed in accordance with S. 14.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

- (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
- (c) The responsible party shall notify the [administering authority] at least [number] business days before commencing any work in conjunction with the storm water management plan, and within [number] business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the [administering authority] so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the [administering authority] or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The [administering authority] or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
- (e) The responsible party shall notify the [administering authority] of any significant modifications it intends to make to an approved storm water management plan. The [administering authority] may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
- (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the [governing body], or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the [administering authority] to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of ch.r 66, Wis. Stats., or to charging such costs against the financial guarantee posted under S. 11.
- (h) If so directed by the [administering authority], the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities

and drainage ways caused by runoff if such damage is caused by activities that are not in compliance with the approved storm water management plan.

- (i) The responsible party shall permit property access to the [administering authority] or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.
 - (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the [administering authority] may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (k) The responsible party is subject to the enforcement actions and penalties detailed in S. 13, if the responsible party fails to comply with the terms of this permit.
- (5) **PERMIT CONDITIONS.** Permits issued under this subsection may include conditions established by [administering authority] in addition to the requirements needed to meet the performance standards in S. 07 or a financial guarantee as provided for in S. 11.
- (6) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the [administering authority] notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4) (d).

S. 09 STORM WATER MANAGEMENT PLAN.

- (1) **STORM WATER MANAGEMENT PLAN REQUIREMENTS.** The storm water management plan required under S. 07 (2) shall contain, at a minimum, all of the following information:
- (a) Name, address, and telephone number for all of the following, or their designees:
 - 1. Landowner.
 - 2. Developer.
 - 3. Project engineer for practice design and certification.
 - 4. Persons responsible for installation of storm water management practices.
 - 5. Persons responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.

- (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
- (c) Pre-development site conditions, including all of the following:
 - 1. One or more site maps at a scale of not less than 1 inch equals [number] feet. The site maps shall show all of the following:
 - a. Site location and legal property description.
 - b. Predominant soil types and hydrologic soil groups.
 - c. Existing cover type and condition.
 - d. Topographic contours of the site at a scale not to exceed [number] feet.
 - e. Topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site.
 - f. Watercourses that may affect or be affected by runoff from the site.
 - g. Flow path and direction for all storm water conveyance sections.
 - h. Watershed boundaries used in hydrology determinations to show compliance with performance standards.
 - i. Lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
 - j. Limits of the 100 year floodplain.
 - k. Location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Adm. Code.
 - 2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required maps.
- (d) Post-development site conditions, including all of the following:
 - 1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.

2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
3. One or more site maps at a scale of not less than 1 inch equals [number] feet showing all of the following:
 - a. Post-construction pervious areas including vegetative cover type and condition.
 - b. Impervious surfaces including all buildings, structures, and pavement.
 - c. Post-construction topographic contours of the site at a scale not to exceed [number] feet.
 - d. Post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site.
 - e. Locations and dimensions of drainage easements.
 - f. Locations of maintenance easements specified in the maintenance agreement.
 - g. Flow path and direction for all storm water conveyance sections.
 - h. Location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area.
 - i. Location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way.
 - j. Watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required maps.
5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed

drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.

- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in S. 07.
 - (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
 - (g) Cost estimates for the construction, operation, and maintenance of each storm water management practice.
 - (h) Other information requested in writing by the [administering authority] to determine compliance of the proposed storm water management measures with the provisions of this ordinance.
 - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a [licensed professional engineer] to be prepared in accordance with accepted engineering practice and requirements of this ordinance.
- (2) **ALTERNATE REQUIREMENTS.** The [administering authority] may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under S. 07 (5).

S. 10 MAINTENANCE AGREEMENT.

- (1) **MAINTENANCE AGREEMENT REQUIRED.** The maintenance agreement required under S. 08 (2) for storm water management practices shall be an agreement between the [administering authority] and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be recorded in the office of the register of deeds for the county where the affected property is located as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.
- (2) **AGREEMENT PROVISIONS.** The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by S. 09 (1) (f):
- (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.

- (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under S. 08 (2).
- (c) Identification of the responsible party, organization or city, county, town, or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under S. 08 (2).
- (d) Requirement that the responsible party, organization, or city, county, town, or village shall maintain storm water management practices in accordance with the schedule included in par. (b).
- (e) Authorization for the [administering authority] to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
- (f) A requirement on the [administering authority] to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.
- (g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the [administering authority] of maintenance problems that require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the [administering authority].
- (h) Authorization of the [administering authority] to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The [administering authority] shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of ch. 66, Wis. Stats.

S. 11 FINANCIAL GUARANTEE.

- (1) **ESTABLISHMENT OF THE GUARANTEE.** The [administering authority] may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the [administering authority]. The financial guarantee shall be in an amount determined by the [administering authority] to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period that the

designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the [administering authority] the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the [administering authority] that the requirements of this ordinance have not been met.

- (2) **CONDITIONS FOR RELEASE.** Conditions for the release of the financial guarantee are all of the following:
- (a) The [administering authority] shall release the portion of the financial guarantee established under this section, less any costs incurred by the [administering authority] to complete installation of practices, upon submission of "as built plans" or "record" drawings by a licensed professional engineer. The [administering authority] may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (b) The [administering authority] shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the [administering authority], at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

S. 12 FEE SCHEDULE.

The fees referred to in other sections of this ordinance shall be established by the [administering authority] and may from time to time be modified by resolution. A schedule of the fees established by the [administering authority] shall be available for review in [location].

S. 13 ENFORCEMENT.

- (1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (2) The [administering authority] shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice

shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken.

- (3) Upon receipt of written notification from the [administering authority] under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the [administering authority] in the notice.
- (4) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the [administering authority] may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the [administering authority] plus interest and legal costs shall be billed to the responsible party.
- (5) The [administering authority] is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the [municipal attorney, corporation counsel] to obtain a cease and desist order in any court with jurisdiction.
- (6) The [administering authority] may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the [administering authority] or by a court with jurisdiction.
- (8) The [administering authority] is authorized to refer any violation of this ordinance, or a stop work order or cease and desist order issued pursuant to this ordinance, to the [municipal attorney, corporation counsel] for the commencement of further legal proceedings in any court with jurisdiction.
- (9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than [number] dollars or more than [number] dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

- (10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

Note to Users: *Injunctive orders are authorized pursuant to s. 59.69 (11), 61.35, or 62.23 (8), Wis. Stats., for counties, villages, towns with village powers, and cities respectively.*

- (11) When the [administering authority] determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the [administering authority] or a party designated by the [administering authority] may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved storm water management plan. The [administering authority] shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to S. 11 of this ordinance. When such a security has not been established, or when such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

S. 14 APPEALS.

- (1) BOARD OF [APPEALS or ADJUSTMENT]. The board of [appeals or adjustment], created pursuant to section [number] of the [name of municipality] ordinances pursuant to s. [59.694, 60.65, 61.354 (4)(b), or 62.23 (7)(e)], Wis. Stats., shall hear and decide appeals when it is alleged that there is error in any order, decision or determination made by the [administering authority] in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and when owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.
- (2) WHO MAY APPEAL. Appeals to the board of [appeals or adjustments] may be taken by any aggrieved person or by an officer, department, board, or bureau of the [name of municipality] affected by any decision of the [administering authority].

S. 15 SEVERABILITY.

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

S. 16 EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the [governing body] of the [name of municipality] on the [number] day of [month], [year].

Approved: _____

Attested: _____

Published on [day, month, year].

SECTION 5. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Daniel L. Meyer, Secretary

(SEAL)