

ORDINANCE #16-22

REPEALING AND RECREATING CHAPTER 28-
STORMWATER MANAGEMENT ZONING (POST CONSTRUCTION)

WHEREAS, the Common Council of the City of De Pere, having reviewed the recommendation of the City Plan Commission regarding the repeal and recreation of De Pere Municipal Code Chapter 28 – Stormwater Management Zoning (Post Construction) regulation under Wis. Stats. §62.234 and having scheduled a public hearing then to be decided by the Common Council; and

WHEREAS, the City Clerk-Treasurer, having published a Class 2 Notice of Public Hearing regarding such proposed repeal and recreation, and pursuant thereto, a public hearing having been held on the 4th day of October, 2016 at 7:35 p.m. and the Common Council having heard all interested parties or their agents and attorneys;

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF DE PERE,
WISCONSIN, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 28-Stormwater Management Zoning (Post Construction), is hereby repealed and recreated as follows:

Sec. 28-1. - Authority.

- (a) This chapter is adopted by the common council under the authority granted by Wis. Stats. § 62.234. This chapter supersedes all provisions of an ordinance previously enacted that relate to stormwater management regulations. Except as otherwise specified in Wis. Stats. § 62.234, Wis. Stats. § 62.23 applies to this chapter and to any amendments to this chapter.
- (b) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- (c) The common council hereby designates the director of public works or designee to administer and enforce the provisions of this chapter.
- (d) The requirements of this chapter do not pre-empt more stringent stormwater management requirements that may be imposed by any of the following:
 - (1) The Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under Wis. Stats. §§ 281.16 and 283.33.
 - (2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.

Sec. 28-2. - Findings of fact.

The common council finds that uncontrolled, post-construction runoff has a significant impact upon water resources and 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:

- (a) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (b) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (c) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (d) Reduce the quality of groundwater by increasing pollutant loading.
- (e) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (f) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
- (g) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

Sec. 28-3. - Purpose and intent.

- (a) Purpose. The general purpose of this chapter 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:
 - (1) Further the maintenance of safe and healthful conditions.
 - (2) Prevent and control the adverse effects of stormwater; 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.
 - (3) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
 - (4) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.
- (b) Intent. It is the intent of the common council that this chapter regulates post-construction stormwater discharges to waters of the state. This chapter may be applied on a site-by-site basis. The common council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this chapter is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater 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. Where such plans are in conformance with the performance standards developed under Wis. Stats. § 281.16, for regional stormwater management measures and have been approved by the common council, it is the intent of this chapter that the approved plan be used to identify post-construction management measures acceptable for the community.

Sec. 28-4. - Applicability and jurisdiction.

(a) Applicability.

- (1) Where not otherwise limited by law, this chapter applies to all post-construction sites, unless the site is otherwise exempt under subsection (a)(2).
 - (2) A post-construction site that meets any of the criteria in this paragraph is exempt from the requirements of this chapter.
 - a. One- and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance.
 - b. Nonpoint discharges from agricultural activity areas.
 - c. Nonpoint discharges from silviculture activities.
 - d. Mill and crush operations.
 - (3) Notwithstanding the applicability requirements in subsection (a)(1), this chapter applies to post-construction sites of any size that, in the opinion of the director of public works, 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, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (b) Jurisdiction. This chapter applies to post-construction sites within the boundaries and jurisdiction of the City of De Pere, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Wis. Stats. § 236.45(2) and (3).
- (c) Exclusions. This chapter is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01(1), but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stats. § 281.33(2).

Sec. 28-5. - Definitions.

“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.

“Administering authority” means the director of public works, empowered under Wis. Stats. §62.234, that is designated by the common council to administer this chapter.

“Agricultural activity area” means the part of the farm where there is planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling and similar practices. The agricultural activity area does not include the agricultural production area.

“Agricultural production area” means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.

“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.

“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. For purposes of this chapter, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.

“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.

“Business day” means a day the office of the director of public works is routinely and customarily open for business.

“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 director of public works.

“Combined sewer system” means a system for conveying both sanitary sewage and stormwater runoff.

“Common plan of development or sale” means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

“Connected imperviousness” means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

“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.

“Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The Atlas 14 MSE4, 24-hour design storms for the city are: one-year, [2.2] inches; two-year, [2.5] inches; five-year, [3.3] inches; ten-year, [3.8] inches; 25-year, [4.4] inches; and 100-year, [5.3] inches.

“Development” means residential, commercial, industrial, institutional, or other land uses and associated roads.

“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 depression groundwater recharge areas over shallow fractured bedrock.

“Division of land” means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a five-year period.

“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.

“Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

“Exceptional resource waters” means waters listed in § NR 102.11, Wis. Adm. Code.

“Extraterritorial” means the unincorporated area within three 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.

“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.

“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 employment of equivalent permanent stabilization measures.

“Financial guarantee” means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the director of public works by the responsible party to assure that requirements of this chapter are carried out in compliance with the stormwater management plan.

“Governing body” means the common council.

“Highway” has the meaning given in Wis. Stats. § 340.01 (22).

“Highway reconditioning” has the meaning given in Wis. Stats. § 84.013 (1)(b).

“Highway reconstruction” has the meaning given in Wis. Stats. § 84.013(1)(c).

“Highway resurfacing” has the meaning given in Wis. Stats. § 84.013(1)(d).

“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, parking lots and streets are examples of areas that typically are impervious. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

“In-fill area” means a new development area less than five acres in size that is located within existing urban sewer service areas, surrounded by already existing development or existing development and natural or manmade features where development cannot occur.

“Infiltration” means the entry of precipitation or runoff into or through the soil.

“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.

“Land disturbing construction activity (or disturbance)” 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, and soil stockpiling.

“Landowner” means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.

“Maintenance agreement” means a legal document that provides for long-term maintenance of stormwater management and best management practices.

“MEP” or “maximum extent practicable” means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. Maximum extent practicable applies when the permit applicant demonstrates to the director of public works’ 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 permit applicant 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.

“Minor reconstruction of a highway” means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening.

“New development” means that portion of a post-construction site where impervious surfaces are being created or expanded. Any disturbance where the amount of impervious area for the post-development condition is greater than the pre-development condition is classified as new development. For purposes of this chapter, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

“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.

“Offsite” means located outside the property boundary described in the permit application.

“Onsite” means located within the property boundary described in the permit application.

“Ordinary high-water mark” has the meaning given in § NR 115.03(6), Wis. Adm. Code.

“Outstanding resource waters” means waters listed in § NR 102.10, Wis. Adm. Code.

“Percent fines” means the percentage of a given sample of soil, which passes through a # 200 sieve.

“Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

“Permit” means a written authorization made by the director of public works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

“Permit administration fee” means a sum of money paid to the director of public works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

“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.

“Pollutant” has the meaning given in Wis. Stats. § 283.01(13).

“Pollution” has the meaning given in Wis. Stats. § 281.01(10).

“Post-construction site” means a construction site following the completion of land disturbing construction activity and final site stabilization.

“Post-development” means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.

“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.

“Preventive action limit” has the meaning given in § NR 140.05(17), Wis. Adm. Code.

“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.

“Redevelopment” means that portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For purposes of this chapter, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

“Responsible party” means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.

“Routine maintenance” means that portion of a post-construction site where pre-development impervious surfaces are being maintained to preserve the original line and grade, hydraulic capacity, drainage pattern, configuration, or purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower one-half of the impervious surface's granular base is not disturbed. The disturbance shall be classified as redevelopment if the lower one-half of the granular base associated with the pre-development impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this chapter, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

“Runoff” means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

“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, which meets all of the following criteria:

- (1) Is designed or used for collecting water or conveying runoff.
- (2) Is not part of a combined sewer system.
- (3) Is not draining to a stormwater treatment device or system.
- (4) Discharges directly or indirectly to waters of the state.

“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.

“Site” means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

“Stop-work order” means an order issued by the director of public works which requires that all construction activity on the site be stopped.

“Stormwater management plan” means a comprehensive plan designed to reduce the discharge of pollutants from stormwater, after the site has undergone final stabilization, following completion of the construction activity.

“Stormwater 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.

“Stormwater reference guide” means the Stormwater Reference Guide, Current Edition, which is available for inspection from the city engineer and available on the City website.

“Technical standard” means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

“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.

“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.

“TP” means Total Phosphorous.

“TP-40” means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.

“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.

“Transportation facility” means a public street, a public road, a public highway, 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 Wis. Stats. § 85.095(1)(b).

“TSS” means total suspended solids.

“Type II distribution” means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973". The type II curve is applicable to all of the state and represents the most intense storm pattern.

“Waters of the state” has the meaning given in Wis. Stats. § 283.01 (20).

Sec. 28-6. - Technical standards.

The following methods shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, and fueling/vehicle maintenance components of stormwater practices needed to meet the water quality standards of this chapter:

- (a) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (b) Technical standards and guidance identified within the Stormwater Reference Guide.
- (c) Where 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 director of public works.
- (d) In this chapter, the following year and location has been selected as average annual rainfall: Green Bay, 1969 (Mar. 29—Nov. 25).

Sec. 28-7. - Performance standards.

- (a) Responsible party. The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.
- (b) Stormwater Management Plan. A written stormwater management plan in accordance with this section shall be developed and implemented for each post-construction site.
- (c) Requirements. The stormwater management plan shall meet the following minimum requirements to the maximum extent practicable:
 - (1) 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. The total suspended solids reduction shall be based on the average annual rainfall, as compared to no runoff management controls.
 - a. For post-construction sites with one or more of the following::
 1. 20,000 square feet or more of impervious surface disturbance and/or creation
 2. Post construction sites with 1 acre or more of land disturbance the following is required:
 - (i.) Reduce the total suspended solids load by 80 percent for infill and new development.
 - (ii.) Reduce the total suspended solids load by 40 percent for redevelopment.
 - (iii.) No total suspended solids load reduction is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed water quality BMP.
 - b. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce the total suspended solids load using BMPs from the city stormwater reference guide. These sites are not required to satisfy a numeric performance standard.
 - c. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date February 3, 2009 of this chapter are required to satisfy the performance standards within subsections(c)(1)a. 2i—iii.
 - d. The amount of total suspended solids control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

- e. 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.
- f. Notwithstanding subsections (c)(1)a—d., if the design cannot achieve the applicable total suspended solids reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.
- g. For redevelopment in the Lower Fox River Subbasin, an incentive is available for additional treatment of total suspended solids and total phosphorous as follows:

Watershed	Redevelopment		Routine Maintenance	
	TSS	TP	TSS	TP
Lower Fox River	80%	30%	80%	30%

For sites that meet both the TSS and TP Additional reductions, the annual stormwater management fee will be reduced by 50%. Documentation requirements can be found in the Stormwater Reference Guide.

- (2) Peak discharge. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site as follows:
 - a. For post-construction sites with one or more of the following:
 - 1. 20,000 square feet or more of impervious surface disturbance and/or creation
 - 2. Post construction sites with 1 acre or more of land disturbance the following is required:
 - (i.) The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the one year, two-year, ten-year, and 100-year, 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.
 - (ii.) TR-55 methodology shall be used for peak discharge calculations, unless the administering authority approves an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Peak pre-development discharge rates shall be determined using the following "meadow" runoff curve numbers:

Maximum Pre-Development Runoff Curve Numbers—Meadow				
Hydrologic soil group	A	B	C	D
Runoff curve number	30	58	71	78

- b. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the city

stormwater reference guide. These sites are not required to satisfy a numeric performance standard.

- c. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date February 3, 2009 of this chapter are required to satisfy the performance standards within subsection (c)(2)a. 2i-ii.
 - d. The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
 - e. An adequate outfall shall be provided for each point of concentrated discharge from the post-construction site. An adequate outfall consists of non-erosive discharge velocities and reasonable downstream conveyance.
 - f. Exemptions. The following transportation facilities are not required to meet the peak discharge requirements of subsection (c)(2) provided the transportation facility is not part of a larger common plan of development or sale:
 - 1. A transportation facility where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving surface water by more than 0.01 of a foot for the two-year, 24-hour storm event.
 - 2. A highway reconstruction site.
 - 3. A transportation facility that is part of a redevelopment project.
- (3) Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following, except as provided in subsections (c)(3)h—k.
- a. For post construction sites with one or more of the following:
 - 1. 20,000 square feet or more of impervious surface disturbance and/or
 - 2. Post-construction sites with one acre or more of land disturbance one of the following shall be met:
 - (i.) 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 volumes, 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.
 - (ii.) 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.
 - (iii.) 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.

- b. Predevelopment condition shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the following runoff curve numbers shall be used:

Maximum Pre-Development Runoff Curve Numbers—Cropland				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	55	69	78	83

- c. For residential and non-residential developments with less than 20,000 square feet of new impervious surfaces, infiltrate runoff volume using BMPs from the stormwater reference guide. These sites are not required to satisfy a numeric performance standard.
- d. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date February 3, 2009 of this chapter are required to satisfy the performance standards within subsections 28-7(c)(3)a—b.
- e. The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- f. 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 subsection [(c)(3)n.]. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
- g. Source Area Prohibitions. Infiltration of runoff from the following areas are prohibited from meeting the infiltration requirements of this subsection [(c)(3)]:
1. Areas associated with tier 1 industrial facilities identified in § NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.
 2. Storage and loading areas of tier 2 industrial facilities identified in § NR 216.21(2)(b), Wis. Adm. Code.
 3. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
- h. Prohibitions.
1. Areas within 1,000 feet upgradient or within 100 feet downgradient of karst features.
 2. Areas within 400 feet of a community water system well as specified in § NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in § NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
 3. Areas where contaminants of concern, as defined in § NR 720.03(2), Wis. Adm. Code are present in the soil through which infiltration will occur.
- i. Source Area Exemptions. Infiltration of runoff from the following areas are not required to meet the infiltration requirements of subsection (c)(3):
1. Parking areas and access roads less than 5,000 square feet for commercial development.

2. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under this subsection (c)(3)g.
 3. Redevelopment and routine maintenance areas.
 4. In-fill areas less than five acres.
 5. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
 6. Highways provided the transportation facility is not part of a larger common plan of development or sale.
- j. Separation Distances.
1. 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 the table below:

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 Infiltrations 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

2. Notwithstanding par.1., applicable requirements for injection wells classified under ch. NR 815 shall be followed.
- k. Infiltration Rate Exemption. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:
1. 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.
 2. 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.
- l. Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph.
- m. Groundwater Standards.
1. 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. 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.

2. Notwithstanding par. 1., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
 - n. 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 subsection (c)(3)m.
 - o. Maximum Extent Practicable. Where the conditions of subsection (c)(3)g.,h., and i. limit or restrict the use of infiltration practices, the performance standard of this subsection (c)(3) shall be met to the maximum extent practicable.
- (4) Protective areas.
- a. "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. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.
 1. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in § NR 103.04, 75 feet.
 2. For perennial and intermittent streams identified on a United States Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 3. For lakes, 50 feet.
 4. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins.
 5. For less susceptible wetlands, ten percent of the average wetland width, but no less than ten feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands 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.
 6. In subsections (c)(4)a.1,4, and 5. 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 § NR 103.03.
 7. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with § NR 103.08(1m). This [subsection (c)(4)] does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 8. For concentrated flow channels with drainage areas greater than 130 acres, ten feet.

9. Notwithstanding pars. 1. To 8., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- b. Subsection (c)(4) applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection (c)(4)e. below.
- c. The following requirements shall be met:
 1. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
 2. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained. 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. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover can 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".

3. Best management practices such as filter strips, swales, or wet detention basins, 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 chs. NR 103, 115, 116, and 117, Wis. Adm. Code, and their associated review and approval processes may apply in the protective area.

- d. A protective area established or created after the adoption date [Insert adoption date] of this chapter shall not be eliminated or reduced, except as allowed in subsections (c)(4)e.2—4. below.
- e. Exemptions. The following areas are not required to meet the protective area requirements of subsection (c)(4):
 1. Redevelopment and routine maintenance areas provided the minimum requirements within in [subsection (c)(4)e.] above are satisfied.
 2. Structures that cross or access surface waters such as boat landings, bridges and culverts.
 3. Structures constructed in accordance with Wis. Stats. § 59.692(1v).
 4. Post-construction sites from which runoff does not enter the surface water, 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 subsection (c)(4)e.4. is not necessary since runoff is not entering the surface water at that location. Other practices, necessary to meet the requirements of this section, such as a swale or basin, will need to be designed and implemented to reduce runoff pollutants before the runoff enters a surface water of the state.

- (5) Fueling and vehicle maintenance areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce

petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

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.

(6) Swale treatment for transportation facilities. Subsection (c)(6) is not applicable to transportation facilities that are part of a larger common plan of development or sale.

a. Requirement. Except as provided in [subsection (c)(6)b.], transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

1. 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.

2. 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 Infiltration Swales", dated May 2007, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

Note to users: Check dams may be included in the swale design to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this paragraph. However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

b. Exemptions. The director of public works may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 and where the initial surface water of the state that the runoff directly enters is any of the following:

1. An outstanding resource water.

2. An exceptional resource water.

3. Waters listed in § 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to nonpoint source impacts.

4. Waters where targeted performance standards are developed under § NR 151.004, Wis. Adm. Code, to meet water quality standards.

Note to users: The transportation facility authority shall contact the Wisconsin Department of Natural Resources' regional storm water staff or the Wisconsin Department of Natural Resources' liaison to the Wisconsin Department of transportation to determine if additional BMPs beyond a water quality swale are needed under this subsection.

(7) Exemptions. The following areas are not required to meet the performance standards within subsection (c) of this section:

a. Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.

- b. Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
- c. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.
 - 1. Reconditioning or resurfacing of a highway.
 - 2. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements within NR 151.24(6) Wisconsin Administrative Code apply to minor reconstruction of a highway.
 - 3. A redevelopment transportation facility with no increase in exposed parking lots or roads.
 - 4. A transportation facility with less than ten percent connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.
 - 5. Routine maintenance for transportation facilities if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - 6. Routine maintenance if performed for storm water conveyance system cleaning.
- (d) General considerations for onsite and offsite stormwater management measures. The following considerations shall be observed in managing runoff:
 - (1) 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.
 - (2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (e) Location and regional treatment option.
 - (1) The BMPs may be located onsite or offsite as part of a regional stormwater device, practice or system.
 - (2) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this chapter. Post-construction BMPs may be located in non-navigable surface waters.
 - (3) Except as allowed under subsection [(e)(4)], post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
 - (4) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this chapter if:
 - a. The BMP was constructed prior to the effective date of this chapter and the BMP either received a permit issued under Wis. Stats. ch. 30 or the BMP did not require a Wis. Stats. ch. 30 permit; and
 - b. The BMP is designed to provide runoff treatment from future upland development.
 - (5) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
 - a. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

- b. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as ch. NR 103, Wis. Adm. Code and Wis. Stats. ch. 30.
- (6) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.

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 Wis. Stats. ch. 30.

- (7) The director of public works may approve off-site management measures provided that all of the following conditions are met:
- a. The director of public works determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the department of public works and that contains management requirements consistent with the purpose and intent of this chapter.
 - b. The offsite facility meets all of the following conditions:
 - 1. The facility is in place.
 - 2. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this chapter.
 - 3. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (8) Where a regional treatment option exists such that the director of public works exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the director of public works. In determining the fee for post-construction runoff, the director of public works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (f) Alternate requirements. The director of public works may establish stormwater management requirements more stringent than those set forth in this section if the director of public works determines that an added level of protection is needed to protect sensitive resources. Also, the director of public works may establish stormwater management requirements less stringent than those set forth in this section if the director of public works determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by the state department of natural resources under NR 151 Wisconsin Administrative Code.

Sec. 28-8. - Permitting requirements, procedures and fees.

- (a) Permit required. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the director of public works prior to commencing the proposed activity.
- (b) Permit application and fees. Unless specifically excluded by this chapter, any responsible party desiring a permit shall submit to the director of public works a permit application made on a form provided by the director of public works for that purpose.
 - (1) Unless otherwise excepted by this chapter, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a non-refundable permit administration fee.
 - (2) The stormwater management plan shall be prepared to meet the requirements of sections 28-7 and 28-9 of this chapter, the maintenance agreement shall be prepared to meet the

requirements of section 28-10 of this chapter, the financial guarantee shall meet the requirements of section 28-11, and fees shall be those established by the common council as set forth in section 28-12 of this chapter.

- (c) Review and approval of permit application. The director of public works shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
- (1) Within 20 business days of the receipt of a complete permit application, including all items as required by subsection (b)(2), the director of public works shall inform the applicant whether the application, stormwater management plan and maintenance agreement are approved or disapproved based on the requirements of this chapter.
 - (2) If the stormwater permit application, stormwater management plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the director of public works shall issue the permit.
 - (3) If the stormwater permit application, stormwater management plan or maintenance agreement is disapproved, the director of public works shall detail in writing the reasons for disapproval.
 - (4) The director of public works may request additional information from the applicant. If additional information is submitted, the director of public works shall have 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
 - (5) Failure by the director of public works to inform the permit applicant of a decision within 20 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.
- (d) Permit requirements. All permits issued under this chapter shall be subject to the following conditions, and holders of permits issued under this chapter shall be deemed to have accepted these conditions. The director of public works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the director of public works to suspend or revoke this permit may be appealed in accordance with section 28-14 of this chapter.
- (1) 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.
 - (2) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
 - (3) The responsible party shall notify the director of public works at least 10 business days before commencing any work in conjunction with the stormwater management plan, and within 10 business days upon completion of the stormwater management practices. If required as a special condition under subsection (e), the responsible party shall make additional notification according to a schedule set forth by the director of public works so that practice installations can be inspected during construction.
 - (4) Practice installations required as part of this chapter shall be certified as "record" drawings by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the director of public works or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The director of public works 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.
 - (5) The responsible party shall notify the director of public works of any significant modifications it intends to make to an approved stormwater management plan. The director of public works may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.

- (6) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the common council, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (7) The responsible party authorizes the director of public works to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Wis. Stats. ch. 66, subch. VII, or to charging such costs against the financial guarantee posted under section 28-11 of this chapter.
 - (8) If so directed by the director of public works, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - (9) The responsible party shall permit property access to the director of public works or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (10) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the director of public works may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (11) The responsible party is subject to the enforcement actions and penalties detailed in section 28-13 of this chapter, if the responsible party fails to comply with the terms of this permit.
 - (12) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.
- (e) Permit conditions. Permits issued under this subsection may include conditions established by director of public works in addition to the requirements needed to meet the performance standards in section 28-7 of this chapter or a financial guarantee as provided for in section 28-11 of this chapter.
 - (f) Permit duration. Permits issued under this section shall be valid from the date of issuance through the date the director of public works notifies the responsible party that all stormwater management practices have passed the final inspection required under subsection (d)(4).
 - (g) Alternate requirements. The director of public works may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection 28-7(e) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 28-9. - Stormwater management plan.

- (a) Plan requirements. The stormwater management plan required under subsection 28-8(b) shall comply with the city stormwater reference guide and contain at a minimum the following information:
 - (1) Name, address, and telephone number of the landowner and responsible parties.
 - (2) A 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.
 - (3) Pre-development site map with property lines, disturbed limits, and drainage patterns.
 - (4) Post-development site map with property lines, disturbed limits, and drainage patterns.
 - a. Total area of disturbed impervious surfaces within the site.
 - b. Total area of new impervious surfaces within the site.

- c. Performance standards applicable to site.
 - d. Proposed best management practices.
 - e. Groundwater, bedrock, and soil limitations.
 - f. Separation distances. Stormwater management practices shall be adequately separated from wells to prevent contamination of drinking water.
- (b) Alternate requirements. The director of public works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection 28-7(c) or for applicants seeking a permit for a postconstruction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 28-10. - Maintenance agreement.

- (a) Maintenance agreement required. The maintenance agreement required under subsection 28-8(b) for stormwater management practices shall be an agreement between the director of public works and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the county register of deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.
- (b) Agreement provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the management plan required by subsection 28-9(a):
- (1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under subsection 28-8(b).
 - (3) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the stormwater management practices identified in the stormwater management plan required under subsection 28-8(b).
 - (4) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in subsection (b)(2) of this section.
 - (5) Authorization for the director of public works to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (6) A requirement on the director of public works 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 stormwater management practice into proper working condition.
 - (7) Agreement that the party designated under subsection (b)(3) of this section, as responsible for long term maintenance of the stormwater management practices, shall be notified by the director of public works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the director of public works.
 - (8) Authorization of the director of public works to perform the corrected actions identified in the inspection report if the responsible party designated under subsection (b)(3) does not make the required corrections in the specified time period. The director of public works shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stats. ch. 66, subch. VII.

- (c) Alternate requirements. The director of public works may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under section 28-7(c) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 28-11. - Financial guarantee.

- (a) Establishment of the guarantee. The director of public works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the director of public works. The financial guarantee shall be in an amount determined by the director of public works to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the director of public works the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the director of public works that the requirements of this chapter have not been met.
- (b) Conditions for release. Conditions for the release of the financial guarantee are as follows:
 - (1) The director of public works shall release the portion of the financial guarantee established under this section, less any costs incurred by the director of public works to complete installation of practices, upon submission of "record" drawings by a licensed professional engineer. The director of public works may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (2) The director of public works shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the director of public works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.
- (c) Alternate requirements. The director of public works may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection 28-7(c) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 28-12. - Fee schedule.

The fees referred to in this chapter shall be established by resolution of the common council. A schedule of the fees so established shall be available for review in the office of the director of public works or city clerk-treasurer.

Sec. 28-13. - Enforcement.

- (a) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this chapter by any person, firm, association, or corporation subject to this chapter's provisions shall be deemed a violation unless conducted in accordance with the requirements of this chapter.
- (b) The director of public works 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 which may be taken.

- (c) Upon receipt of written notification from the director of public works under subsection (b), the responsible party shall correct work that does not comply with the stormwater 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 director of public works in the notice.
- (d) If the violations to a permit issued pursuant to this chapter are likely to result in damage to properties, public facilities, or waters of the state, the director of public works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the director of public works plus interest and legal costs shall be billed to the responsible party.
- (e) The director of public works is authorized to post a stop-work order on all land disturbing construction activity that is in violation of this chapter, or to request the city attorney to obtain a cease and desist order in any court with jurisdiction.
- (f) The director of public works may revoke a permit issued under this chapter for non-compliance with chapter provisions.
- (g) Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the director of public works or by a court with jurisdiction.
- (h) The director of public works is authorized to refer any violation of this chapter, or of a stop work order or cease and desist order issued pursuant to this chapter, to the city attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (i) Any person, firm, association, or corporation who does not comply with the provisions of this chapter shall be subject to a forfeiture of not less than \$200.00 or more than \$1,000.00 per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (j) Compliance with the provisions of this chapter 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.
- (k) When the director of public works determines that the holder of a permit issued pursuant to this chapter has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the director of public works or a party designated by the director of public works 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 plan. The director of public works 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 section 28-11 of this chapter. Where such a security has not been established, or where 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.

Sec. 28-14. - Appeals.

- (a) Board of appeals. The board of appeals, created pursuant to § 14.21 of the city zoning ordinance pursuant to Wis. Stats § 62.23(7)(e), shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the director of public works in administering this chapter. 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 chapter that are not contrary to the public interest, and where owing to special conditions a literal enforcement of this chapter will result in unnecessary hardship.
- (b) Who may appeal. Appeals to the board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the city affected by any decision of the director of public works.

Sec. 28-15. - Severability.

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

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall take effect upon its passage and publication.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 4th day of October, 2016.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

Shana D. Ledvina, Clerk-Treasurer

Ayes: 7

Nays: 0

Board/Committee Approval: BOPW 9/12/16; Plan Commission 9/26/16

Publication Date: October 7, 2016

Effective Date: October 7, 2016