

Gen Ord. No. 45 - 04- 05. By Alderperson Baumann. November 15, 2004.

AN ORDINANCE repealing and recreating Appendix E of the Sheboygan Municipal Code, entitled "Post-Construction Stormwater Management Zoning Ordinance" relating to the control of post-construction stormwater runoff.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix E of the Sheboygan Municipal Code, entitled "Stormwater Management," is hereby repealed and recreated to read as follows:

"APPENDIX E
POST-CONSTRUCTION STORMWATER MANAGEMENT ZONING
ORDINANCE

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SEC. 1. AUTHORITY.

(1) This ordinance is adopted by the City of Sheboygan under the authority granted by sec. 62.234, Wis. Stats. Except as otherwise specified in sec. 62.234, Wis. Stats., sec. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the City of Sheboygan.

(3) The Common Council hereby designates the Director of Public Works, or his/her designee, as the Administering Authority to administer and enforce the provisions of this ordinance.

(4) The requirements of this ordinance do not preempt more stringent stormwater 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 secs. 281.16 and 283.33, Wis. Stats.

(b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under sec. NR 151.004, Wis. Admin. Code.

SEC. 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:

(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, 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 by 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.

(6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

(7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

SEC. 3. 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:

(a) Further the maintenance of safe and healthful conditions.

(b) 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.

(c) 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.

(2) INTENT.

It is the intent of the Common Council that this zoning ordinance regulates post-construction stormwater discharges to waters of the state. This ordinance 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 ordinance 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 sec. 281.16, Wis. Stats., for regional stormwater management measures and have been approved by the Common Council, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

SEC. 4. APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this subsection, unless the site is otherwise exempt under subsection (b):

1. A post construction site that had 5 or more acres of land disturbing construction activity.
2. A post-development construction site that had one or more acres of land disturbing construction activity after March 10, 2003.
3. A post-construction site that had more than 1000 square feet but less than one acre of land disturbing activity shall be required to obtain a permit under this ordinance, but shall only be required to comply with the performance standards contained in Section 7(3)(b) regarding peak discharges unless otherwise required by the administering authority.

(b) A site that meets any of the criteria in this subsection is exempt from the requirements of this ordinance:

1. A redevelopment post-construction site with no increase in exposed parking lots or roads.
2. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
6. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in subsection (a), this ordinance applies to post-construction sites of any size that, in the opinion of the Director of Public Works, is likely to result in run-off 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.

(2) JURISDICTION.

This ordinance applies to post construction sites within the boundaries and jurisdiction of the City of Sheboygan, as well as all lands located within the extraterritorial zoning jurisdiction of the City of Sheboygan, even if plat approval is not involved.

(3) EXCLUSIONS.

This ordinance is not applicable to activities conducted by a state agency, as defined under sec. 227.01(10), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under sec. 281.33(2), Wis. Stats.

SEC. 5. DEFINITIONS.

(1) 'Administering authority' means the Director of Public Works, or his/her designee, that is designated by the Common Council to administer this ordinance.

(2) 'Agricultural facilities and practices' has the meaning given in sec. 281.16, Wis. Stats.

(3) 'Average annual rainfall' means a calendar year of precipitation, excluding snow, which is considered typical.

(4) '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.

(5) 'Business day' means a day the office of the administering authority is routinely and customarily open for business.

(6) 'Cease and desist order' means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

(7) 'Combined sewer system' means a system for conveying both sanitary sewage and stormwater runoff.

(8) '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.

(9) '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 where 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.

(10) 'Design storm' means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

(11) 'Development' means residential, commercial, industrial or institutional land uses and associated roads.

(12) 'Division of land' has the meaning given in Section 3.8 of the City of Sheboygan Subdivision Code.

(13) '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.

(14) 'Erosion' means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

(15) 'Exceptional resource waters' means waters listed in sec. NR 102.11, Wis. Admin. Code.

(16) 'Extraterritorial' means the unincorporated area within 3 miles of the corporate limits of the City of Sheboygan.

(17) '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% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.

(18) '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 stormwater management plan.

(19) 'Governing body' means the Common Council of the City of Sheboygan.

(20) '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.

(21) 'In-fill area' means an undeveloped area of land located within existing development.

(22) 'Infiltration' means the entry of precipitation or runoff into or through the soil.

(23) '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 signed for conveyance and pollutant removal only.

(24) 'Karst feature' means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

(25) '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.

(26) 'Maintenance agreement' means a legal document that provides for long-term maintenance of stormwater management practices.

(27) 'MEP' or 'maximum extent practicable' means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance which takes into account the best

available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

(28) 'New development' means development resulting from the conversion of previously undeveloped land or agricultural land uses.

(29) 'Off-site' means located outside the property boundary described in the permit application.

(30) 'On-site' means located within the property boundary described in the permit application.

(31) 'Ordinary high-water mark' has the meaning given in sec. NR 115.03(6), Wis. Admin. Code.

(32) 'Outstanding resource waters' means waters listed in sec. NR 102.10, Wis. Admin. Code.

(33) 'Percent fines' means the percentage of a given sample of soil , which passes through a #200 sieve.

(34) 'Performance standard' means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

(35) '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.

(36) '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.

(37) '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 typical are pervious.

(38) 'Pollutant' has the meaning given in sec. 283.01(13), Wis. Stats.

(39) 'Pollution' has the meaning given in sec. 281.01(10), Wis. Stats.

(40) 'Post-construction site' means a construction site following the completion of land disturbing construction activity and final site stabilization.

(41) '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.

(42) 'Preventive action limit' has the meaning given in sec. NR 140.05(17), Wis. Admin. Code.

(43) 'Redevelopment' means areas where development is replacing older development.

(44) '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 BMP's.

(45) '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.

(46) '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 meet 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 draining to a stormwater treatment device or system.

(d) Discharges directly or indirectly to waters of the state.

(47) 'Site' means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

(48) 'Stop work order' means an order issued by the administering authority that requires that all construction activity on the site be stopped.

(49) '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.

(50) '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.

(51) 'Technical standard' means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

(52) '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% continually for at least 50 feet. If the slope of the land is 12% 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.

(53) '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.

(54) '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 Wisconsin and represents the most intense storm pattern.

(55) 'Waters of the state' has the meaning given in sec. 281.01(18), Wis. Stats.

SEC. 6. TECHNICAL STANDARDS.

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

(1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Admin. Code.

(2) 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 administering authority.

(3) In this ordinance, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28-Dec. 6).

SEC. 7. PERFORMANCE STANDARDS.

(1) RESPONSIBLE PARTY.

The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.

(2) PLAN.

A written stormwater management plan in accordance with Section 9 shall be developed and implemented for each post-construction site.

(3) REQUIREMENTS.

The plan required under subsection (2) shall include the following:

(a) TOTAL SUSPENDED SOLIDS.

BMP's shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

1. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this Section (a)1.
2. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this Section (a)1.
3. For in-fill development under 5 acres that occurs within 10 years after October 1, 2002, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this Section (a)1.

4. For in-fill development that occurs 10 or more years after October 1, 2002, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this Section (a)1.

5. Notwithstanding subsections (a) 1. to 4., 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.

(b) PEAK DISCHARGE.

1. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to predevelopment conditions for the 2-year, 24-hour design storm applicable to the post-construction site. At a minimum, the post-construction site shall detain the 10-year, 24-hour design storm released at the 2-year, 24-hour predevelopment peak discharge rate. Rainfall data applicable to this section shall be taken from 'The Rainfall Frequency Atlas of the Midwest,' by Floyd A. Huff and James R. Angel, Bulletin 71 of the Midwestern Climate Center, 1992, Section 9, Table 9. Predevelopment conditions shall assume 'good hydrologic conditions' for appropriate land covers as identified in TR-55 or an equivalent methodology, such as modified rational or rational method Q/Qp. The meaning of 'hydrologic soil group' and 'runoff curve number' are as determined in TR-55. However, when predevelopment land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used. The administrative authority may require additional retention up to and including the 100-year post development storm frequency due to downstream threats to life and property resulting from the additional drainage. The grading plan shall pass the 100-year storm around or through the development without causing harm to life or property.

Table 1 - Maximum Predevelopment Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

2. Subsection (b)1. does not apply to any of the following:

a. A post-construction site where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving water by more than 0.01 of a foot for the 2-year, 24-hour storm event.

~~b. A redevelopment post-construction site. Repealed 2005~~

~~c. An in-fill development area less than 5 acres. Repealed 2005~~

(c) INFILTRATION.

BMPs shall be designed, installed and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subsection (c) 5 through 8, below:

1. For residential developments one of the following shall be met:

a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% 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 1% of the project site is required as an effective infiltration area.

b. Infiltrate 25% of the post-development runoff from the 2-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

2. For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:

a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% 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% of the project site is required as an effective infiltration area.

b. Infiltrate 10% of the runoff from the 2-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall

be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

3. Pre-development condition shall be the same as in subsections 1.b. and 2.b.

4. 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) below. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

5. Exclusions. The runoff from the following areas are prohibited from meeting the requirements of this paragraph:

a. Areas associated with tier 1 industrial facilities identified in sec. NR 216.21(2)(a), Wis. Admin. Code, including storage, loading, rooftop and parking.

b. Storage and loading areas of tier 2 industrial facilities identified in sec. NR 216.21(2)(b), Wis. Admin. Code.

c. Fueling and vehicle maintenance areas.

d. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

e. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subsection (c)5.e. does not prohibit infiltration of roof runoff.

f. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

g. Areas within 400 feet of a community water system well as specified in sec. NR 811.16(4), Wis. Admin. Code, or within 100 feet of a private well as specified in sec. NR 812.08(4), Wis. Admin. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

h. Areas where contaminants of concern, as defined in sec. NR 720.03(2), Wis. Admin. Code, are present in the soil through which infiltration will occur.

i. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10 percent fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subsection (c)5.i. does not prohibit infiltration of roof runoff.

6. Exemptions. The following are not required to meet the requirements of this subsection (c):

a. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.

b. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

c. Redevelopment post-construction sites.

d. In-fill development areas less than 5 acres.

e. Infiltration areas during periods when the soil on the site is frozen.

f. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

7. 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 subsection (c).

8.a. Infiltration systems designed in accordance with this subsection (c) 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. Admin. 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 subsection (c)8.a. above, the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) PROTECTIVE AREAS.

1. '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 subsection, '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.

a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in sec. NR 103.04, Wis. Admin. Code, 75 feet.

b. 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.

c. For lakes, 50 feet.

d. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with sec. NR 103.08(1m), Wis. Admin. Code. This subsection 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.

e. 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 wetlands dominated by invasive species such as reed canary grass.

f. In subsections (d) 1. a., d. and e., 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 sec. NR 103.03, Wis. Admin. Code.

g. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

2. This subsection applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection (d) 4, below.

3. The following requirements shall be met:

a. 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.

b. 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% 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.

c. 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.

4. This subsection (d) does not apply to:

a. Redevelopment post-construction sites.

b. In-fill development areas less than 5 acres.

c. Structures that cross or access surface waters such as boat landings, bridges and culverts.

d. Structures constructed in accordance with sec. 59.692(1v), Wis. Stats.

e. 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.

(e) 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.

(f) SWALE TREATMENT FOR TRANSPORTATION FACILITIES.

1. Applicability. Except as provided in subd. 2., 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:

a. 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.

b. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

2. Exemptions. The administering authority 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:

a. An outstanding resource water.

b. An exceptional resource water.

c. Waters listed in sec. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.

d. Waters where targeted performance standards are developed under sec. NR 151.004, Wis. Admin. Code, to meet water quality standards.

(4) GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORMWATER MANAGEMENT MEASURES.

The following considerations shall be observed in managing runoff:

(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 stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(5) LOCATION AND REGIONAL TREATMENT OPTION.

(a) The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system.

(b) 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 ordinance. Post-construction BMPs may be located in non-navigable surface waters.

(c) Except as allowed under par. (d), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.

(d) 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 ordinance if:

1. The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under ch. 30, Wis. Stats., or the BMP did not require a ch. 30, Wis. Stats., permit; and

2. The BMP is designed to provide runoff treatment from future upland development.

(e) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.

1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

2. 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. Admin. Code and ch. 30, Wis. Stats.

(f) 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.

(g) 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 stormwater management system plan that is approved by the City of Sheboygan 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 stormwater 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.

(h) Where a regional treatment option exists such that the administering authority 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 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.

(6) ALTERNATE REQUIREMENTS.

The administering authority may establish stormwater management requirements more stringent than those set forth in this section if the administering authority determines that an added level of protection is needed to protect sensitive resources.

SEC. 8. 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 made on a form provided by the administering authority for that purpose.

(a) Unless otherwise excepted by this ordinance, or as provided in subsection 2(c) below, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a non-refundable permit administration fee.

(b) The stormwater management plan shall be prepared to meet the requirements of Sections 7 and 9, the maintenance agreement shall be prepared to meet the requirements of Section 10, the financial guarantee shall meet the requirements of Section 11, and fees shall be those established by the Common Council as set forth in Section 12.

(c) A permit application for those sites referenced in Section 4(1)(a)3. of this ordinance need not be accompanied by a maintenance agreement.

(3) REVIEW AND APPROVAL OF PERMIT APPLICATION.

The administering authority 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:

(a) Within 30 business days of the receipt of a complete permit application, including all items as required by subsection (2), the administering authority shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

(b) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater

management practices is made, the administering authority shall issue the permit.

(c) If the stormwater permit application, 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 10 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.

(4) PERMIT REQUIREMENTS.

All permits issued under this ordinance shall be subject to 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 Section 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 stormwater management measures in accordance with the approved stormwater management plan and this permit.

(c) The responsible party shall notify the administering authority at least 2 business days before commencing any work in conjunction with the stormwater management plan and within 2 business days upon completion of the stormwater management practices. If required as a special condition under subsection (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' by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the administering authority or its designee to determine if they are in accordance with the approved stormwater 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 stormwater management plan. The administering authority 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.

(f) 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 City, 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 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 subchapter VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under Section 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, where such damage is caused by activities that are not in compliance with the approved stormwater 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 stormwater 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 Section 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 the administering authority in addition to the requirements needed to meet the performance standards in Section 7 or a financial guarantee as provided for in Section 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 stormwater management practices have passed the final inspection required under subsection (4)(d).

SEC. 9. STORMWATER MANAGEMENT PLAN.

(1) PLAN REQUIREMENTS.

The stormwater management plan required under Section 8(2) shall contain at a minimum the following information:

(a) Name, address and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater 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:

1. One or more site maps at a scale of not less than 1 inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 100 feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams,

wetlands, channels, ditches and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to sec. NR 811.16, Wis. Admin. 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 map(s).

(d) Post-development site conditions, including:

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 stormwater 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 100 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures and pavement; post-construction topographic contours of the site at a scale not to exceed 100 feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; 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; 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 map(s).

5. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including

cross-sections and profiles of all permanent stormwater conveyance and treatment practices.

(e) A description and installation schedule for the stormwater management practices needed to meet the performance standards in Section 7.

(f) A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.

(g) Cost estimates for the construction, operation and maintenance of each stormwater management practice.

(h) Other information requested in writing by the administering authority to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.

(i) All site investigations, plans, designs, computations and drawings shall be certified by a license 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 stormwater management performance standards under Section 7(5).

SEC. 10. MAINTENANCE AGREEMENT.

(1) MAINTENANCE AGREEMENT REQUIRED.

The maintenance agreement required under Section 8(2) for stormwater management practices shall be an agreement between the administering authority 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.

(2) AGREEMENT PROVISIONS.

The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by Section 9(1)(f):

(a) Identification of the stormwater facilities and designation of the drainage area served by the facilities.

(b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under Section 8(2).

(c) 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 Section 8(2).

(d) 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).

(e) Authorization for the administering authority 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.

(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 stormwater management practice into proper working condition.

(g) Agreement that the party designated under subsection (c), as responsible for long-term maintenance of the stormwater management practices, shall be notified by the administering authority of maintenance problems which 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 subsection (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.

SEC. 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 stormwater management practices during the period which 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 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 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 as follows:

(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' 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 stormwater 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.

SEC. 12. FEE SCHEDULE.

The fees referred to in this ordinance shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established shall be available for review in the office of the administering authority.

SEC. 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 which may be taken.

(3) Upon receipt of written notification from the administering authority under subsection (2), 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 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 city attorney 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 of a stop work order or cease and desist order issued pursuant to this ordinance, to the city attorney 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 \$50

and not more than \$1000 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.

(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 stormwater management plan, or has failed to comply with schedules set forth in said stormwater 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 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 Section 11 of this ordinance. 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 for the year in which the work is completed.

SEC. 14. APPEALS.

(1) ZONING BOARD OF APPEALS.

The zoning board of appeals, created pursuant to section 15.934 of the City of Sheboygan's zoning ordinance pursuant to sec. 62.23(7)(e), Wis. Stats., shall hear and decide appeals where 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 where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.

(2) WHO MAY APPEAL.

Appeals to the zoning board of appeals may be taken by any aggrieved person or by an officer, department, board or bureau of the City of Sheboygan affected by any decision of the administering authority."

Section 2. 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.

Section 3. Effective Date. This ordinance shall be in force and effect from and after its passage and publication.

