

## TITLE 14

### CHAPTER 2

#### Stormwater Management (Ord. No. 2006-05)

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#### SEC. 14-2-1 AUTHORITY

- (a) This ordinance is adopted by the City of Cedarburg under the authority granted by Section 62.234 Wis. Stats. This ordinance supersedes all conflicting and contradictory stormwater management regulations previously enacted under Section 62.23, Wis. Stats. Except as specifically provided for in Section 62.234 Wis. Stats., Section 62.23 Wis. Stats. applies to this ordinance to any amendments to this ordinance.
- (b) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (c) The City of Cedarburg hereby designates the City of Cedarburg Department of Engineering and Public Works to administer and enforce the provisions of this ordinance.
- (d) The requirements of this ordinance do not pre-empt more stringent stormwater management requirements that may be imposed by WPDES Stormwater Permits issued by the Department of Natural Resources under Section 147.021 Wis. Stats.

#### SEC. 14-2-2 PURPOSE AND INTENT

- (a) **Purpose.** The purpose of this ordinance is to set forth stormwater requirements and criteria which will prevent and control water pollution, diminish the threats to public health, safety, welfare, and aquatic life due to runoff of stormwater from development or redevelopment.
- (b) **Intent.** It is the general intent of the City of Cedarburg that this ordinance achieve its purpose through:
  - (1) Regulating long-term, post-construction stormwater discharges from land development activities; City of Cedarburg Subdivision Regulations.

- (2) Controlling the quantity, peak flow rates, and quality of stormwater discharges from land development activities.
- (3) It is more fully the intent of the City of Cedarburg to provide services to maintain and enhance the quality of life within the community. To this end the City of Cedarburg and its Department of Engineering and Public Works will manage stormwater to protect, maintain and enhance the natural environment; diversity of fish and wildlife; human life; property; and recreational use of waterways within the area.

### **SEC 14-2-3 DEFINITIONS**

- (a) "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.
- (b) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (c) "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.
- (d) "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.
- (e) "Land development activity" means any construction or modification of improvements to real property or other activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This term does not include agricultural cropping activities.
- (f) "Residential development" means that which is created to house people, including the residential dwellings as well as all affected portions of the development including lawns, driveways, sidewalks, garages and access streets. This type of development includes single family, multi-family, apartment, and trailer parks.
- (g) "Post-development land use condition" means the extent and distribution of land cover types, anticipated to occur under conditions of full development, that will influence precipitation runoff and infiltration.
- (h) "Pre-development land use condition" means land which has runoff characteristics equivalent to runoff Curve Numbers (CNs) of: 30, 58, 71 and 78 for Hydrologic Soil Groups A, B, C, and D, respectively. This term is used for the purpose of matching of pre- and post-development stormwater peak flows and volumes as required by this ordinance. S.06(1)(a).

### **SEC. 14-2-4 APPLICABILITY AND JURISDICTION**

- (a) **Applicability.** This ordinance applies to land development activities which meet the applicability criteria specified in this section. The ordinance also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development or sale that meets the following

applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.

- (1) Residential land development with a gross aggregate area of 1 acre or more;
  - (2) Residential land development with a gross aggregate area less than 1 acre, if there are at least 0.25 acres of impervious surfaces;
  - (3) Land development, other than a residential land development, with a gross aggregate area of 0.5 acres or more;
  - (4) Any land development, which in the opinion of the City of Cedarburg Department of Engineering and Public Works, is likely to result in stormwater runoff that exceeds the safe capacity of existing drainage facilities or receiving body of water, that causes undue channel erosion, increases water pollution or which endangers downstream property or public safety.
- (b) **Jurisdiction.** This ordinance applies to land development activities within the boundaries of the City of Cedarburg. This ordinance also applies to all lands located within the extraterritorial plat approval jurisdiction of the City of Cedarburg, even if plat approval is not involved.
- (c) **Exemptions.** This ordinance does not apply to the following activities:
- (1) Land development activities conducted or contracted for by any state agency, as defined under Section 227.01 (1) Wis. Stats., but also including the office of district attorney.
  - (2) Stormwater discharges from projects administered by the Department of Transportation, regulated by Ch. TRANS 401, Wis. Admin. Code and subject to the DOT and DNR cooperative agreement.
- (d) **Waivers.** Requests to waive the stormwater management plans requirements shall be submitted to the City of Cedarburg Department of Engineering and Public Works for approval by the Public Works Commission. Waivers may be granted if it can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance.

#### **SEC. 14-2-5 STORMWATER MANAGEMENT STANDARDS**

- (a) **Technical Standards.** The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of storm water 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. Adm. 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 City of Cedarburg.
  - (3) In this ordinance, the following year and location has been selected as average annual rainfall(s): *Milwaukee, 1969 (Mar. 28-Dec. 6)*
- (b) **Stormwater Discharge Rate and Quantity.** Unless otherwise provided for in this ordinance, all land development activities subject to this ordinance shall establish on-site management practices to control the peak flow rates of stormwater discharged from the site as described in this ordinance. Infiltration of stormwater runoff from driveways, sidewalks,

rooftops, parking lots, and landscaped areas shall be incorporated to the maximum extent practical to provide volume control in addition to control of peak flows.

- (1) On-site management practices shall be used to meet the minimum performance standards as described in this Section:

The post-development stormwater runoff rate associated with the 100-year, 24-hour design storm, shall not exceed the pre-development 10-year, 24-hour design storm runoff rate.

For the 2-year, 24-hour design storm, BMPs shall be designed to either: maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions.

- (2) All stormwater conveyance systems within the proposed development, and receiving surface runoff from the proposed development, shall be designed to completely contain peak storm flows as described in Sec. 5(a)(2)(i) and (ii). Calculations for determining peak flows for conveyance system sizing shall use Curve Numbers based on the existing or future proposed land use for off-site areas (which ever results in the highest peak flows), and the proposed land use for the on-site areas.

Appropriate Curve Numbers are described in Urban Hydrology for Small Watershed, TR-55 (Technical Release 55) published by the Engineering Division, United States Natural Resource Conservation Service (formerly known as the Soil Conservations Service) United States Department of Agriculture, June 1992, or most recent version.

- a. For open channel conveyance systems the peak flow from the 25 year, 24 hour storm shall be completely contained within the channel bottom and banks.
- b. For storm sewer pipes the peak flow from the 10 year, 24 hour storm shall be completely contained within the pipes with no surcharging or pressurized flow.

- (3) Determination of peak flow rates and volume of runoff for purposes of meeting the requirements of Sec. 5(a)(1) and (2) shall be computed by procedures based on the principals and procedures described in Urban Hydrology for Small Watershed, TR-55 (Technical Release 55) published by the Engineering Division, United States Natural Resource Conservation Service (formally known as the Soil Conservations Service) United States Department of Agriculture, June 1992, or most recent version. Other calculations methods must be approved by the City of Cedarburg Department of Engineering and Public Works.
- (4) The rainfall distributions for the storm events shall be based on the SCS Type II storms as described in Urban Hydrology for Small Watershed, TR-55 (Technical Release 55) published by the Engineering Division, United States Natural Resource Conservation Service (formally known as the Soil Conservations Service) United States Department of Agriculture, June 1992, or most recent version.
- (5) Increases or decreases in the hydrology of natural wetlands shall be minimized to the extent practical. Where such changes are proposed, the impact of the proposal on wetland functional values shall be assessed using methods acceptable to the City of Cedarburg Department of Engineering and Public Works. Significant changes to

wetland functional values shall be avoided (as defined by Wis. Admin. Code NR 103).

- (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 subds. (5) through (8).

- (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 par. (b).

**Note to Users:** A model that calculates runoff volume, such as SLAMM, P8, or an equivalent methodology may be used.
- (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 subd. 8. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

**Note to Users:** To achieve the infiltration requirement for the parking lots or roads, maximum extent practicable should not be interpreted to require significant topography changes that create an excessive financial burden. To minimize potential groundwater impacts, it is desirable to infiltrate the cleanest runoff. To achieve this, a design may propose greater infiltration of runoff from low pollutant sources such as roofs, and less from higher pollutant source areas such as parking lots.

- (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 s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.
  - b. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b), Wis. Adm. Code
  - c. Fueling and vehicle maintenance areas.  
**Note to Users:** Runoff from tier 2 parking and rooftop areas may be infiltrated but may require pretreatment.
  - 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 subd. 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 s. NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in s. NR 812.08(4), Wis. Adm. 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 s. NR 720.03(2), Wis. Adm. 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% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subd. 5.i. does not prohibit infiltration of roof runoff.  
**Note to Users:** The areas listed in subd. (5) are prohibited from infiltrating runoff due to the potential for groundwater contamination.
- (6) Exemptions. The following are not required to meet the requirements of this paragraph:
- 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 paragraph.
  - (8) a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
  - b. Notwithstanding subd. par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
- (d) **Stormwater Discharge Quality.** Unless otherwise provided for in this ordinance, all land development activities subject to this ordinance shall establish on-site management practices to control the quality of stormwater discharged from the site. On-site management practices shall be used to meet the following minimum standard:
- (1) Stormwater management measures shall be designed to remove on an average annual basis a minimum of 80% of the total suspended solids load from the proposed on-site development when compared to the proposed on-site development without stormwater management measures. The effectiveness of the stormwater management measures shall be evaluated using criteria provided by the City of Cedarburg Department of Engineering and Public Works.
  - (2) Discharge of urban stormwater pollutants to wetlands without pre-treatment shall be avoided to the extent practical. Pre-treatment methods shall include (but are not limited to) one or more of the following: vegetated swale, buffer strips, wet detention ponds, and in-line structural, stormwater pollution treatment systems.
  - (3) All post-construction land development and redevelopment sites subject to this Ordinance shall establish on-site management practices with the design capability to infiltrate stormwater discharges, to the maximum extent practicable. Stormwater discharges shall be pre-treated prior to the use of infiltration best management practices to prolong maintenance of the infiltration practice and to prevent discharge of stormwater pollutants at concentrations that will result in exceedances of groundwater preventive action limits or enforcement standards established by the Department of Natural Resources in NR 140 Wisconsin Administrative Code. Stormwater infiltration is prohibited under the following circumstances:
    - a. Stormwater is generated from highly contaminated source areas at manufacturing industrial sites;
    - b. Stormwater is carried in a conveyance system that also carries contaminated, non-stormwater discharges;
    - c. Stormwater is generated from active construction sites.Pre-treatment methods shall include (but are not limited to) one or more of the following: vegetated swale, buffer strips, wet detention ponds, and in-line structural, stormwater pollution treatment systems.

- (4) Stormwater ponds and infiltration devices shall not be located closer to water supply wells than indicated below without first notifying the City of Cedarburg Department of Engineering and Public Works:
  - a. 100 feet from a non-public water supply well;
  - b. 400 feet from a municipal water supply well;
  - c. 1,200 feet from a community water supply well (or the defined well for which recharge area surrounding a community water a wellhead protection plan has been established)
- (5) Land development activities with stormwater runoff reaching Outstanding or Exceptional Resource Waters as identified in Chapter NR 102 Wisconsin Administrative Code, may be required to use additional stormwater management measures to exceed the minimum requirements in Sec. 5(b)(1).

(e) **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 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.
  - a. For outstanding resource waters and exceptional resource waters, 75 feet.
  - b. For lakes, 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 wetlands, 25 feet unless a greater setback is required under NR 151. Wetland boundary delineations shall be made in accordance with s.NR 103.08(1m). This paragraph 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.
  - d. For concentrated flow channels with drainage areas greater than 130 acres, 25 feet.
- (2) This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
- (3) The following requirements shall be met:
  - a. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water 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. **Note to Users:** It is recommended that seeding of non-aggressive vegetative cover be used in the protective areas. 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”.

- 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.

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

- (4) This paragraph 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 s. 59.692(1v), Wis. Stats. 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 subd. 4.e. 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.

- (f) **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.

- (g) **Exceptions.** The minimum requirements for on-site stormwater management practices established in Sec. 5(a) and (b) may be waived in whole or in part by the City of Cedarburg Department of Engineering and Public Works upon written request of the applicant, provided that at least one of the following conditions applies:

- (1) Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater management plan that has been approved by the City of Cedarburg Department of Engineering and Public Works and that is required to be implemented by local ordinance.

- (2) Provisions are made to manage stormwater by an off-site facility. This requires that the off-site facility is in place, is designed and adequately sized to provide a level of stormwater control that is equal to or greater than that which would be afforded by on-site practices meeting the requirements of this ordinance, and has a legally obligated entity responsible for long-term operation and maintenance of the stormwater practice.
  - (3) The City of Cedarburg Department of Engineering and Public Works finds that meeting the minimum on-site management requirements is not feasible due to site conditions.
- (h) **Fee In Lieu of On-site Stormwater Management Practices.** Where the City of Cedarburg Department of Engineering and Public Works waives all or part of the minimum on-site stormwater management requirements under Sec. 5(c)(3), or where the waiver is based on the provision of adequate stormwater facilities provided by the City of Cedarburg Department of Engineering and Public Works downstream of the proposed development, as provided for under Sec. 5(c)(2), the applicant shall be required to pay a fee hereby established.

<b>Fee in Lieu of Costs - Cedarburg Stormwater Ordinance</b>	
<b>Land Use</b>	<b>Fee/Acre of Land Developed (\$/acre)</b>
Residential (1&2 Family)	\$3,923
Commercial, Industrial and Multi-Family	\$9,290

The fee shall be evaluated no less than once every two years and adjusted as necessary.

- (i) **General Considerations for On-Site Stormwater Management Measures.** The following considerations shall be observed in managing stormwater 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) Stormwater management measures used in developing the stormwater management plan should be considered according to the following order of preference. Limitations to this order of preference that may be recognized include natural site characteristics, financial feasibility, type of development, legal rights in redirecting stormwater flows, and other restrictions specified in Sec. 5(b) and The Wisconsin Stormwater Manual, Part Two: Technical Design Guidelines for Stormwater BMPs (Wisconsin Department of Natural Resources, in Preparation.).
    - a. On-site infiltration measures for rooftop, sidewalk, parking lot and driveway runoff,
    - b. On-site and off-site infiltration style conveyance measures,
    - c. Off-site wet detention measures,
    - d. On-site wet detention measures,

- e. Extended detention measures,
  - f. Off-site infiltration measures.
- (3) 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.

## **SEC. 14-2-6 PERMITTING REQUIREMENT & PROCEDURES AND FEES**

### **(a) Permit Requirements.**

- (1) No land owner or land operator may undertake a land development activity subject to this ordinance without receiving a permit from the City of Cedarburg Department of Engineering and Public Works prior to commencing the proposed activity.
- (2) The responsible party shall notify the City of Cedarburg Department of Engineering and Public Works at least ten (10) business days before commencing any work in conjunction with the storm water management plan, and within ten (10) business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the City of Cedarburg Department of Engineering and Public Works so that practice installations can be inspected during construction.
- (3) The responsible party shall notify the City of Cedarburg Department of Engineering and Public Works of any significant modifications it intends to make to an approved storm water management plan. The City of Cedarburg Department of Engineering and Public Works may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
- (4) The responsible party authorizes the City of Cedarburg Department of Engineering and Public Works to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under S.11.
- (5) If so directed by the City of Cedarburg Department of Engineering and 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 storm water management plan.
- (6) The responsible party shall permit property access to the City of Cedarburg Department of Engineering and Public Works or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.
- (7) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the City of Cedarburg Department of Engineering and 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.

The responsible party is subject to the enforcement actions and penalties detailed in S.14.2.10, if the responsible party fails to comply with the terms of this permit.

- (b) **Permit Application and Fee.** Unless specifically excluded by this ordinance, any land owner or operator desiring a permit shall submit to the City of Cedarburg Department of Engineering and Public Works a permit application made on a form provided by the City of Cedarburg Department of Engineering and Public Works for that purpose.
- (1) Unless otherwise excepted by this ordinance, a permit application must be accompanied by the following in order that the permit application be considered by the City of Cedarburg Department of Engineering and Public Works: 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 Sec. 7 of this ordinance, the maintenance agreement shall be prepared to meet the requirements of Sec. 8 of this ordinance, and fees shall be those established by the City of Cedarburg Department of Engineering and Public Works.
- (c) **Review and Approval of Permit Application.** The City of Cedarburg Department of Engineering and 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 30 business days of the receipt of a complete permit application, including all documents as required by Sec. 6(b)(1), the City of Cedarburg Department of Engineering and Public Works shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved. The City of Cedarburg Department of Engineering and Public Works shall base the decision on requirements set forth in Sec. 5, Sec. 7, and Sec. 8 of this ordinance.
  - (2) If the stormwater permit application, plan and maintenance agreement are approved, the City of Cedarburg Department of Engineering and Public Works shall issue the permit.
  - (3) If the stormwater permit application, plan or maintenance agreement are disapproved, the applicant may revise the stormwater management plan or agreement, or may appeal the decision of the City of Cedarburg Department of Engineering and Public Works as provided for in Sec. 10 of this ordinance.
  - (4) If additional information is submitted, the City of Cedarburg Department of Engineering and Public Works shall have 30 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.
- (d) **Practice Installation and Maintenance Performance Security.** The City of Cedarburg Department of Engineering and Public Works may, at its discretion, require the submittal of a performance security prior to issuance of the permit in order to insure that the stormwater practices are installed and maintained by the permit holder as required by the stormwater management plan. The amount of the installation performance security shall be determined by the City of Cedarburg Department of Engineering and Public Works, not to exceed the total estimated construction cost of the stormwater management practices approved under the permit, plus 25%. The amount of the maintenance performance security shall be determined by the City of Cedarburg Department of Engineering and Public Works, not to exceed the maintenance costs estimated in the stormwater plan for the period during which the permit

holder has maintenance responsibility. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan. Conditions for the release of performance security as follows:

- (1) The installation performance security shall be released in full only upon submission of “as built plans” and written certification by a registered professional engineer in the State of Wisconsin that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The City of Cedarburg Department of Engineering and Public Works may make provisions for a partial pro-rata release of the performance security based on the completion of various development stages.
  - (2) The maintenance performance security, minus any costs incurred by the City of Cedarburg Department of Engineering and Public Works to conduct required maintenance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City of Cedarburg Department of Engineering and Public Works.
- (e) **Permit Duration.** Permits issued under this section shall be valid from the date of issuance through the date the City of Cedarburg Department of Engineering and Public Works notifies the permit holder that all stormwater management practices have passed the final inspection required under Permit Condition.

#### **Sec. 14-2-7 ILLICIT DISCHARGE PROHIBITION AND DISCONNECTION**

- (a) This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.
- (b) **Applicability.** This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.
- (c) **Responsibility for Administration.** The authorized enforcement agency shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.
- (d) **Illicit Discharge Prohibitions**
  - (1) No person shall discharge or cause to be discharged into the municipal storm sewer system or watercourses any materials, including but not limited, to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
  - (2) Exemptions. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
    - a. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning

condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

- b. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- c. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- d. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(e) **Illicit Connection Prohibitions.** The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(f) **Suspension of MS4 Access.**

- (1) Suspension due to Illicit Discharges in Emergency Situations. The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.
- (2) Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

(g) **Monitoring of Discharges.**

- (1) The authorized enforcement agency shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
- (2) Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) Unreasonable delays in allowing the authorized enforcement agency access to a

permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

- (4) If the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.
- (h) **Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.** The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (i) **Watercourse Protection.** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.
- (j) **Notification of Spills.** Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person, shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## SEC. 14-2-8 STORMWATER MANAGEMENT PLANS

- (a) **Plan Requirements.** The stormwater management plan required under Sec. 6 of this ordinance shall contain any such information the City of Cedarburg Department of Engineering and Public Works may need to evaluate the environmental characteristics of the area affected by land development activity, the potential impacts of the proposed development upon the quality and quantity of stormwater discharges, the potential impacts upon water, resources, and drainage utilities, and the effectiveness and acceptability of proposed stormwater management measure in meeting the performance standards set forth in this ordinance. All site investigations, plans, designs, computations, and drawings shall be certified by a registered professional engineer in the State of Wisconsin to be prepared in accordance with accepted engineering practice and in accordance with criteria set forth by the City of Cedarburg Department of Engineering and Public Works.
- (b) **Exceptions.** The City of Cedarburg Department of Engineering and Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under Sec. 5(c) of this ordinance.

#### **SEC. 14-2-9 MAINTENANCE AGREEMENT**

- (a) **Maintenance Agreement Required.** The maintenance agreement required for stormwater management practices under Sec. 6(b) of this ordinance shall be an agreement between the City of Cedarburg Department of Engineering and Public Works and the permittee. The agreement shall be recorded as a property deed restriction by the permit applicant with the County Register of Deeds so that it is binding upon all subsequent owners of land served by the stormwater management practices.
- (b) **Agreement Provisions.** The maintenance agreement shall contain the following provisions:
  - (1) The landowner shall maintain stormwater management practices in accordance with the stormwater practice maintenance provisions contained in the approved stormwater management plan submitted under Sec. 6(b) of this ordinance.
  - (2) The City of Cedarburg Department of Engineering and Public Works is authorized to access the property to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the approved stormwater management plan.
  - (3) The City of Cedarburg Department of Engineering and Public Works shall maintain public records of the results of the site inspections, shall inform the landowner responsible for maintenance of the inspection results, and shall specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition and a reasonable time frame during which the corrective action must be taken.
  - (4) The City of Cedarburg Department of Engineering and Public Works is authorized to perform the corrected actions identified in the inspection report if the landowner does not make the required corrections in the specified time period. The City of Cedarburg shall assess the landowner for the cost of such work and shall place a lien on the property which may be collected as ordinary taxes by the City of Cedarburg.
- (c) **Termination of Agreement.** The maintenance agreement shall be terminated at such time that responsibility for maintenance of the stormwater management practice is legally transferred to the City of Cedarburg Department of Engineering and Public Works or agency

acceptable to the City of Cedarburg Department of Engineering and Public Works, through a written, binding agreement. The termination date of the maintenance agreement required under Sec. 8(a) shall be the date upon which the legal transfer of maintenance responsibility to the City of Cedarburg Department of Engineering and Public Works or agency is made effective.

## **SEC. 14-2-10 ENFORCEMENT AND PENALTIES**

- (a) Any land development activity initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinary provisions shall be deemed a violation unless conducted in accordance with said provisions.
- (b) The City of Cedarburg Department of Engineering and Public Works shall notify the responsible owner or operator in writing of any non-complying land development activity. 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 City of Cedarburg Department of Engineering and Public Works, the permit holder shall correct work which does not comply with the stormwater management plan or other provisions of this permit within 30 days. The permit holder shall make corrections as necessary to meet the specifications and schedule set forth by the City of Cedarburg Department of Engineering and Public Works in the notice.
- (d) The City of Cedarburg Department of Engineering and Public Works is authorized to post a stop work order on all land development activity in violation of this ordinance, or to request that the City of Cedarburg attorney obtain a cease and desist order.
- (e) The City of Cedarburg Department of Engineering and Public Works may revoke a permit issued under this ordinance for noncompliance with ordinance provisions.
- (f) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the City of Cedarburg Department of Engineering and Public Works or by a court of competent jurisdiction.
- (g) The City of Cedarburg Department of Engineering and Public Works 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 of Cedarburg attorney for the commencement of further legal proceedings.
- (h) 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 500 dollars or more than 5,000 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (i) Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by injunction pursuant to Section 62.23(8) Wis. Stats. It shall not be necessary to prosecute for forfeiture before resorting to injunction proceedings.
- (j) When the City of Cedarburg Department of Engineering and Public Works determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the Stormwater Management Plan submitted and approved pursuant to Sec. 6 of this ordinance, or has failed to comply with schedules set forth in said Stormwater management Plan, the City of Cedarburg Department of Engineering and Public Works or a party designated by the City of Cedarburg Department of Engineering and 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 City of Cedarburg Department of Engineering and 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 performance or maintenance bond posted pursuant to Sec. 8 of this ordinance. Where such a bond has not been established, or where such a bond 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. 14-2-11 APPEALS**

- (a) **Board of Appeals.** The Board of Appeals created under Sec. 2-4-4 of the City of Cedarburg zoning ordinance pursuant to Section 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 Department of Engineering and Public Works 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 which are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance 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 of Cedarburg Department of Engineering and Public Works affected by any decision of the City of Cedarburg Department of Engineering and Public Works.”

#### **SEC. 14-2-12 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.