

## CHAPTER 7

### POST CONSTRUCTION WATER MANAGEMENT

#### SEC. 6-7-1 AUTHORITY.

- (1) This ordinance is adopted by the Common Council under the authority granted by s. 62.234, for cities, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 62.234, Wis. Stats., s. 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 Common Council.
- (3) The Common Council hereby designates the Director of Public Works and/or designees to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:
  - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats. or
  - (b) Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

#### SEC. 6-7-2 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, and recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens, and other urban pollutants;
- (3) Alter wetland communities by changing wetland hydrology and 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; and/or
- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

#### SEC. 6-7-3 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 storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth; and
  - (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 ordinance regulates post-construction storm water 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 storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices, or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the 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. 6-7-4 APPLICABILITY AND JURISDICTION.**

(1) **APPLICABILITY.**

- (a) Where not otherwise limited by law, this ordinance applies to all post-construction sites, unless the site is otherwise exempt under Sec. 6-7-4(1)(b).
- (b) A post-construction site that meets any of the following criteria is exempt from the requirements of this ordinance.
  - 1. 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance.
  - 2. Non-point discharges from agricultural activity areas.
  - 3. Non-point discharges from silviculture activities.
  - 4. Mill and crush operations.
- (c) Notwithstanding the applicability requirements in Sec. 6-7-4(1) (a), this ordinance applies to post-construction sites of any size that, in the opinion of the Public Works Department, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, increases water pollution by scouring or the transportation of particulate matter, or endangers property or public safety.

(2) **JURISDICTION.** This ordinance applies to post-construction sites within the boundaries and jurisdiction of the City of Menasha.

(3) **EXCLUSIONS.** This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), 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 s. 281.33 (2), Wis. Stats.

**SEC. 6-7-5 DEFINITIONS.**

- (1) “Adequate sod or self-sustaining vegetative cover” means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
- (2) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.
- (3) “Agricultural activity area” means the part of the farm where there is planting, growing, cultivating, and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling, and similar practices. The agricultural activity area does not include the agricultural production area.
- (4) “Agricultural production area” means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.
- (5) “Atlas 14” means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (6) “Average annual rainfall” means a typical calendar year of precipitation as determined by the Wisconsin DNR for users of models such as SLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a Wisconsin DNR publication for the location closest to the City of Menasha.
- (7) “Best management practice” (BMP) means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.
- (8) “Business day” means a day the office of the Public Works Department is routinely and customarily open for business.
- (9) “Cease and desist order” means a court-issued order to halt land disturbing construction activity being conducted without the required permit.
- (10) “Combined sewer system” means a system for conveying both sanitary sewage and storm water runoff.
- (11) “Common plan of development or sale” means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.
- (12) “Connected imperviousness” means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
- (13) “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.
- (14) “Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The - TP-40, Type II, 24-hour design storms for City of Menasha are: 1-year, 2.2 inches; 2-year, 2.5 inches; 5-year, 3.3 inches; 10-year, 3.8 inches; 25-year, 4.4 inches; and 100-year, 5.3

inches. The Atlas 14, MSE4, 24-hour design storms for the City of Menasha are: 1-year, 2.19 inches; 2-year, 2.51 inches; 5-year, 3.09 inches; 10-year, 3.62 inches; 25-year, 4.42 inches; and 100-year, 5.83 inches.

- (15) “Development” means residential, commercial, industrial, institutional, or other land uses and associated roads.
- (16) “Direct conduits to groundwater” means wells, sinkholes, swallet, fractured bedrock at the surface, mine shafts, nonmetallic mines, tile inlets discharging to groundwater, quarries, or depressed groundwater recharge areas over shallow fractured bedrock.
- (17) “Division of land” means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.
- (18) “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.
- (19) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice, or gravity.
- (20) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
- (21) “Existing development” means development in existence on October 1, 2004 or development for which a storm water permit in accordance with subch. III of Ch. NR 216, Wis. Adm. Code, was received on or before October 1, 2004.
- (22) “Extraterritorial” means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
- (23) “Filtering layer” means soil that has at least a 3-foot deep layer with at least 20 percent fines, a 5-foot deep layer with at least 10 percent fines, or an engineered soil with an equivalent level of protection as determined by the Public Works Department for the site.
- (24) "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 that employ equivalent permanent stabilization measures.
- (25) “Financial guarantee” means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantee is submitted to the Public Works Department by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.
- (26) “Governing body” means city council, which is the City of Menasha Common Council.
- (27) “Highway” has the meaning given in s. 340.01 (22), Wis. Stats.
- (28) “Highway reconditioning” has the meaning given in s. 84.013 (1) (b), Wis. Stats.
- (29) “Highway reconstruction” has the meaning given in s. 84.013(1) (c), Wis. Stats.
- (30) “Highway resurfacing” has the meaning given in s. 84.013(1) (d), Wis. Stats.
- (31) “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 surfaces that are typically impervious. Gravel surfaces are considered impervious unless specifically designed to encourage infiltration.
- (32) “In-fill” means an undeveloped area of land or new development area located within an existing urban sewer service area surrounded by natural or man-made features where development cannot occur. In-fill does not include any undeveloped area that was part of a

larger new development for which a storm water permit in accordance with subch. III of ch. NR 216, Wis. Adm. Code, was required to be submitted after October 1, 2004 to the Wisconsin Department of Natural Resources or Wisconsin Department of Safety and Professional Services (formerly Department of Commerce).

- (33) “Infiltration” means the entry and movement of precipitation or runoff into or through soil.
- (34) “Infiltration system” means a device or practice such as a basin, trench, rain garden, or swale designed specifically to encourage infiltration, but that 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.
- (35) “Land disturbing construction activity” (disturbance) means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of pollutants into the municipal separate storm sewer or waters of the state. Disturbance includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
- (36) “Maintenance agreement” means a legal document that provides for long-term maintenance of storm water management and BMP.
- (37) “Maximum extent practicable” (MEP) means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. Maximum extent practicable applies when the permit applicant demonstrates to the Public Works Department’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the MEP, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.
- (38) “Minor reconstruction of a highway” means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment, does not exceed 100 feet in width of roadbed widening, and does not include replacement of a vegetated drainage system with a non-vegetated drainage system except where necessary to convey runoff under a highway, private road, or driveway.
- (39) “MSE3 or MSE4 distribution” means a specific precipitation distribution developed by the USDA, NRCS, using precipitation data from Atlas 14.
- (40) “Navigable waters” and “navigable waterway” has the meaning given in s. 30.01(4m), Wis. Stats.
- (41) “New development” means that portion of a post-construction site where impervious surfaces are being created or expanded. Any disturbance where the amount of impervious area for the post-development condition is greater than the pre-development condition is classified as new development. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
- (42) “Off-site” means located outside the property boundary described in the permit application.

- (43) “On-site” means located within the property boundary described in the permit application.
- (44) "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.
- (45) “Outstanding resource waters” means waters listed in s. NR 102.10, Wis. Adm. Code.
- (46) “Percent fines” means the percentage of a given sample of soil which passes through a # 200 sieve.
- (47) “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (48) “Permit” means a written authorization made by the Public Works Department to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (49) “Permit administration fee” means a sum of money paid to the Public Works Department by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (50) “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 are typically pervious.
- (51) “Pollutant” has the meaning given in s. 283.01(13), Wis. Stats.
- (52) “Pollution” has the meaning given in s. 281.01(14), Wis. Stats.
- (53) “Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (54) “Post-development” means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.
- (55) “Pre-development” means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming all land uses prior to development activity are managed in an environmentally sound manner.
- (56) “Preventive action limit” has the meaning given in s. NR 140.05(17), Wis. Adm. Code.
- (57) "Redevelopment” means the portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
- (58) “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 storm water BMPs.
- (59) “Routine maintenance” means the portion of a post-construction site where pre-development impervious surfaces are being maintained to preserve the original line and grade, hydraulic capacity, drainage pattern, configuration, or purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower ½ of the impervious surface’s granular base is not disturbed. The disturbance shall be classified as redevelopment if the lower ½ of the granular base associated with the pre-development impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this ordinance, a post-

construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

- (60) “Runoff” means storm water or precipitation including rain, snow or ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (61) “Sediment” means solid material, which can settle, that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.
- (62) “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 part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
  - (d) Discharges directly or indirectly to waters of the state.
- (63) “Silviculture activities” means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (64) “Site” means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
- (65) “Stop work order” means an order issued by the Public Works Department which requires all construction activity on the site be stopped.
- (66) “Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.
- (67) “Storm water management system plan” is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (68) “Targeted performance standard” means a performance standard that will apply in a specific area, where additional practices beyond those contained in this ordinance are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.
- (69) "Technical standard" means a document that specifies design, predicted performance and operation, and maintenance specifications for a material, device, or method.
- (70) “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.
- (71) “Total maximum daily load” (TMDL) means the amount of pollutants specified as a function of one or more water quality parameters that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (72) “TP-40” means the Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (73) “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, which is incorporated by reference for this ordinance.

- (74) “Transportation facility” means a public street, public road, public highway, railroad, public mass transit facility, public-use airport, public trail, or any other public work for transportation purposes, such as harbor improvements under s. 85.095(1) (b), Wis. Stats. Transportation facility does not include building sites for the construction of public buildings and buildings that are places of employment regulated by the Wisconsin Department of Natural Resources pursuant to s. 281.33, Wis. Stats.
- (75) “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,” which is incorporated by reference for this ordinance. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.
- (76) “Waters of the state” has the meaning given in s. 283.01 (20), Wis. Stats.

**SEC. 6-7-6 TECHNICAL STANDARDS.**

The following methods shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, vehicle maintenance or fueling, and swale treatment 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) Technical standards and guidance identified within the City of Menasha Storm Water Reference Guide.
- (3) 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 Public Works Department.

**SEC. 6-7-7 PERFORMANCE STANDARDS.**

- (1) **RESPONSIBLE PARTY.** The responsible party shall develop and implement a post-construction storm water management plan that incorporates the requirements of this section.
- (2) **PLAN.** A written storm water management plan shall be developed and implemented by the responsible party in accordance with Sec. 6-7-9. The storm water management plan shall meet all of the applicable requirements contained in this ordinance.
- (3) **REQUIREMENTS.** The storm water management plan shall meet the following minimum requirements to the MEP:

(a) **WATER QUALITY.** BMPs shall be designed, installed, and maintained to control pollutants carried in runoff from the post-construction site. The design shall be based on the average annual rainfall as compared to no runoff management controls.

1. For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required.

a. Except as provided in Sec. 6-7-7(3)(a)1.b., a Total Suspended Solids (TSS) and Total Phosphorus (TP) reduction is required as follows:

Watershed	Percent Reduction					
	New Development		Redevelopment		Routine Maintenance	
	TSS	TP	TSS	TP	TSS	TP



Lake Winnebago	80%	60%	40%	30%	40%	30%
Lower Fox River	80%	<u>41%</u>	72%	41%	72%	41%

- b. A pollutant reduction is not required for routine maintenance areas that are part of a post-construction site with less than 5 acres of disturbance.
2. Post-construction sites with less than 20,000 square feet of impervious surface disturbance that reduce the pollutant load using BMPs from the City of Menasha Storm Water Reference Guide are not required to satisfy a numeric performance standard.
  3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after January 5, 2009 are required to satisfy the performance standards within Sec. 6-7-7(3) (a) 1. a. and b.
  4. The amount of pollutant control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
  5. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the treatment efficiency of the practice. Any impact on the BMP efficiency shall be compensated for by increasing the size of the BMP accordingly. The pollutant load reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite pollutant load reduction, unless otherwise approved by the Public Works Department in accordance with Sec. 6-7-7(5).
  6. If the design cannot meet the water quality performance standards of Sec. 6-7-7(3)(a)1-5., the storm water management plan shall include a written, site specific explanation of why the water quality performance standard cannot be met and why the pollutant load will be reduced only to the MEP. Except as provided in Sec. 6-7-7(6), the Public Works Department may not require any person to exceed the applicable water quality performance standard to meet the requirements of MEP.
- (b) **PEAK DISCHARGE.** BMPs shall be designed, installed, and maintained to control peak discharges from the post-construction site.
1. For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required.
    - a. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the 1-year, 2-year, 10-year, 100-year, and 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.
    - b. TR-55 methodology, Atlas 14 precipitation depths, and the MSE3 or MSE4 distribution shall be used for peak discharge calculations unless the administering authority approves the TP-40 precipitation depths and Type II distribution. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55.

Unless the site is currently woodland, peak pre-development discharge rates shall be determined using the following runoff curve numbers for a “meadow” vegetative cover.

Maximum Pre-Development Runoff Curve Numbers				
Vegetative Cover	Hydrologic Soil Group			
	A	B	C	D
Meadow	30	58	71	78
Woodland	30	55	70	77

2. Post-construction sites with less than 20,000 square feet of impervious surface disturbance that reduce peak post-development discharge rates using BMPs from the City of Menasha Storm Water Reference Guide are not required to satisfy a numeric performance standard.
  3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after January 5, 2009 are required to satisfy the performance standards within Sec. 6-7-7(3) (b)1.a. and b.
  4. The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
  5. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The peak discharge reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite peak discharge reduction, unless otherwise approved by the Public Works Department in accordance with Sec. 6-7-7(5).
  6. An adequate outfall shall be provided for each point of concentrated discharge from the post-construction site. An adequate outfall consists of non-erosive discharge velocities and reasonable downstream conveyance.
  7. The peak discharge performance standards do not apply to the following:
    - a. A transportation facility where the discharge flows directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles;
    - b. Except as provided under Sec. 6-7-7(3) (b)4-6., a highway reconstruction site; or
    - c. Except as provided under Sec. 6-7-7(3) (b)4-6., a transportation facility that is part of a redevelopment project.
- (c) **INFILTRATION.** BMPs shall be designed, installed, and maintained to infiltrate runoff from the post-construction site, except as provided in Sec. 6-7-7(3)(c)8-12.
1. For post-construction sites with 1 acre or more of land disturbance, the following is required.
    - a. *Low Imperviousness.* For development below 40 percent connected imperviousness, such as parks, cemeteries, and low density residential developments, the post-construction sites will infiltrate sufficient runoff volume so that the post-development infiltration volume is at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate

infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.

- b. *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, the post-construction site will infiltrate sufficient runoff volume so that the post-development infiltration volume is at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.
- c. *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, the post-construction site will infiltrate sufficient runoff volume so that the post-development infiltration volume is at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

- 2. Pre-development condition shall assume “good hydrologic conditions” for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. The actual pre-development vegetative cover and the following pre-development runoff curve numbers shall be used.

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

- 3. Post-construction sites with less than 1 acre of land disturbance should infiltrate runoff volume using BMPs from the City of Menasha Storm Water Reference Guide are not required to satisfy a numeric performance standard.
- 4. Sites with a cumulative addition of 1 acre or more of new development after January 5, 2009 are required to satisfy the performance standards within Sec. 6-7-7(3)(c)1. and 2.
- 5. The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- 6. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The runoff volume reduction provided by the

BMP for an offsite area shall not be used to satisfy the required onsite runoff volume reduction, unless otherwise approved by the Public Works Department in accordance with Sec. 6-7-7(5).

7. *Pretreatment.* Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from 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 Sec. 6-7-7(3) (c) 14. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.
8. *Source area prohibitions.* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of Sec. 6-7-7(3)(c) unless demonstrated to meet the conditions of Sec. 6-7-7(3)(c)14.
  - a. Areas associated with a tier 1 industrial facility identified in s. NR 216.21(2) (a), Wis. Adm. Code, including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the Public Works Department.
  - b. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21(2) (b), Wis. Adm. Code.
  - c. Fueling and vehicle maintenance areas. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the Public Works Department.
9. *Source area exemptions.* Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these sources is optional.
  - a. Parking areas and access roads less than 5,000 square feet for commercial development.
  - b. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under Sec. 6-7-7(3)(c)8.
  - c. Redevelopment and routine maintenance areas, except as provided under Sec. 6-7-7(3)(c)5.
  - d. In-fill development areas less than 5 acres.
  - e. Roads in commercial, industrial, and institutional land uses and arterial residential roads.
  - f. Transportation facility highway reconstruction and new highways, except as provided under Sec. 6-7-7(3)(c)5.
10. *Prohibitions.* Infiltration practices may not be located in the following areas.
  - a. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.
  - b. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within the separation distances listed in s. NR 812.08, Wis. Adm. Code, for any private well or non-community well for runoff infiltrated from commercial, multi-family

residential, industrial, and institutional land uses or regional devices for 1- and 2-family residential development.

- c. 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.

- 11. *Separation distances.* Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with the following specifications.

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

Notwithstanding Sec. 6-7-7(3)(c)11., applicable requirements for injection wells classified under ch. NR 815, Wis. Adm. Code, shall be followed.

- 12. *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirement under the following conditions but the decision to infiltrate under these conditions is optional.
  - a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
  - b. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
- 13. *Alternate uses.* Where alternate uses of runoff are employed, such as for toilet flushing, laundry, irrigation, or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by Sec. 6-7-7(3)(c).
- 14. *Groundwater standards.*
  - a. Infiltration systems designed in accordance with this Sec. 6-7-7(3)(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. 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 MEP.

- b. Notwithstanding Sec. 6-7-7(3)(c)14.a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

- 15. Where the conditions of Sec. 6-7-7(3)(c)8-12. limit or restrict the use of infiltration practices, the performance standard of Sec. 6-7-7(3)(c) shall be met to the MEP.

(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 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 Sec. 6-7-7(3)(d), “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 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 wetlands not subject to Sec. 6-7-7(3)(d)1.e. or f., 50 feet.
  - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
  - f. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include the following types: degraded wetlands dominated by invasive species, such as reed canary grass, cultivated hydric soils, and any gravel pits or dredged or fill material disposal sites that take on the attributes of a wetland.
  - g. In Sec. 6-7-7(3)(d)1.d-f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03, Wis. Adm. Code.
  - h. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m), Wis. Adm. Code. Sec. 6-7-7(3)(d) does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been

placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

- i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
  - j. Notwithstanding Sec. 6-7-7(3)(d)1.a- i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
2. Sec. 6-7-7(3)(d) applies to all post-construction sites located within a protective area except those areas exempted pursuant to Sec. 6-7-7(3)(d)5.
  3. The following requirements shall be met:
    - a. Impervious surfaces shall be kept out of the protective area entirely or to the MEP. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.
    - b. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.
    - c. Best management practices such as filter strips, swales, or wet detention ponds, designed to control pollutants from non-point sources may be located in the protective area.
  4. A protective area established or created after January 5, 2009 shall not be eliminated or reduced, except as allowed in Sec. 6-7-7(3)(d)5.b., c., or d.
  5. *Exemptions.* The following areas are not required to meet the protective area requirements of Sec. 6-7-7(3)(d).
    - a. Redevelopment and routine maintenance areas, provided the minimum requirements within Sec. 6-7-7(3)(d)4. are satisfied.
    - b. Structures that cross or access surface waters such as boat landings, bridges, and culverts.
    - c. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.
    - d. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of Sec. 6-7-7(3)(a) and (b), except to the extent that vegetative ground cover is necessary to maintain bank stability.
- (e) **VEHICLE MAINTENANCE AND FUELING AREAS.** Vehicle maintenance and fueling areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff so that the runoff that enters waters of the state contains no visible petroleum sheen or to the MEP.

- (f) **SWALE TREATMENT FOR TRANSPORTATION FACILITIES.** This Sec. 6-7-7(3)(f) is not applicable to transportation facilities that are part of a larger common plan of development or sale.
1. *Requirement.* Except as provided in Sec. 6-7-7(3)(f)2., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of Sec. 6-7-7(3)(a), (b), and (c), if the swales are designed to do all of the following or to the MEP.
    - a. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
    - b. Swales shall comply with the Wisconsin Department of Natural Resources Technical Standard 1005, "Vegetated Infiltration Swale," except as otherwise authorized in writing by the Wisconsin Department of Natural Resources.
  2. *Other Requirements.* Notwithstanding Sec. 6-7-7(3)(f)1., the Public Works Department, consistent with water quality standards, may require other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where runoff directly enters water of the state is any of the following:
    - a. An outstanding resource water;
    - b. An exceptional resource water;
    - c. Waters listed in section 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts; or
    - d. Waters where targeted performance standards are developed pursuant to s. NR 151.004, Wis. Adm. Code.
- (g) **EXEMPTIONS.** The following areas are not required to meet the performance standards within Sec. 6-7-7(3).
1. Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.
  2. Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
  3. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.
    - a. A transportation facility post-construction site with less than 10 percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. Notwithstanding this exemption, the protective area requirements of Sec. 6-7-7(3)(d) still apply.
    - b. Reconditioning or resurfacing of a highway.
    - c. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements of Sec. 6-7-7(3)(d) apply to minor reconstruction of a highway.



- d. Routine maintenance for transportation facilities that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- e. Routine maintenance if performed for storm water conveyance system cleaning.

(4) **GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORM WATER 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 storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(5) **BMP LOCATION AND CREDIT.**

- (a) **GENERAL.** To comply with Sec. 6-7-7(3) performance standards, the BMPs may be located on-site or off-site as part of a regional storm water device, practice, or system.
- (b) **OFFSITE OR REGIONAL BMP.**
  - 1. The amount of credit that the Public Works Department may give an offsite or regional BMP for purposes of determining compliance with the performance standards of Sec. 6-7-7(3) is limited to the treatment capability or performance of the BMP.
  - 2. The Public Works Department may authorize credit for an off-site or regional BMP provided all of the following conditions are satisfied.
    - a. The BMP received all applicable permits.
    - b. The BMP shall be installed and operational before the construction site has undergone final stabilization.
    - c. The BMP shall be designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site BMPs meeting the Sec. 6-7-7(3) performance standards.
    - d. The owner of the BMP has entered into a Sec. 6-7-10 maintenance agreement with the City of Menasha, or another municipal entity, such that the BMP has a legally obligated entity responsible for its long-term operation and maintenance. Legal authority exists if a municipality owns, operates, and maintains the BMP.
    - e. The owner of the BMP has provided written authorization which indicates the permit applicant may use the BMP for Sec. 6-7-7(3) performance standard compliance.
    - f. Where an off-site or regional BMP option exists such that the Public Works Department exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Public Works Department. In determining the

fee for post-construction runoff, the Public Works Department shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the off-site or regional BMP.

(c) **BMP IN NON-NAVIGABLE WATERS.** For purposes of determining compliance with the performance standards of Sec. 6-7-7(3), the Public Works Department may give credit for BMPs that function to provide treatment for runoff from existing development and post-construction runoff from new development, redevelopment, and routine maintenance areas and are located within non-navigable waters.

(d) **BMP IN NAVIGABLE WATERS.**

1. *New Development Runoff.* Except as allowed under Sec. 6-7-7(5)(d)2., BMPs designed to treat post-construction runoff from new development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of Sec. 6-7-7(3), the Public Works Department may not give credit for such BMPs.
2. *New Development Runoff Exemption.* BMPs to treat post-construction runoff from new development areas may be located within navigable waters and may be creditable by the Public Works Department under Sec. 6-7-7(3), if all the following qualifications are met.
  - a. The BMP was constructed prior to October 1, 2002 and received all applicable permits.
  - b. The BMP functions or will function to provide runoff treatment for the new development area.
3. *Existing Development & Post-Construction Runoff from Redevelopment, Routine Maintenance, & Infill Development Areas.* Except as provided in Sec. 6-7-7(5)(d)4., BMPs designed to treat post-construction runoff for existing development and post-construction runoff from redevelopment, routine maintenance, and infill development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of Sec. 6-7-7(3), the Public Works Department may not give credit for such BMPs.
4. *Existing Development & Post-Construction Runoff from Redevelopment, Routine Maintenance, & Infill Development Areas Exemption.* BMPs that function to provide treatment of runoff from existing development and post-construction runoff from redevelopment, routine maintenance, and infill development areas may be located within navigable waters and, for purposes of determining compliance with the performance standards of Sec. 6-7-7(3), the Public Works Department may give credit for such BMPs if any of the following are met:
  - a. The BMP was constructed, contracts were signed or bids advertised, and all applicable permits were received prior to January 1, 2011; or
  - b. The BMP is on an intermittent waterway and all applicable permits are received.

(e) **WATER QUALITY TRADING.** To comply with Sec. 6-7-7(3)(a) performance standards, the Public Works Department may authorize credit for water quality trading provided all of the following conditions are satisfied.

1. The treatment practices associated with a water quality trade shall be in place, effective and operational, before credit can be authorized.

2. The water quality trade shall comply with applicable trading ratios established by the Wisconsin Department of Natural Resources or the City of Menasha.
  3. The water quality trade shall comply with applicable regulations, standards, and guidance developed by the Wisconsin Department of Natural Resources or the City of Menasha.
  4. The responsible party shall furnish a copy of executed water quality trading agreements or other related information deemed necessary by the Public Works Department in order to authorize credit.
- (6) **TARGETED PERFORMANCE STANDARDS.** The Public Works Department may establish numeric water quality requirements that are more stringent than those set forth in Sec. 6-7-7(3) in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.
- (7) **ALTERNATE REQUIREMENTS.** The Public Works Department may establish storm water management requirements more stringent than those set forth in this section if the Public Works Department determines that an added level of protection is needed to protect sensitive resources. Also, the Public Works Department may establish storm water management requirements less stringent than those set forth in this section if the Public Works Department determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

**SEC. 6-7-8 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 Public Works Department 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 Public Works Department a permit application made on a form provided by the Public Works Department for that purpose.
- (a) Unless otherwise exempted by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement, and a non-refundable permit administration fee.
  - (b) The storm water management plan shall be prepared to meet the requirements of Sec. 6-7-7 and Sec. 6-7-9; the maintenance agreement shall be prepared to meet the requirements of Sec. 6-7-10; the financial guarantee shall meet the requirements of Sec. 6-7-11; and fees shall be those established by the Common Council as set forth in Sec. 6-7-12.
- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Public Works Department shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used.
- (a) Within 20 business days of the receipt of a complete permit application, including all items as required by Sec. 6-7-8(2), the Public Works Department 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 storm water permit application, plan, and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made pursuant to Sec. 6-7-7(5), the Public Works Department shall issue the permit.
  - (c) If the storm water permit application, plan, or maintenance agreement is disapproved, the Public Works Department shall detail in writing the reasons for disapproval.
  - (d) The Public Works Department may request additional information from the applicant. If additional information is submitted, the Public Works Department shall have 20 business days from the date the additional information is received to inform the applicant the plan and maintenance agreement are either approved or disapproved.
  - (e) Failure by the Public Works Department to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (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 Public Works Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Public Works Department to suspend or revoke this permit may be appealed in accordance with Sec. 6-7-14.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
  - (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
  - (c) The responsible party shall notify the Public Works Department at least 10 business days before commencing any work in conjunction with the storm water management plan and within 10 business days upon completion of the storm water management practices. If required as a special condition under Sec. 6-7-8(5), the responsible party shall make additional notification according to a schedule set forth by the Public Works Department so 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 storm water management practices must pass a final inspection by the Public Works Department or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The Public Works Department, 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 Public Works Department of any significant modifications it intends to make to an approved storm water management plan. The Public Works Department may require the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
  - (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City of Menasha or are transferred to subsequent private owners as specified in the approved maintenance agreement.
  - (g) The responsible party authorizes the Public Works Department 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 Sec. 6-7-11.

- (h) If so directed by the Public Works Department, 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.
  - (i) The responsible party shall permit property access to the Public Works Department or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.
  - (j) Where site development or redevelopment involves changes in direction, increases in peak rate, and/or total volume of runoff from a site, the Public Works Department 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) If the responsible party fails to comply with the terms of this permit the responsible party is subject to the enforcement actions and penalties detailed in Sec. 6-7-13.
  - (l) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.
- (5) **PERMIT CONDITIONS.** Permits issued under this subsection may include conditions established by Public Works Department in addition to the requirements needed to meet the performance standards in Sec. 6-7-7 or a financial guarantee as provided for in Sec. 6-7-11.
- (6) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the Public Works Department notifies the responsible party that all storm water management practices have passed the final inspection required under Sec. 6-7-8(4)(d).
- (7) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 6-7-7(5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

#### **SEC. 6-7-9 STORM WATER MANAGEMENT PLAN.**

- (1) **PLAN REQUIREMENTS.** The storm water management plan required under Sec. 6-7-7(2) and Sec. 6-7-8(2) shall comply with the City of Menasha Storm Water Reference Guide and contain, at a minimum, the following information.
- (a) Name, address, and telephone number of the landowner and responsible parties.
  - (b) A legal description of the property proposed to be developed.
  - (c) Pre-development site map with property lines, disturbed limits, and drainage patterns.
  - (d) Post-development site map with property lines, disturbed limits, and drainage patterns, which includes:
    - 1. Total area of disturbed impervious surfaces within the site;
    - 2. Total area of new impervious surfaces within the site;
    - 3. Performance standards applicable to site;
    - 4. Proposed best management practices;

5. Groundwater, bedrock, and soil limitations; and
  6. Separation distances. Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water.
- (2) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 6-7-7(5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

**SEC. 6-7-10 MAINTENANCE AGREEMENT.**

- (1) **MAINTENANCE AGREEMENT REQUIRED.** The maintenance agreement required under Sec. 6-7-8(2) for storm water management practices shall be an agreement between the City of Menasha and the responsible party to provide for maintenance of storm water 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 it is binding upon all subsequent owners of the land served by the storm water management practices.
- (2) **AGREEMENT PROVISIONS.** The maintenance agreement shall contain the following information and provisions and be consistent with the plan required by Sec. 6-7-8(2).
- (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.
  - (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under Sec. 6-7-8(2).
  - (c) Identification of the responsible party(s), organization, or city, county, town, or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under Sec. 6-7-8(2).
  - (d) Requirement that the responsible party(s), organization, or city, county, town, or village shall maintain storm water management practices in accordance with the schedule included in Sec. 6-7-10(2)(b).
  - (e) Authorization for the Public Works Department to access the property to conduct inspections of storm water management practices as necessary to ascertain if the practices are being maintained and operated in accordance with the agreement.
  - (f) A requirement on the Public Works Department to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.
  - (g) Agreement that the party designated under Sec. 6-7-10(2)(c), is responsible for long term maintenance of the storm water management practices and shall be notified by the Public Works Department of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Public Works Department.
  - (h) Authorization of the Public Works Department to perform the corrected actions identified in the inspection report if the responsible party designated under Sec. 6-7-10(2)(c) does not make the required corrections in the specified time period. The Public Works Department 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.

- (3) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe alternative requirements for applicants seeking an exemption from on-site storm water management performance standards under Sec. 6-7-7(5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

**SEC. 6-7-11 FINANCIAL GUARANTEE.**

- (1) **ESTABLISHMENT OF THE GUARANTEE.** The Public Works Department may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Public Works Department. The financial guarantee shall be in an amount determined by the Public Works Department to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period in which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Public Works Department the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Public Works Department 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 Public Works Department shall release the portion of the financial guarantee established under this section, less any costs incurred by the Public Works Department to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Public Works Department may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages; and
- (b) The Public Works Department shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the Public Works Department, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.
- (3) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 6-7-7(5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

**SEC. 6-7-12 FEE SCHEDULE.**

The fees referred to in other sections of this ordinance shall be established by the Common Council of the City of Menasha and may be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in the Public Works Department.

**SEC. 6-7-13 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 Public Works Department 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 Public Works Department under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Public Works Department 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 Public Works Department may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Public Works Department plus interest and legal costs shall be billed to the responsible party.
- (5) The Public Works Department 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 Public Works Department 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 Public Works Department or by a court with jurisdiction.
- (8) The Public Works Department 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 the penalties listed in Sec. 1-1-7. Each day 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 injunction proceedings.
- (11) When the Public Works Department determines the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the Public Works Department or a party designated by the Public Works Department 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 Public Works Department 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 Sec. 6-7-11 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.

#### **SEC. 6-7-14 APPEALS.**

- (1) **BOARD OF PUBLIC WORKS.** The Board of Public Works, created pursuant to Sec. 2-2-5 of the City of Menasha ordinances pursuant to s. 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 Public Works Department 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 Board of Public Works may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Menasha affected by any decision of the Public Works Department. Such appeal shall be filed within 10 days of the alleged grievance.

**SEC. 6-7-15 SEVERABILITY.**

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