

## Chapter 325

### EROSION CONTROL AND STORMWATER MANAGEMENT

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ARTICLE I  
General Provisions

**§ 325-1. Findings of fact.**

The City Council finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the City of Fond du Lac.

The City Council finds that uncontrolled post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

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

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### § 325-2. Purpose and intent.

- A. Construction site erosion control purpose. It is the purpose of this chapter to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Fond du Lac.
- B. Post-construction stormwater management purpose. The general purpose of this chapter is to establish long-term post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
- (1) Further the maintenance of safe and healthful conditions.
  - (2) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
  - (3) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
  - (4) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.
- C. Post-construction stormwater management intent. It is the intent of the City Council that this chapter regulates post-construction stormwater discharges to waters of the state. This chapter may be applied on a site-by-site basis. The City Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this chapter is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under § 281.16, Wis. Stats., for regional stormwater management measures and have been approved by the City Council, it is the intent of this chapter that the approved plan be used to identify post-construction management measures acceptable for the community.
- D. Illicit discharge and connection purpose. The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Fond du Lac through the regulation of non-stormwater discharges to the MS4 to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the

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WPDES permit process. The objectives of this chapter are as follows:

- (1) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (2) To prohibit illicit connections and discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

E. Monitor and approve Drainage Plans submitted under Section 325-4.1., Drainage Plans.

**§ 325-3. Definitions.** As used in this chapter, the following terms will have the meanings indicated:

**ADEQUATE SOD, OR SELF-SUSTAINING VEGETATIVE COVER** — Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

**ADMINISTERING AUTHORITY** — The City of Fond du Lac City Manager, Director of Public Works, or City Engineer.

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

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

**ATLAS 14** — The National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

**AVERAGE ANNUAL RAINFALL** — A calendar year of precipitation, excluding snow, which is considered typical. For purposes of this chapter, average annual rainfall means measured precipitation in Green Bay, Wisconsin, between March 29 and November 25, 1969.

**BEST MANAGEMENT PRACTICE(s) or (BMP(s))** — Structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

**BUSINESS DAY** — A day the office of the City Engineer is routinely and customarily open for business.

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**CEASE AND DESIST ORDER** — A court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City Engineer.

**CITY ENGINEER** — The City of Fond du Lac City Engineer or his authorized deputy(s) or employees.

**COMBINED SEWER SYSTEM** — A system for conveying both sanitary sewage and stormwater runoff.

**COMMON PLAN OF DEVELOPMENT OR SALE** — A development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

**CONNECTED IMPERVIOUSNESS** — 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.

**CONTAMINATED STORMWATER** — Stormwater that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or industrial machinery in the source areas listed in Ch. NR 216, Wis. Adm. Code.

**CONSTRUCTION SITE** — An area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development.

**DESIGN STORM** — A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The Atlas 14, NRCS MSE4 distribution, twenty-four-hour design storms for the City of Fond du Lac are: one-year, 2.23 inches; two-year, 2.55 inches; five-year, 3.13 inches; ten-year, 3.69 inches; twenty-five-year, 4.57 inches; fifty-year, 5.33 inches; and one-hundred-year, 6.16 inches.

**DEVELOPMENT** — Residential, commercial, industrial, institutional, or other land uses and associated roads.

**DIRECT CONDUITS TO GROUNDWATER** — Wells, sinkholes, swallets, fractured bedrock at the surface, sand or gravel surficial deposits, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

**DISCHARGE** — The release of stormwater or adding, introducing, releasing, leaking, spilling, casting, throwing, or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state.

**DISCHARGE OF POLLUTANT(S)** — Any addition of any pollutant to the waters of this state from any source.

**DIVISION OF LAND** — The creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a five-year period.

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**DRAINAGE PLAN** — The drainage plan shall also show existing and proposed grades of the lot on which the building is to be constructed and any adjoining property in sufficient detail to indicate surface water drainage before and after the completion of grading. The drainage plan shall also show existing trees, drainage patterns and significant land features and buildings, and typical proposed drainage swale details as may be required.

**EFFECTIVE INFILTRATION AREA** — The area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

**EROSION** — The process by which the land's surface is worn away by the action of wind, water, ice or gravity.

**EROSION AND SEDIMENT CONTROL PLAN** — A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

**EXTRATERRITORIAL** — The unincorporated area within three miles of the corporate limits of a first, second, or third class city or within 1.5 miles of a fourth class city or village.

**EXCEPTIONAL RESOURCE WATERS** — Waters listed in § NR 102.11, Wis. Adm. Code.

**EXISTING DEVELOPMENT** — Development in existence on October 1, 2004 or development for which a stormwater permit in accordance with Subchapter III of Ch. NR 216, Wis. Adm. Code, was received on or before October 1, 2004.

**EXTRATERRITORIAL** — The unincorporated area within three miles of the corporate limits of a first, second, or third class city or within 1.5 miles of a fourth class city or village.

**FEE IN LIEU** — A payment of money to the City of Fond du Lac in place of meeting all or part of the stormwater management performance standards required by this chapter.

**FILTERING LAYER** — Soil that has at least a three-foot deep layer with at least twenty percent fines; or at least a five-foot deep layer with at least ten percent fines; or an engineered soil with an equivalent level of protection as determined by the City Engineer.

**FINAL STABILIZATION** — All land disturbing construction activities at the construction site have been completed and 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.

**FINANCIAL GUARANTEE** — A performance bond, maintenance bond, surety bond, irrevocable letter of credit, cash escrow or similar guarantees submitted to the City Engineer by the responsible party to assure that requirements of this chapter are carried out in compliance with the stormwater management plan.

**GOVERNING BODY or COUNCIL** — The City Council of the City of Fond du Lac, Wisconsin.

**GROUNDWATER** — Any of the waters of the state occurring in a saturated subsurface

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geological formation of rock or soil.

**HAZARDOUS MATERIALS** — Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**HIGH GROUNDWATER LEVEL or SUBSURFACE SATURATION** — The higher of either the elevation to which the soil is saturated as observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.

**HIGHWAY** — Has the meaning given in § 340.01(22), Wis. Stats.

**HIGHWAY RECONDITIONING** — Has the meaning given in § 84.013(1)(b), Wis. Stats.

**HIGHWAY RECONSTRUCTION** — Has the meaning given in § 84.013(1)(c), Wis. Stats.

**HIGHWAY RESURFACING** — Has the meaning given in § 84.013(1)(d), Wis. Stats.

**ILLICIT CONNECTIONS** — Either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4, including but not limited to any conveyances that allow any non-stormwater discharge, including sewage, process wastewater, and wash water, to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Fond du Lac or State of Wisconsin; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the City of Fond du Lac or State of Wisconsin.

**ILLICIT DISCHARGE** — Any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater, except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, firefighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air-conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

**IMPERVIOUS SURFACE** — An area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

**INDUSTRIAL ACTIVITY** — Activities subject to WPDES industrial permits per Ch. NR 216, Wis. Adm. Code, and Ch. 283, Wis. Stats.

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**INFILL** — An undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur. Infill does not include any undeveloped area that was part of a larger new development for which a stormwater permit was required under this chapter or by Subchapter III of Ch. NR 216, Wis. Adm. Code.

**INFILTRATION** — The entry of precipitation or runoff into or through the soil.

**INFILTRATION SYSTEM** — A device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices such as swales or road side channels designed for conveyance and pollutant removal only.

**LAND DISTURBING CONSTRUCTION ACTIVITY or DISTURBANCE** — 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. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.

**MAINTENANCE AGREEMENT** — A legal document that provides for long-term maintenance of stormwater management and best management practices.

**MEP or MAXIMUM EXTENT PRACTICABLE** — The highest level of performance that is achievable but is not equivalent to a performance standard identified within this chapter. Maximum extent practicable applies when the permit applicant demonstrates to the City Engineer's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

**MINOR RECONSTRUCTION OF A HIGHWAY** — Reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening, and that does not include replacement of a vegetated drainage system with a non-vegetated drainage system except where necessary to convey runoff under a highway or private road or driveway.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM or MS4** — A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

- A. Is owned or operated by a municipality.
- B. Is designed or used for collecting or conveying stormwater.
- C. Is not part of a combined sewer system.
- D. Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.



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**MUNICIPALITY** — Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, stormwater or other wastes.

**NAVIGABLE WATERS and NAVIGABLE WATERWAY** — Has the meaning given in § 30.01(4m), Wis. Stats.

**NEW DEVELOPMENT** — 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 predevelopment condition is classified as new development. For purposes of this chapter, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

**NON-STORMWATER DISCHARGE** — Any discharge to the MS4 that is not composed entirely of stormwater.

**NRCS MSE4 DISTRIBUTION** — A specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.

**OFF SITE** — Located outside the property boundary described in the permit application.

**ON SITE** — Located within the property boundary described in the permit application.

**ORDINARY HIGH-WATER MARK** — Has the meaning given in § NR 115.03(6), Wis. Adm. Code.

**OUTFALL** — The point at which stormwater is discharged to waters of the state, to a storm sewer, or off site.

**OUTSTANDING RESOURCE WATERS** — Waters listed in § NR 102.10, Wis. Adm. Code.

**OWNER** — Any person holding fee title, an easement or other interest in property. May also include a person allowed to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.

**PERCENT FINES** — The percentage of a given sample of soil which passes through a No. 200 sieve.

**PERFORMANCE STANDARD** — A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

**PERMIT** — A written authorization made by the City Engineer to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

**PERMIT ADMINISTRATION FEE** — A sum of money paid to the City Engineer by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering

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the permit.

**PERSON** — An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

**PERVIOUS SURFACE** — An area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

**POLLUTANT** — Any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

**POLLUTION** — Any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

**POLLUTION PREVENTION** — Taking measures to eliminate or reduce pollution.

**POST-CONSTRUCTION SITE** — A construction site following the completion of land disturbing construction activity and final site stabilization.

**POST-DEVELOPMENT** — The extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.

**PREDEVELOPMENT** — The extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

**PREMISES** — Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

**PREVENTIVE ACTION LIMIT** — Has the meaning given in § NR 140.05(17), Wis. Adm. Code.

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

**RESPONSIBLE PARTY** — The owner or any other entity performing services to meet the requirements of this chapter through a contract or other agreement.

**ROUTINE MAINTENANCE** — That portion of a post-construction site where predevelopment 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 1/2 of the impervious surface's granular base is not disturbed.

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The disturbance shall be classified as redevelopment if the lower 1/2 of the granular base associated with the predevelopment impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this chapter, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

**RUNOFF** — Stormwater or precipitation, including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

**SEDIMENT** — Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

**SEPARATE STORM SEWER** — A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

- 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.

**SILVICULTURE ACTIVITY** — Activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

**SITE** — The entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application or on which land disturbing construction activity occurred.

**STATE** — The State of Wisconsin.

**STOP-WORK ORDER** — An order issued by the City Engineer which requires that all construction activity on the site be stopped.

**STORMWATER** — Runoff from precipitation, including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

**STORMWATER MANAGEMENT PLAN** — A comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.

**STORMWATER MANAGEMENT SYSTEM PLAN** — A comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

**STORMWATER POLLUTION PREVENTION PLAN or SWPPP** — A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving

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waters to the maximum extent practicable.

**TARGETED PERFORMANCE STANDARD** — A performance standard that will apply in a specific area, where additional practices beyond those contained in this chapter, are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.

**TECHNICAL STANDARD** — A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

**TOTAL MAXIMUM DAILY LOAD or TMDL** — 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.

**TOP OF THE CHANNEL** — 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.

**TP-40** — Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.

**TR-55** — 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 chapter.

**TRANSPORTATION FACILITY** — A highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under § 85.095(1)(b), Wis. Stats. “Transportation facility” does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the DNR pursuant to § 281.33, Wis. Stats.

**TYPE II DISTRIBUTION** — A rainfall type curve as established in the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Technical Paper 149, published in 1973.

**WASTEWATER** — Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

**WATERCOURSE** — A natural or artificial channel through which water flows. These channels include all perennial streams (blue lines) and intermittent streams (dashed blue lines) on the United States Geological Survey (USGS) quadrangle maps, all streams and canals shown on the Natural Resources Conservation Service (NRCS) soil survey maps, all channels identified on the site, and new channels that are created as part of a development. The term "watercourse" includes waters of the state.

**WATERS OF THE STATE** — Those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater,

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natural or artificial, public or private, within Wisconsin or its jurisdiction.

WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM (WPDES)  
STORMWATER DISCHARGE PERMIT — A Wisconsin Pollutant Discharge Elimination  
System permit issued pursuant to Ch. 283, Wis. Stats.

### § 325-4. Abbreviations.

The following abbreviations shall have the designated meanings:

BMP	Best management practice
CFR	Code of Federal Regulations
DNR	Wisconsin Department of Natural Resources
MEP	Maximum extent practicable
MS4	Municipal separate storm sewer system
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
NR	Wisconsin Department of Natural Resources Administrative Code
RUSLE2	Revised Universal Soil Loss Equation 2
SPS	Wisconsin Department of Safety and Professional Services Administrative Code
SWPPP	Stormwater pollution prevention plan
TMDL	Total maximum daily load
TP	Total phosphorus
TSS	Total suspended solids
USLE	Universal Soil Loss Equation
WPDES	Wisconsin Pollutant Discharge Elimination System

#### §325-4.1. Drainage plans.

- A. A City Engineer approved drainage plan and application shall be required for construction of any building with an area of 650 square feet or greater and for any grading or landscaping that will change the elevations of a lot, except for the addition to fill to lot depressions to maintain elevations within interior of a lot. A drainage plan submitted by the builder for the first-time construction of a single-family or two-family home may be prepared by a person other than a licensed professional, provided that the plan includes stamped certification of existing conditions at the time of plan preparation by a registered engineer, land surveyor or architect as described in Chs. A-E 1 to 13, Wis. Adm. Code, and required by the Department of Safety and Professional Services. No deviation from any drainage plan shall be permitted unless approved, in writing, by the City Engineer. No building permit shall be issued if the erection of the building and the proposed grades shall unreasonably obstruct the natural flow of water from the surface of adjoining property or obstruct the flow of any existing ravine, ditch, drain or stormwater sewer draining neighboring property, unless suitable provision is made for such flow by means of an adequate ditch, swale or pipe. If the City Engineer determines that surface water from adjoining property presently draining across the area to be developed will be diverted, the ditch, swale or pipe shall necessarily be a joint lot-line facility and no property which has in the past been draining across vacant lands shall be held exempt from the development of a joint drainage facility. Any such drainage facility shall be shown on the plans and shall be constructed so as to provide continuous drainage at all times.

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- B. The following minimum slopes shall apply:
- (1) Grass areas: 1.0% (12.00 inches per 100 feet).
  - (2) Asphalt areas: 0.5% (6.00 inches per 100 feet).
  - (3) Concrete curb/gutter: 0.4% (4.75 inches per 100 feet).

### § 325-5. Fee schedule.

- A. The fees referred to in other sections of this chapter shall be established by resolution of the City Council and may from time to time be modified by resolution. A schedule of the fees established by the City Council shall be available for review in the offices of the City Engineer and the City Clerk.
- B. Review Fee Required. A review fee is required with the submittal of a residential lot drainage plan and shall be paid in an amount set by resolution of the City Council.
- C. Drainage Deposit Required. A deposit is required for compliance with residential lot drainage plans and protection of public right-of-way infrastructure (including, but not limited to, sidewalk, driveway aprons, curb/gutter, terrace landscaping, street pavement; and sanitary, water, storm facilities). The deposit shall be returned to the builder or property owner upon the final approved inspection of the lot drainage and public right-of-way infrastructure. If during final inspection, the City Engineer directs corrective work, and said corrective work is not completed, part or all of the deposit may be forfeited to the City of Fond du Lac for use in completing the corrective work. The amount of the deposit shall be set by resolution of the City Council.

### § 325-6. Appeals.

- A. Appeals. The Director of Public Works:
- (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Engineer in administering this chapter, except for cease and desist orders obtained under § 325-16C or § 325-27E;
  - (2) Upon appeal, may authorize variances from the provisions of this article which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship; and
  - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- B. Who may appeal. Appeals to the Director of Public Works may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Fond du Lac affected by any decision of the City Engineer.
- C. Appeal of notice of violation. Any person receiving an illicit discharge notice of violation

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may appeal the determination of the Department of Public Works. The notice of appeal must be received by or filed with the Department of Public Works within three days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 30 days from the date of receipt of the notice of appeal.

**§ 325-7. Reserved.**

**§ 325-8. Reserved.**

## ARTICLE II Construction Site Erosion Control

**§ 325-9. Authority.**

- A. This article is adopted under the authority granted by § 62.234, Wis. Stats. This article supersedes all provisions of an ordinance previously enacted under § 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in § 62.234, Wis. Stats., § 62.23, Wis. Stats., applies to this article and to any amendments to this article.
- B. The provisions of this article are deemed not to limit any other lawful regulatory powers of the same governing body.
- C. The City Council hereby designates the City Engineer to administer and enforce the provisions of this article.
- D. The requirements of this article do not preempt more stringent erosion and sediment control requirements that may be imposed by any of the following:
  - (1) DNR administrative rules, permits or approvals including those authorized under §§ 281.16 and 283.33, Wis. Stats.
  - (2) Targeted nonagricultural performance standards promulgated in rules by the DNR under § NR 151.004, Wis. Adm. Code.

**§ 325-10. Applicability and jurisdiction.**

- A. Applicability.
  - (1) Where not otherwise limited by law, this article applies to all construction sites, unless the site is otherwise exempt under Subsection A(2) or A(3):
    - (a) A permit is required for a construction site with 4,000 square feet or greater of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this article for a permitted site, including the § 325-12B performance standards, § 325-13 permit requirements, and § 325-14 plan requirements.
    - (b) A permit is not required for a construction site with less than 4,000 square

## Construction Site Erosion Control

feet of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this article for a non-permitted site, including the § 325-12A performance standards.

- (c) Notwithstanding the applicability requirements in Subsection A(1)(a) and A(1)(b), a permit is required for a construction site with less than 4,000 square feet of land disturbing construction activity if the City Engineer determines that permit coverage is needed in order to improve compliance with this article, meet targeted performance standards, or protect waters of the state. If a permit is required, the responsible party shall comply with all applicable provisions of this article for a permitted site, including the § 325-12B performance standards, § 325-13 permit requirements, and § 325-14 plan requirements.

(2) This article does not apply to the following:

- (a) Land disturbing construction activity that includes the construction of one- and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under § SPS 321.125, Wis. Adm. Code.
- (b) Nonpoint discharges from agricultural activity areas.
- (c) Nonpoint discharges from silviculture activities.

(3) A construction site exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity, shall comply with § 325-12A performance standards if less than one acre of land disturbing construction activity. The § 325-12B performance standards, § 325-13 permit requirements, and § 325-14 plan requirements are not applicable.

B. Jurisdiction. This article applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Fond du Lac.

C. Exclusions. This article is not applicable to activities conducted by a state agency, as defined under § 227.01(1), Wis. Stats.

### § 325-11. Technical standards.

A. Design criteria, standards and specifications. All BMPs required to comply with this article shall meet the design criteria, standards and specifications based on any of the following:

- (1) Design guidance and technical standards identified or developed by the DNR under Subchapter V of Ch. NR 151, Wis. Adm. Code.
- (2) Technical standards and other guidance identified within the City of Fond du Lac



## Construction Site Erosion Control

Stormwater Reference Guide.

- (3) Soil loss prediction tools, such as the Universal Soil Loss Equation (USLE) or the Revised Universal Soil Loss Equation 2 (RUSLE2), that estimate the sediment load leaving the site under varying land and management conditions may be used to show compliance with the sediment performance standards in § 325-12B.
  - (4) For this article, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a NRCS MSE4 distribution, with consideration given to the geographic location of the site and the period of disturbance.
- B. Other standards. Other technical standards not identified in Subsection A may be used, provided that the methods have been approved by the City Engineer.

### § 325-12. Performance standards.

A. Non-permitted sites.

- (1) Responsible party. The responsible party shall comply with this section.
- (2) Erosion and sediment control practices. BMPs shall be used at each site where land disturbing construction activity is to occur to prevent or reduce all of the following:
  - (a) The deposition of soil from being tracked onto streets by vehicles.
  - (b) The discharge of sediment from disturbed areas into storm water inlets.
  - (c) The discharge of sediment from disturbed areas into adjacent waters of the state.
  - (d) The discharge of sediment from drainage ways that flow off the site.
  - (e) The discharge of sediment by dewatering activities.
  - (f) The discharge of sediment eroding from soil stockpiles existing for more than seven days.
  - (g) The transport by runoff into waters of the state or off site separate storm sewers of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this article.
- (3) Location. The BMPs shall be located so that treatment occurs before runoff enters waters of the state and off site separate storm sewers. However, projects that require BMP placement in waters of the state or separate storm sewers are not prohibited by this article.

## Construction Site Erosion Control

- (4) Implementation. The BMPs used to comply with this section shall be implemented as follows:
  - (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
  - (b) Erosion and sediment control practices shall be maintained until final stabilization.
  - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (5) Alternative requirements. The City Engineer may establish erosion and sediment control requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed to protect resources.

### B. Permitted sites.

- (1) Responsible party. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with § 325-14.
- (2) Erosion and sediment control plan. A written site-specific erosion and sediment control plan shall be developed and implemented by the responsible party in accordance with § 325-14. The erosion and sediment control plan shall meet all of the applicable requirements contained in this article.
- (3) Erosion and other pollutant control requirements. The erosion and sediment control plan shall meet all of the following:
  - (a) Erosion and sediment control practices. The plan shall use BMPs to prevent or reduce all of the following:
    - [1] The deposition of soil from being tracked onto streets by vehicles.
    - [2] The discharge of sediment from disturbed areas into storm water inlets.
    - [3] The discharge of sediment from disturbed areas into adjacent waters of the state.

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- [4] The discharge of sediment from drainage ways that flow off the site.
  - [5] The discharge of sediment by dewatering activities.
  - [6] The discharge of sediment eroding from soil stockpiles existing for more than seven days.
  - [7] The discharge of sediment from erosive flows at outlets and in downstream channels.
  - [8] The transport by runoff into waters of the state or off site separate storm sewers of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this article.
  - [9] The transport by runoff into waters of the state or off site separate storm sewers of untreated wash water from vehicle and wheel washing.
- (b) Sediment performance standards. For sites with one acre or more of land disturbing construction activity, in addition to the BMPs identified in Subsection B(3)(a), the following BMPs shall be employed:
- [1] BMP's that, by design, discharge no more than five tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
  - [2] Except as provided in Subsection B(6), the City Engineer may not require any person to employ more BMPs than are needed to meet the five tons per acre per year sediment performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the sediment performance standard. The City Engineer may give credit toward meeting the sediment performance standard for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
  - [3] Notwithstanding Subsection B(3)(b)[1] and [2], if BMPs cannot be designed and implemented to meet the five tons per acre per year sediment performance standard, the plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.
- (c) Preventive measures. The plan shall incorporate all of the following preventative measures:

## Construction Site Erosion Control

- [1] Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
  - [2] Minimization of soil compaction and preservation of topsoil.
  - [3] Minimization of land disturbing construction activity on slopes of 20% or more.
  - [4] Development of spill prevention and response procedures.
- (4) Location. The BMPs shall be located so that treatment occurs before runoff enters waters of the state and off site separate storm sewers. However, projects that require BMP placement in waters of the state or separate storm sewers are not prohibited by this article.
- (5) Implementation. The BMPs used to comply with this article shall be implemented as follows:
- (a) In accordance with the plan developed pursuant to § 325-14, the erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
  - (b) Erosion and sediment control practices shall be maintained until final stabilization.
  - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (6) Targeted performance standards. The City Engineer may establish numeric water quality requirements that are more stringent than those set forth in Subsection B(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 City Engineer may establish erosion and sediment control requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed to protect resources. Also, the City Engineer may establish erosion and sediment control requirements less stringent than those set forth in this section if the City Engineer determines that less protection is needed to protect resources. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by the DNR under NR 151 Wisconsin Administrative Code.

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### § 325-13. Permitting requirements, procedures and fees.

- A. Permit required. When a permit is required, no responsible party may commence a land disturbing construction activity subject to this article without receiving prior approval of an erosion and sediment control plan for the site and a permit from the City Engineer.
- B. Permit application and fees. When a permit is required, the responsible party desiring to undertake a land disturbing construction activity subject to this article shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of § 325-14 and shall pay an application fee to the City Engineer. By submitting an application, the applicant is authorizing the City Engineer to enter the site to obtain information required for the review of the erosion and sediment control plan.
- C. Review and approval of permit application. The City Engineer shall review any permit application that is submitted with an erosion and sediment control plan and the required fee. The following approval procedure shall be used:
  - (1) Within 20 business days of the receipt of a complete permit application, as required by Subsection B, the City Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this article.
  - (2) If the permit application and plan are approved, the City Engineer shall issue the permit.
  - (3) If the permit application or plan is disapproved, the City Engineer shall state, in writing, the reasons for disapproval.
  - (4) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have 20 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
  - (5) Failure by the City Engineer to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- D. Financial guarantee. As a condition of approval and issuance of the permit, the City Engineer may require the applicant to deposit a surety bond, cash escrow, or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- E. Permit requirements. All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The City Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City Engineer to suspend or revoke this permit may be appealed in accordance with § 325-6.

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- (1) Notify the City Engineer after the completion of any BMPs and prior to commencing any land disturbing construction activity.
  - (2) Obtain permission, in writing, from the City Engineer prior to any modification pursuant to § 325-14B of the erosion and sediment control plan.
  - (3) Install all BMPs as identified in the approved erosion and sediment control plan.
  - (4) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
  - (5) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in weekly inspection reports.
  - (6) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inch or greater; repair or replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or notification that repair or replacement is needed; and maintain, at the construction site, weekly written reports of all inspections. Weekly inspection reports shall include all of the following: date, time and location of the construction site inspection; the name of individual who performed the inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site.
  - (7) The City Engineer may require that construction site inspections, including any repairs needed and any actions taken at the site to comply with the performance standards for the site, be documented on the City of Fond du Lac construction site inspection website. The responsible party will be given access to this website, which contains documentations and forms for use in the construction site inspections. Digital photographs of each BMP and the site conditions ~~will shall~~ be submitted.
  - (8) Allow the City Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan and keep a copy of the erosion and sediment control plan, stormwater management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.
  - (9) Post the certificate of permit coverage in a conspicuous location at the construction site.
- F. Permit conditions. Permits issued under this section may include conditions established by the City Engineer in addition to the requirements set forth in Subsection E, where needed to assure compliance with the performance standards in § 325-12.
- G. Permit duration. Permits issued under this section shall be valid for a period of 180 days,

## Construction Site Erosion Control

or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The City Engineer may extend the period one or more times for up to an additional 180 days. The City Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this article.

- H. Maintenance. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this article until the site has undergone final stabilization.
- I. Alternate requirements. The City Engineer may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than one acre of disturbance.

### § 325-14. Erosion and sediment control plan.

- A. Plan requirements. The erosion and sediment control plan required under § 325-12B shall comply with the City of Fond du Lac Stormwater Reference Guide and contain, at a minimum, the following information:
  - (1) Name, address, and telephone number of the owner and responsible parties.
  - (2) A legal description of the property proposed to be developed.
  - (3) A site map with property lines, disturbed limits, and drainage patterns.
  - (4) Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.
  - (5) Performance standards applicable to site.
  - (6) Proposed best management practices.
  - (7) Erosion and sediment control plan narrative.
  - (8) Construction sequence and construction schedule.
- B. Amendments. The applicant shall amend the plan if any of the following occur:
  - (1) There is a change in design, construction, operation, maintenance, or schedule at the site which has the reasonable potential for the discharge of pollutants to waters of the state or separate storm sewers, and which has not otherwise been addressed in the plan.
  - (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
  - (3) The City Engineer notifies the applicant of changes needed in the plan.
- C. Alternate requirements. The City Engineer may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than one acre of disturbance.

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### § 325-15. Inspection.

Whenever land disturbing construction activities are being carried out the City Engineer may enter the land pursuant to the provisions of § 66.0119(1), (2) and (3), Wis. Stats.

### § 325-16. Enforcement; violations and penalties.

- A. The City Engineer may post a stop-work order if any of the following occurs:
- (1) Any land disturbing construction activity is being undertaken without a permit and, pursuant to § 325-10A of this article, a permit is required for the construction site.
  - (2) The erosion and sediment control plan is not being implemented in a good faith manner.
  - (3) The conditions of the permit are not being met.
  - (4) Any land disturbing construction activity is in violation of the article.
- B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the City Engineer may revoke the permit.
- C. If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the City Engineer, or if a responsible party violates a stop-work order posted under Subsection A, the City Engineer may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- D. The City Engineer or the Board of Appeals may retract the stop-work order issued under Subsection A or the permit revocation under Subsection B.
- E. After posting a stop-work order under Subsection A, the City Engineer may issue a notice of intent to the responsible party of his intent to perform work necessary to comply with this article. The City Engineer may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this article by the City Engineer, plus interest at the rate authorized by City Engineer, shall be billed to the responsible party or recovered from the surety bond, cash escrow, or irrevocable letter of credit. In the event a responsible party fails to pay the amount due, the City Clerk shall enter the amount due on the tax rolls and collect it as a special assessment against the property pursuant to Subchapter VII of Ch. 66, Wis. Stats.
- F. Any person violating any of the provisions of this article shall be subject to a penalty as provided in § 1-4 of this Code and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- G. Compliance with the provisions of this article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.



# Construction Site Erosion Control

§ 325-17. Reserved.

§ 325-18. Reserved.

## ARTICLE III Post-Construction Stormwater Management

§ 325-19. Authority.

- A. This article is adopted by the City Council under the authority granted by § 62.234, Wis. Stats. This article supersedes all provisions of an ordinance previously enacted under § 62.23, Wis. Stats., that relate to stormwater management regulations. Except as otherwise specified in § 62.234, Wis. Stats., § 62.23, Wis. Stats., applies to this article and to any amendments to this article.
- B. The provisions of this article are deemed not to limit any other lawful regulatory powers of the same governing body.
- C. The City Council hereby designates the City Engineer to administer and enforce the provisions of this article.
- D. The requirements of this article do not preempt more stringent stormwater management requirements that may be imposed by any of the following:
  - (1) DNR administrative rules, permits or approvals, including those authorized under §§ 281.16 and 283.33, Wis. Stats.
  - (2) Targeted nonagricultural performance standards promulgated in rules by the DNR under § NR 151.004, Wis. Adm. Code.

§ 325-20. Applicability and jurisdiction.

- A. Applicability.
  - (1) Where not otherwise limited by law, this article applies to all post-construction sites, unless the site is otherwise exempt under Subsection A(2).
  - (2) A post-construction site that meets any of the criteria in this subsection is exempt from the requirements of this article:
    - (a) One- and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance.
    - (b) Nonpoint discharges from agricultural activity areas.
    - (c) Nonpoint discharges from silviculture activities.
  - (3) Notwithstanding the applicability requirements in Subsection A(1), this article

## Post-Construction Stormwater Management

applies to post-construction sites of any size that, as determined by the City Engineer, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

- B. Jurisdiction. This article applies to post-construction sites within the boundaries and jurisdiction of the City of Fond du Lac.
- C. Exclusions. This article is not applicable to activities conducted by a state agency, as defined under § 227.01(1), Wis. Stats.

### § 325-21. Technical standards.

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

- A. Technical standards identified, developed or disseminated by the DNR under Subchapter V of Ch. NR 151, Wis. Adm. Code.
- B. Technical standards and guidance identified within the City of Fond du Lac Stormwater Reference Guide.
- C. Where technical standards have not been identified or developed by the DNR, other technical standards may be used, provided that the methods have been approved by the City Engineer.
- D. In this article, the following year and location have been selected as average annual rainfall(s): Green Bay 1969 (March 29 to November 25).

### § 325-22. Performance standards.

- A. Responsible party. The responsible party shall develop and implement a post-construction stormwater management plan that incorporates the requirements of this section.
- B. Plan. A written stormwater management plan shall be developed and implemented by the responsible party in accordance with § 325-24. The stormwater management plan shall meet all of the applicable requirements contained in this article.
- C. Requirements. The stormwater management plan shall meet the following minimum requirements to the maximum extent practicable:
  - (1) 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.
    - (a) For post-construction sites with 20,000 square feet or more of impervious

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surface disturbance, post-construction sites with one acre or more of land disturbance and sites located within a watershed subject to a TMDL or targeted performance standard, the following is required:

[1] Except as provided in Subsection C(1)(a)[2], a pollutant reduction is required as follows:

Watershed	Total Suspended Solids (TSS) & Total Phosphorus (TP) Reduction					
	New Development		Redevelopment		Routine Maintenance	
	TSS	TP	TSS	TP	TSS	TP
All	80	0	40	0	40	0

[2] A pollutant reduction is not required for routine maintenance areas that are part of a post-construction site with less than five acres of disturbance.

- (b) For post-construction sites with less than one acre of disturbance, less than 20,000 square feet of impervious surface disturbance, and that are not located within a watershed subject to a TMDL or a targeted performance standard, reduce the pollutant load using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (c) Sites, including common plan of development sites, with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 10, 2008 are required to satisfy the performance standards within Subsection C(1)(a)[1] and [2].
- (d) The amount of total suspended solids control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- (e) When designing BMPs, runoff draining to the BMP from off site 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 off site area shall not be used to satisfy the required on site pollutant load reduction, unless otherwise approved by the City Engineer in accordance with Subsection E.
- (f) If the design cannot meet the water quality standards of Subsection C(1)(a) to (e), the stormwater 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 maximum extent practicable. Except as provided in Subsection F, the City Engineer may not require any person to exceed the applicable water quality performance standard to meet the requirements of maximum extent practicable.
- (g) Exemptions. The water quality performance standards do not apply to the

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following:

- [1] The water quality performance standard for a highway reconstruction project first applies January 1, 2017.
  - [2] Agricultural production areas.
- (2) Peak discharge. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site, including agricultural production areas, as follows:
- (a) For post-construction sites with 20,000 square feet or more of impervious surface disturbance or post-construction sites with one acre or more of land disturbance, the following is required:

- [1] The peak post-development discharge rate shall not exceed the peak predevelopment discharge rate for the one-, two-, five-, ten-, and one-hundred-year, twenty-four-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.
- [2] Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the NRCS MSE4 precipitation distribution. On a case-by-case basis, the City Engineer may allow the use of TP-40 precipitation depths and the Type II distribution. The meanings of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Unless the site is currently woodland, peak predevelopment discharge rates shall be determined using runoff curve numbers for a "meadow" vegetative cover. The following runoff curve numbers shall be used:

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

- (b) For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (c) Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 10, 2008 are required to satisfy the performance standards within Subsection C(2)(a)[1] and [2].

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- (d) The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- (e) When designing BMPs, runoff draining to the BMP from off site 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 off site area shall not be used to satisfy the required on site peak discharge reduction, unless otherwise approved by the City Engineer in accordance with Subsection E.
- (f) An adequate outfall shall be provided for each point of concentrated discharge and shall:
  - [1] Consist of non-erosive discharge velocities and reasonable downstream conveyance.
  - [2] Discharge to the municipal separate storm sewer system, waters of the state, or appropriate drainage easement. Sites which are not able to meet this requirement shall diffuse the concentrated discharge within the site boundary using BMPs from the City of Fond du Lac Stormwater Reference Guide or other practices approved by the City Engineer.
  - [3] Contain a means to keep floatable debris within all BMPs.
- (g) All new development sites shall have a minimum of one foot of vertical separation between the lowest floor surface and the high groundwater level and/or bedrock. Sites which are not able to meet this separation distance shall quantify the anticipated amount of groundwater that will be discharged to the surface or the separate storm sewer. System-wide management of the proposed groundwater discharge shall be required. All BMPs shall be approved by the City Engineer and indicated on the drainage plan.
- (h) A post-construction site that is within an area indicated in the City of Fond du Lac Stormwater Reference Guide as having a depth to carbonate bedrock of 50 feet or less is required to perform a field verification as outlined in DNR Technical Standard 1002. The stormwater plan shall assess the risk of BMP failure caused by high groundwater levels and shallow bedrock. Remediation or mitigation strategies shall be presented as part of the stormwater plan and approved by the City Engineer.
- (i) Direct conduits to groundwater shall be identified. An analysis of practical measures to avoid direct discharge to direct conduits to groundwater shall be provided for sites located within the watershed of a direct conduit to groundwater. Eliminate or minimize direct conduits to groundwater using BMPs from the City of Fond du Lac Stormwater Reference Guide.
- (j) Sites within watersheds known by the City Engineer to experience

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significant flooding or with separate storm sewer or drainage way capacity restrictions identified in the City of Fond du Lac Stormwater Reference Guide shall meet the peak discharge requirements established in the City of Fond du Lac Stormwater Reference Guide for the site.

- (k) Exemptions. The peak discharge performance standards of this Subsection C(2) do not apply to the following:
  - [1] A transportation facility where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.
  - [2] Except as provided under Subsection C(2)(d) to (f), a highway reconstruction site.
  - [3] Except as provided under Subsection C(2)(d) to (f), a transportation facility that is part of a redevelopment project.
- (3) Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff from the post-construction site, except as provided in Subsection C(3)(i) through (m):
  - (a) For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with one acre or more of land disturbance, the following is required:
    - [1] Low Imperviousness. For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.
    - [2] Moderate imperviousness. For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.
    - [3] High imperviousness. For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient

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runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

- (b) Predevelopment condition shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the City Engineer. The meanings of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. The actual predevelopment vegetative cover and the following predevelopment runoff curve numbers shall be used:

Maximum Predevelopment 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

- (c) For post-construction sites with less than 20,000 square feet of new impervious surfaces, infiltrate runoff volume using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (d) Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 10, 2008 are required to satisfy the performance standards within Subsection C(3)(a) and (b).
- (e) The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- (f) Agricultural production areas are encouraged to infiltrate runoff volume using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (g) When designing BMPs, runoff draining to the BMP from off site 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 off site area shall not be used to satisfy the required on site runoff volume reduction, unless otherwise approved by the City Engineer in accordance with Subsection E.
- (h) Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect

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groundwater quality in accordance with Subsection C(3)(o). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

- (i) Source area prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of Subsection C(3) unless demonstrated to meet the conditions of Subsection C(3)(o).
  - [1] Areas associated with a tier 1 industrial facility identified in § NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the City Engineer.
  - [2] Storage and loading areas of a tier 2 industrial facility identified in § NR 216.21(2)(b), Wis. Adm. Code.
  - [3] Fueling and vehicle maintenance areas. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the City Engineer.
  - [4] Untreated runoff from agricultural production areas that contain livestock, animal waste, or feed storage.
- (j) 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:
  - [1] Parking areas and access roads less than 5,000 square feet for commercial development.
  - [2] Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under Subsection C(3)(i).
  - [3] Except as provided under Subsection C(3)(e), redevelopment and routine maintenance areas.
  - [4] Infill development areas less than 5 acres.
  - [5] Roads in commercial, industrial and institutional land uses, and arterial residential roads.
  - [6] Except as provided under Subsection C(3)(e), transportation facility highway reconstruction and new highways.
- (k) Prohibitions. Infiltration practices may not be located in the following areas:
  - [1] Areas within 1,000 feet upgradient or within 100 feet



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downgradient of direct conduits to groundwater.

- [2] Areas within 400 feet of a community water system well as specified in § NR 811.16(4), Wis. Adm. Code, or within the separation distances listed in § NR 812.08, Wis. Adm. Code, for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.
- [3] Areas where contaminants of concern, as defined in § NR 720.03(2), Wis. Adm. Code, are present in the soil through which infiltration will occur.

(l) Separation distances.

- [1] Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with the following:

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

- [2] Notwithstanding Subsection C(3)(l), applicable requirements for injection wells classified under Ch. NR 815, Wis. Adm. Code, shall be followed.

(m) 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:

- [1] Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.

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- [2] Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
- (n) 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 this Subsection C(3).
- (o) Groundwater standards.
- [1] Infiltration systems designed in accordance with this Subsection C(3) 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.
- [2] Notwithstanding Subsection C(3)(o)[1], the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
- (p) Where the conditions of Subsection C(3)(i) through (m) limit or restrict the use of infiltration practices, the performance standard of Subsection C(3) shall be met to the maximum extent practicable.
- (4) Protective areas.
- (a) "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this subsection, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.
- [1] For outstanding resource waters and exceptional resource waters, 75 feet.
- [2] For perennial and intermittent streams identified on a United States Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

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- [3] For lakes, 50 feet.
  - [4] For wetlands not subject to Subsection C(4)(a)[5] or [6], 50 feet.
  - [5] 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.
  - [6] For less susceptible wetlands, 10% of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetlands dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.
  - [7] In Subsection C(4)(a)[4] to [6] determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in § NR 103.03, Wis. Adm. Code.
  - [8] Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with § NR 103.08(1m), Wis. Adm. Code. Subsection C(4) 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.
  - [9] For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
  - [10] Notwithstanding Subsection C(4)(a)[1] to [9], the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- (b) This Subsection C(4) applies to all post-construction sites located within a protective area, except those areas exempted pursuant to Subsection C(4)(e).
  - (c) The following requirements shall be met:
    - [1] Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-

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specific explanation.

- [2] 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.
  - [3] Best management practices, such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from nonpoint sources may be located in the protective area.
- (d) A protective area established or created after September 10, 2008 shall not be eliminated or reduced, except as allowed in Subsection C(4)(e)[2], [3] or [4].
  - (e) Exemptions. The following areas are not required to meet the protective area requirements of Subsection C(4):
    - [1] Redevelopment and routine maintenance areas provided the minimum requirements in Subsection C(4)(d) are satisfied.
    - [2] Structures that cross or access surface waters such as boat landings, bridges and culverts.
    - [3] Structures constructed in accordance with § 59.692(1v), Wis. Stats.
    - [4] 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 Subsection C(1) and (2), except to the extent that vegetative ground cover is necessary to maintain bank stability.
  - (5) Fueling and vehicle maintenance areas. Fueling and vehicle maintenance areas shall have BMPs designed, installed and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.
  - (6) Swale treatment for transportation facilities. This subsection is not applicable to transportation facilities that are part of a larger common plan of development or sale.
    - (a) Requirement. Except as provided in Subsection C(6)(b), transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of Subsections C(1), C(2) and C(3), if the

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swales are designed to do all of the following or to the maximum extent practicable:

- [1] 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.
- [2] Swales shall comply with the DNR Technical Standard 1005, "Vegetated Infiltration Swale."

### (b) Other Requirements

[1] Notwithstanding Subsection C(6)(a), the City Engineer may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate of vehicles greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

- [a] An outstanding resource water.
- [b] An exceptional resource water.
- [c] Waters listed in Section 303(d) of the federal Clean Water Act that are identified as impaired, in whole or in part, due to nonpoint source impacts.
- [d] Waters where targeted performance standards are developed pursuant to § NR 151.004, Wis. Adm. Code.

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

### (7) Exemptions. The following areas are not required to meet the performance standards within this Subsection C:

- (a) 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.
- (b) The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale:
  - [1] 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

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surfaces is less than one acre. Notwithstanding this exemption, the protective area requirements of Subsection C(4) still apply.

- [2] Reconditioning or resurfacing of a highway.
- [3] Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements of Subsection C(4) apply to minor reconstruction of a highway.
- [4] Routine maintenance for transportation facilities that have less than five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- [5] Routine maintenance if performed for stormwater conveyance system cleaning.

D. General considerations for on-site and off-site stormwater management measures. The following considerations shall be observed in managing runoff:

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

E. BMP Location and credit.

- (1) General. To comply with Subsection C performance standards, the BMPs may be located on site or off site as part of a regional stormwater device, practice or system and shall be installed and operational before the construction site has undergone final stabilization.
- (2) Off site or regional BMP.
  - (a) The amount of credit that the City Engineer may give an off site or regional BMP for purposes of determining compliance with the performance standards of Subsection C is limited to the treatment capability or performance of the BMP.
  - (b) The City Engineer may authorize credit for an off site or regional BMP provided all of the following conditions are satisfied:
    - [1] The City Engineer determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Fond du Lac and that contains stormwater management requirements consistent with the purpose and intent

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of this article.

- [2] The BMP received all applicable permits.
  - [3] 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 Subsection C performance standards.
  - [4] The owner of the BMP has entered into a § 325-25 maintenance agreement with the City of Fond du Lac, 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.
  - [5] The BMP has passed a final inspection in accordance with § 325-23 D(4). The City Engineer may waive this requirement for BMPs for which construction has not been completed at the time of permit application.
  - [6] The owner of the BMP has provided written authorization which indicates the permit applicant may use the BMP for Subsection C performance standard compliance.
  - [7] Where an off site or regional BMP option exists such that the City Engineer 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 City Engineer. In determining the fee for post-construction runoff, the City Engineer may consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the off site or regional BMP.
- (3) BMPs in non-navigable waters. For purposes of determining compliance with the performance standards of Subsection C, the City Engineer 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 that are located within non-navigable waters.
  - (4) BMPs in navigable waters.
    - (a) New Development Runoff. Except as allowed under Subsection E(4)(b), 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 Subsection C, the City Engineer may not give credit for such BMPs.
    - (b) 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 City Engineer under Subsection C, if

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all the following are met:

- [1] The BMP was constructed prior to October 1, 2002 and received all applicable permits.
  - [2] The BMP functions or will function to provide runoff treatment for the new development area.
- (c) Existing Development and Post-Construction Runoff from Redevelopment, Routine Maintenance, and Infill Development Areas. Except as provided in Subsection E(4)(d), 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 Subsection C, the City Engineer may not give credit for such BMPs.
- (d) Existing Development and Post-Construction Runoff from Redevelopment, Routine Maintenance, and 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 Subsection C, the City Engineer may give credit for such BMPs, if any of the following are met:
- [1] The BMP was constructed, contracts were signed or bids advertised and all applicable permits were received prior to January 1, 2011.
  - [2] The BMP is on an intermittent waterway and all applicable permits are received.
- (5) Fee in lieu of on site stormwater management practices. Where the City Engineer exempts the applicant from all or part of the minimum on site stormwater management requirements of this article, the applicant shall be required to pay a fee in an amount determined in negotiation with the City Engineer. No exemption shall allow a site to meet requirements less stringent than those requirements promulgated in rules by the DNR under Ch. NR 151, Wis. Adm. Code.
- (6) Water quality trading. To comply with Subsection C(1) performance standards, the City Engineer may authorize credit for water quality trading provided all of the following conditions are satisfied:
- (a) The treatment practices associated with a water quality trade shall be in place, effective and operational before credit can be authorized.
  - (b) The water quality trade shall comply with applicable trading ratios established by the DNR or the City of Fond du Lac.



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- (c) The water quality trade shall comply with applicable regulations, standards, and guidance developed by the DNR or the City of Fond du Lac.
  - (d) The responsible party shall furnish a copy of executed water quality trading agreements or other related information deemed necessary by the City Engineer in order to authorize credit.
- F. Targeted performance standards. The City Engineer may establish numeric water quality requirements that are more stringent than those set forth in Subsection C 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.
- G. Alternate requirements. The City Engineer may establish stormwater management requirements more stringent than those set forth in this section if the City Engineer determines that the requirements are needed to control stormwater quantity or flooding, comply with total maximum daily load requirements, or control pollutants associated with existing development or redevelopment. Also, the City Engineer may establish stormwater management requirements less stringent than those set forth in this section if the City Engineer determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by the DNR under Ch. NR 151, Wis. Adm. Code.

### § 325-23. Permitting requirements, procedures and fees.

- A. Permit required. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the City Engineer prior to commencing the proposed activity.
- B. Permit application and fees. Unless specifically excluded by this article, any responsible party desiring a permit shall submit to the City Engineer a permit application made on a form provided by the City Engineer for that purpose.
  - (1) Unless otherwise excepted by this article, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a nonrefundable permit administration fee.
  - (2) The stormwater management plan shall be prepared to meet the requirements of §§ 325-22 and 325-24, the maintenance agreement shall be prepared to meet the requirements of § 325-25, the financial guarantee shall meet the requirements of § 325-26, and fees shall be those established by the City Council as set forth in § 325-5.
- C. Review and approval of permit application. The City Engineer 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:

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- (1) Within 20 business days of the receipt of a complete permit application, including all items as required by Subsection B, the City Engineer shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this article.
  - (2) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made pursuant to § 325-22E(2)(b)[7] or § 325-22E(5), the City Engineer shall issue the permit.
  - (3) If the stormwater permit application, stormwater management plan or maintenance agreement is disapproved, the City Engineer will detail in writing the reasons for disapproval.
  - (4) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have an additional 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
- D. Permit requirements. All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The City Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City Engineer to suspend or revoke this permit may be appealed in accordance with § 325-6.
- (1) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
  - (2) The responsible party shall design and install all structural and nonstructural stormwater management measures in accordance with the approved stormwater management plan and this permit.
  - (3) The responsible party shall notify the City Engineer at least 10 business days before commencing any work in conjunction with the stormwater management plan, and within 10 business days upon completion of the stormwater management practices. If required as a special condition under Subsection E, the responsible party shall make additional notification according to a schedule set forth by the City Engineer so that practice installations can be inspected during construction.
  - (4) Practice installations required as part of this article shall be certified as built by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the City Engineer to determine if they are in accordance with the approved stormwater management plan and this article. The City Engineer 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.

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- (5) The responsible party shall notify the City Engineer of any significant modifications it intends to make to an approved stormwater management plan. The City Engineer may require that the proposed modifications be submitted to him for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
  - (6) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City of Fond du Lac or are transferred to subsequent private owners as specified in the approved maintenance agreement.
  - (7) The responsible party authorizes the City Engineer to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan and consents to a special assessment or charge against the property as authorized under Subchapter VII of Ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under § 325-26.
  - (8) If so directed by the City Engineer, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
  - (9) The responsible party shall permit property access to the City Engineer for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
  - (10) Where site development or redevelopment involves changes in direction or increases in peak rate and/or total volume of runoff from a site, the City Engineer may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
  - (11) The responsible party is subject to the enforcement actions and penalties detailed in § 325-27, if the responsible party fails to comply with the terms of this permit.
  - (12) The permit applicant shall post the certificate of permit coverage in a conspicuous location at the construction site.
  - (13) The responsible party for any sites which are required to install and maintain a BMP or have a maintenance agreement shall submit an annual report to the City Engineer reviewing the condition of the BMP and any maintenance performed during the reporting period in accordance with the requirements established in the City of Fond du Lac Stormwater Reference Guide.
- E. Permit conditions. Permits issued under this section may include conditions established by the City Engineer in addition to the requirements needed to meet the performance standards in § 325-22 or a financial guarantee as provided for in § 325-26.

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- F. Permit duration. Permits issued under this section shall be valid from the date of issuance through the date the City Engineer notifies the responsible party that all stormwater management practices have passed the final inspection required under Subsection D(4).
- G. Alternate requirements. The City Engineer may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under § 325-22E or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

### § 325-24. Stormwater management plan.

- A. Plan requirements. The stormwater management plan required under § 325-22B and § 325-23B shall comply with the City of Fond du Lac Stormwater Reference Guide and contain at a minimum the following information:
  - (1) Name, address, and telephone number of the owner and responsible parties.
  - (2) A legal description of the property proposed to be developed.
  - (3) Predevelopment site map with property lines, disturbed limits, and drainage patterns.
  - (4) Post-development site map with property lines, disturbed limits, and drainage patterns.
    - (a) Total area of disturbed impervious surfaces within the site.
    - (b) Total area of new impervious surfaces within the site.
    - (c) Performance standards applicable to site.
    - (d) Proposed best management practices.
    - (e) Groundwater, bedrock, and soil limitations.
    - (f) Separation distances. Stormwater management practices shall be adequately separated from wells to prevent contamination of drinking water.
  - (5) A maintenance plan developed for the life of each stormwater management practice including required maintenance activities and maintenance activity schedule.
- B. Alternate requirements. The City Engineer may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under § 325-22E or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

### § 325-25. Maintenance agreement.

## Post-Construction Stormwater Management

- A. Maintenance agreement required. The maintenance agreement required under § 325-23B for stormwater management practices shall be an agreement between the City of Fond du Lac and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.
- B. Agreement provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required in § 325-24A(5):
- (1) Identification of the stormwater facilities.
  - (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under § 325-23B.
  - (3) Identification of the responsible party, organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under § 325-23B.
  - (4) Requirement that the responsible party, organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in Subsection B(2).
  - (5) Authorization for the City Engineer to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
  - (6) A requirement on the City Engineer to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
  - (7) Agreement that the party designated under Subsection B(3) as responsible for long-term maintenance of the stormwater management practices shall be notified by the City Engineer of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the City Engineer.
  - (8) Authorization of the City Engineer to perform the corrected actions identified in the inspection report if the responsible party designated under Subsection B(3) does not make the required corrections in the specified time period. The City Clerk will enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subchapter VII of Ch. 66, Wis. Stats.
- C. Alternate requirements. The City Engineer may prescribe alternative requirements for

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applicants seeking an exemption to on-site stormwater management performance standards under § 325-22E or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

### § 325-26. Financial guarantee.

- A. Establishment of the guarantee. The City Engineer may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City Engineer. The financial guarantee shall be in an amount determined by the City Engineer to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the City Engineer the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the City Engineer that the requirements of this article have not been met.
- B. Conditions for release. Conditions for the release of the financial guarantee are as follows:
  - (1) The City Engineer will release the portion of the financial guarantee established under this section, less any costs incurred by the City Engineer to complete installation of practices, upon submission of as-built plans by a licensed professional engineer. The City Engineer may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
  - (2) The City Engineer will release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the City Engineer, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.
- C. Alternate requirements. The City Engineer may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under § 325-22E or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

### § 325-27. Enforcement; violations and penalties.

- A. Any land disturbing construction activity or post-construction runoff initiated after the effective date of this article by any person, firm, association, or corporation subject to the provisions of this article shall be deemed a violation unless conducted in accordance with the requirements of this article.
- B. The City Engineer will notify the responsible party by certified mail of any noncomplying 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.

## Post-Construction Stormwater Management

- C. Upon receipt of written notification from the City Engineer under Subsection B, the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the City Engineer in the notice.
- D. If the violations to a permit issued pursuant to this article are likely to result in damage to properties, public facilities, or waters of the state, the City Engineer may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City Engineer plus interest and legal costs shall be billed to the responsible party.
- E. The City Engineer is authorized to post a stop-work order on all land disturbing construction activity that is in violation of this article, or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- F. The City Engineer may revoke a permit issued under this article for noncompliance with provisions of this article.
- G. Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the City Engineer or by a court with jurisdiction.
- H. The City Engineer is authorized to refer any violation of this article, or of a stop-work order or cease and desist order issued pursuant to this article, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- I. Any person, firm, association, or corporation who does not comply with the provisions of this article shall be subject to a penalty as provided in § 1-4 of this Code and the costs of prosecution for each violation. Each day that the violation exists shall constitute a separate offense.
- J. Compliance with the provisions of this article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- K. When the City Engineer determines that the holder of a permit issued pursuant to this article has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the City Engineer or a party designated by the City Engineer 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 stormwater management plan. The City Engineer will keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial guarantee posted pursuant to § 325-26 of this article. Where such a financial guarantee has not been established, or where such a financial guarantee is insufficient to cover these costs, the costs and expenses shall be entered by the City Clerk on the tax roll as a special charge against the property and collected with any other taxes levied thereon.

**§ 325-28. Reserved.**

**§ 325-29. Reserved.**

# Illicit Discharge and Connection

## ARTICLE III Illicit Discharge and Connection

### § 325-30. Applicability.

This article shall apply to all water entering the MS4 generated on any lands unless explicitly exempted by the Director of Public Works.

### § 325-31. Responsibility for administration.

The City of Fond du Lac Department of Public Works and/or its agents shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the Department of Public Works may be delegated by the Director of the Department of Public Works to persons or entities acting in the beneficial interest of or in the employ of the agency.

### § 325-32. Compatibility with other regulations.

This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

### § 325-33. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

### § 325-34. Discharge and connection prohibitions.

- A. Prohibition of illicit discharges. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater.
- B. Allowed discharges:
  - (1) Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air-conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.
  - (2) Discharges or flow from firefighting, and other discharges specified, in writing, by the Department of Public Works as being necessary to protect public health and safety.



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- (3) Discharges associated with dye testing,
- (4) Any non-stormwater discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DNR. Any person subject to such a WPDES stormwater discharge permit shall comply with all provisions of such permit.

### C. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (2) 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.
- (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (4) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the Department of Public Works.
- (5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Public Works requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Public Works.

### § 325-35. 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.

### § 325-36. Compliance monitoring.

- A. Right of entry; inspecting and sampling. The Department of Public Works shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article.

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- (1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Department of Public Works.
  - (2) Facility operators shall allow the Department of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
  - (3) The Department of Public Works shall have the right to set up on any facility such devices as are necessary in the opinion of the Department of Public Works to conduct monitoring and/or sampling of the facility's stormwater discharge.
  - (4) The Department of Public Works has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
  - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Department of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.
  - (6) Unreasonable delay in allowing the Department of Public Works access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the Department of Public Works reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.
- B. Special inspection warrant. If the Department of Public Works has been refused access to any part of the premises from which stormwater is discharged, and it is able to demonstrate probable cause to believe that there may be a violation of this article, 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 article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Department of Public Works may seek issuance of a special inspection warrant per § 66.0119, Wis. Stats.

### **§ 325-37. Use of best management practices required.**

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the state shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises that is, or may be, the source of an illicit discharge may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the

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provisions of this section. These BMPs shall be part of a stormwater management plan and/or stormwater pollution prevention plan (SWPPP) as necessary for compliance.

### **§ 325-38. 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 illicit discharges or pollutants discharging into stormwater, the MS4, or waters of the state, 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 nonhazardous materials, said person shall notify the Department of Public Works in person or by phone, e-mail 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 Department of Public Works within five 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. Failure to provide notification of a release as provided above is a violation of this article.

### **§ 325-39. Enforcement; violations and penalties.**

- A. Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article may be subject to the enforcement actions outlined in this section or the violation may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the Department of Public Works is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The Department of Public Works is authorized to seek costs of the abatement as outlined in § 325-41.
- B. Warning notice. When the Department of Public Works finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the Department of Public Works may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in the subsection shall limit the authority of the Department of Public Works to take action, including emergency action or any other enforcement action, without first issuing a warning notice.
- C. Notice of violation. Whenever the Department of Public Works finds that a person has violated a provision or failed to meet a requirement of this article, the Department of Public Works may order compliance by written notice of violation to the responsible person.

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- (1) The notice of violation shall contain:
  - (a) The name and address of the alleged violator;
  - (b) The address when available or a description of the building, structure or land upon which the violation is occurring or has occurred;
  - (c) A statement specifying the nature of the violation;
  - (d) A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (f) A statement that the determination of violation may be appealed to the Department of Public Works by filing a written notice of appeal within three days of service of notice of violation; and
  - (g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.
- (2) Such notice may require without limitation:
  - (a) The performance of monitoring, analyses, and reporting;
  - (b) The elimination of illicit connections or discharges;
  - (c) That violating discharges, practices, or operations shall cease and desist;
  - (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
  - (e) Payment of a fine to cover administrative and remediation costs; and
  - (f) The implementation of BMPs.

### D. Suspension of MS4 access.

- (1) Emergency cease and desist orders.
  - (a) When the Department of Public Works finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health

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or welfare of persons or to the environment, the Department of Public Works may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

[1] Immediately comply with all requirements of this chapter; and

[2] Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(b) Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Department of Public Works may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Department of Public Works may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Department of Public Works that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Department of Public Works within five days of receipt of the notice of violation.

(2) Suspension due to illicit discharges in emergency situations. The Department of Public Works 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 state. If the violator fails to comply with a suspension order issued in an emergency, the Department of Public Works may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state or to minimize danger to persons.

(3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of its MS4 access. The violator may petition the Department of Public Works for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the Department of Public Works.

E. Prosecution and penalties. Any person that has violated or continues to violate this article shall be liable to prosecution to the fullest extent of the law. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or

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otherwise fails to cure the violations described therein within the set time period specified by the Department of Public Works, after the Department of Public Works has taken one or more of the actions described above, the City of Fond du Lac may impose a penalty as provided in § 1-4 of this Code (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

### **§ 325-40. Enforcement measures after appeal.**

If an illicit discharge violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, the Director of Public Works upheld the decision of the Department of Public Works, then representatives of the Department of Public Works are authorized to enter upon the subject private property and authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

### **§ 325-41. Cost of abatement of violation.**

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the Director of Public Works, the charges shall become a special charge against the property and shall constitute a lien on the property.

### **§ 325-42. Violations deemed a public nuisance.**

Any condition in violation of any of the provisions of this article and declared and deemed a nuisance may be summarily abated or restored at the violator's expense.

### **§ 325-43. Remedies not exclusive.**

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Department of Public Works to seek cumulative remedies. The Department of Public Works may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

### **§ 325-44. Reserved.**

### **§ 325-45. Reserved.**