

SHEBOYGAN COUNTY ORDINANCE NO. 11 (2016/17)

Re: **Repealing and Re-creating Chapter 75, Erosion Control and Stormwater Management Ordinance**

WHEREAS, the Wisconsin legislature, by the enactment of 2015 Wisconsin Act 55, 2015 Wisconsin Act 176, and 2015 Wisconsin Act 291, has made changes to the Wisconsin shoreland zoning laws which require Sheboygan County to make changes to its Erosion Control and Stormwater Management Ordinance, and

WHEREAS, consistent with these requirements, Sheboygan County has made proposed modifications to its Erosion Control and Stormwater Management Ordinance as set forth hereafter, and

WHEREAS, Sheboygan County has held a public hearing on November 8, 2016, in which the proposed changes were presented to the public

NOW, THEREFORE, the County Board of Supervisors of the County of Sheboygan does ordain as follows:

Section 1. **Repealing and Re-creating Chapter 75.** Chapter 75 of the Sheboygan County Code of Ordinances is hereby repealed and re-created as follows:

CHAPTER 75
EROSION CONTROL AND STORMWATER MANAGEMENT

75.01 AUTHORITY.

- (1) This Ordinance is adopted under the authority granted by Wis. Stat. § 59.693. This Chapter supersedes all conflicting and contradictory regulations previously enacted by Sheboygan County or enacted under Wis. Stat. § 59.69 or Wis. Stat. ch. 236 that relates to construction site erosion control and stormwater management regulations.
- (2) The provisions of this Ordinance are deemed not to limit any other lawful regulatory powers of the County Board.
- (3) The County Board hereby designates the Sheboygan County Planning & Conservation Department (Department) as the County Department to administer and enforce the provisions of this Ordinance.
- (4) The requirements of this Ordinance do not preempt more stringent erosion, sediment control, and stormwater management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals including those authorized under Wis. Stat. §§ 281.16 and 283.33.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Admin. Code § NR 151.004.

75.02 FINDINGS OF FACT. The County Board finds that runoff from land disturbing construction activity and post-construction runoff carries a significant amount of

sediment and other pollutants to the waters of the State in Sheboygan County. The County Board also finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety, and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

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

75.03 DEFINITIONS.

- (1) **Active construction period** means the period beginning on the day of land-disturbing construction activity and ending on the day of final stabilization.
- (2) **Administering authority** means the Sheboygan County Planning & Conservation Department empowered under Wis. Stat. § 59.693 and designated by the County Board to administer this Chapter.
- (3) **Agricultural facilities and practices** has the meaning in Wis. Stat. § 281.16(1).
- (4) **Applicant** means the person or entity that submits an erosion control or stormwater permit application with the Department.
- (5) **Average annual rainfall** means a calendar year of precipitation data, excluding snow, which is considered typical of rainfall conditions in the County. The following years and locations shall be as specified in the Sheboygan County Erosion Control and Stormwater Manual.
- (6) **Best management practice** (or **BMP**) means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the State.

- (7) **Cease and desist order** means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Department.
- (8) **Combined sewer system** means a system for conveying both sanitary sewage and stormwater runoff.
- (9) **Complete application** means an application that contains all the elements outlined in this Chapter and any additional information that Department has requested to properly evaluate the application.
- (10) **Concentrated flow channel** means a non-navigable waterway that has a drainage area greater than one hundred thirty (130) acres.
- (11) **Connected imperviousness** means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path, such as a storm sewer or concrete channel. Impervious surfaces connected to a storm sewer or water of the state by less than fifty (50) feet of swale or other conveyance constructed on pervious soil shall be included in connected imperviousness calculations.
- (12) **Construction limits** means the area within the site outside which construction equipment is strictly prohibited.
- (13) **Construction site** means an area upon which one or more land-disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land-disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a twenty-year transportation improvement plan, it not a common plan of development.
- (14) **Department** means the Planning & Conservation Director and his or her appointed designee charged with administering the provisions of this Ordinance.
- (15) **Design storm** means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall described in the Sheboygan County Erosion Control and Stormwater Manual.
- (16) **Development** means residential, commercial, industrial, or institutional land uses and associated roads.
- (17) **Double-ring infiltrometer test** means a test performed in accordance with ASTM standard 5093.
- (18) **Effective infiltration area** means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms, or pretreatment.
- (19) **Enforcement standard** has the meaning given in Wis. Admin. Code § NR 140.05(7).

- (20) **Erosion** means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (21) **Erosion control plan** means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (22) **Exceptional resource waters** means waters listed in Wis. Admin. Code Ch. NR 102.11.
- (23) **Final stabilization** means that all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least seventy percent (70%) of the cover, for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (24) **Financial guarantee** means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Department by the responsible party to assure that requirements of the Chapter are carried out in compliance with the stormwater management plan.
- (25) **Governing body** means the Sheboygan County Board of Supervisors.
- (26) **Highly-susceptible wetland** means a regulatory wetland that has at least one of the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes, and seasonally flooded basins.
- (27) **Illicit discharge** means any direct or indirect discharge of pollutants other than stormwater into the storm drain system except as allowed under Section 75.28 (allowed discharges).
- (28) **Illicit connection** means either of the following:
- (a) Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the municipal separate storm sewer system (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 an authorized enforcement agency; 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 an authorized enforcement agency.
- (29) **Impervious surface** means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots, and streets are examples

of areas that typically are impervious. A compacted gravel surface shall be considered impervious.

- (30) **Industrial activity** means activities subject to Wisconsin Pollutant Discharge Elimination System (WPDES) Industrial Permits pursuant to Wis. Admin. Code Ch. NR 216 and Wis. Stat. ch. 283.
- (31) **Infiltration** means the entry of precipitation or runoff into or through the soil.
- (32) **Infiltration systems** means a device or practice such as a basin, trench, rain garden, or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or roadside channels designed for conveyance and pollutant removal only.
- (33) **Infiltration volume** means to the total volume of infiltration accounting for infiltration systems and pervious surfaces.
- (34) **In-fill area** means an undeveloped area of land located within existing development.
- (35) **Intermittent stream** has the meaning as identified on a United States Geological Survey 7.5-minute series topographic map or the Sheboygan County Soil Survey Map, whichever is more current. The location of the intermittent stream shall be based on a site survey.
- (36) **Land-disturbing construction activity** means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Examples of land-disturbing construction activities include but are not limited to clearing, grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.
- (37) **Maintenance agreement** means a legal document that provides for long-term maintenance of stormwater management practices.
- (38) **Maximum extent practicable (MEP)** means the highest level of performance that is achievable but not equivalent to a performance standard identified in this Chapter as determined by the Department and in accordance with Wis. Admin. Code § NR 151.006 and this Ordinance. **Maximum extent practicable** applies when a person who is subject to a performance standard of this Ordinance demonstrates to the Department's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the **maximum extent practicable**, the responsible party 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.

- (39) **Municipal separate storm sewer system (MS4)** means a conveyance or system of conveyance including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains which meet all of the following criteria:
- (a) Owned or operated by a municipality;
 - (b) Designed or used for collecting or conveying stormwater;
 - (c) Which is not a combined sewer conveying both sanitary and storm water; and
 - (d) Which is not part of a publicly-owned wastewater treatment works that provides secondary or more stringent treatment.
- (40) **Navigable waters** or **navigable waterway** means any body of water which is navigable under the laws of this State.
- (41) **New development** means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (42) **Non-stormwater discharge** means any discharge into the MS4 that is not composed entirely of stormwater.
- (43) **Off-site** means located outside the property boundary described in the permit application.
- (44) **On-site** means located within the property boundary described in the permit application.
- (45) **Ordinary high water mark** has the meaning given in Wis. Admin. Code § NR 115.03(6).
- (46) **Outfall** means the point at which stormwater is discharged to waters of the state or to a storm sewer.
- (47) **Outstanding resource waters** means waters listed in Wis. Admin. Code § NR 102.10.
- (48) **Owner** means any person holding fee title, an easement, or other interest in property.
- (49) **Percent fines** means the percentage of a given sample of soil which passes through a #200 sieve.
- (50) **Perennial stream** has the meaning as identified on a United States Geological Survey 7.5-minute series topographic map or the Sheboygan County Soil Survey Map, whichever is more current. The location of the perennial stream shall be based on a site survey.
- (51) **Performance standard** means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (52) **Permit** means a written authorization made by the Department to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the State.

- (53) **Permit administration fee** means a sum of money paid to the Department by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (54) **Pervious surface** means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests, or other similar vegetated areas are examples of surfaces that typically are pervious.
- (55) **Point of standards application** has the meaning given in Wis. Admin. Code § NR140.05(15).
- (56) **Pollutant** has the meaning given in Wis. Stat. § 283.01(13).
- (57) **Pollution** has the meaning given in Wis. Stat. § 281.01(10).
- (58) **Post-construction site** means a construction site following the completion of land-disturbing construction activity and final site stabilization.
- (59) **Pre-development condition** means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (60) **Premises** means any building, lot, parcel, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (61) **Preventative action limit** has the meaning given in Wis. Admin. Code § NR 140.05(17).
- (62) **Rainfall event** means the amount of rainfall that occurs within a twenty-four- (24-) hour period using measurement techniques outlined in the Sheboygan County Erosion Control and Stormwater Manual or other Department-approved methods.
- (63) **Receipt of a permit application** means that Department has either obtained an application in person at the Department offices or signed for the application package received via registered mail.
- (64) **Record drawing** means a scale drawing representing the site conditions after final site stabilization including but not limited to topography, buildings, infrastructure, impervious area, underground piping, and any other information that would be necessary to accurately describe the features pertinent to this Chapter.
- (65) **Redevelopment** means areas where development is replacing older development.
- (66) **Regulatory wetland** or **wetland** has the meaning given in Wis. Admin. Code § NR 103.02(5). For this Chapter only, the regulatory wetland does not include the portion of wetlands where fill has been placed or approved to be placed in the wetland in accordance with all applicable state and federal regulations.

- (67) **Regulatory wetland boundary** or **wetland boundary** has the meaning given in Wis. Admin. Code § NR 103.08(1m).
- (68) **Responsible party** means any entity holding fee title to the property or performing services to meet the performance standards of this Chapter through a contract or other agreement. Examples of County-approved responsible parties are contained in the Sheboygan County Erosion Control and Stormwater Manual.
- (69) **Runoff** means stormwater or precipitation including rain, snow, or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (70) **Sediment** means settleable solid material that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.
- (71) **Separate storm sewer** means a conveyance or system or 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 draining to a stormwater treatment device or system; and
 - (d) Discharges directly or indirectly to waters of the State.
- (72) **Sheboygan County Erosion Control and Stormwater Manual** means a document prepared by the Department to provide an applicant with a checklist for compliance with the provisions of this Ordinance and outlining the standards required under this Ordinance.
- (73) **Silviculture** means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (74) **Site** means the entire area included in the legal description of the land on which the land-disturbing construction activity is proposed in the permit application.
- (75) **Stop work order** means an order issued by the Department which requires that all construction activity on the site be stopped.
- (76) **Stormwater** means runoff from precipitation including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (77) **Stormwater management plan** means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.
- (78) **Technical standard** means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method that is consistent with the technical

standards identified, developed, or disseminated by the Wisconsin Department of Natural Resources under Wis. Admin. Code Ch. NR 151, Subchapter V.

- (79) **Top of bedrock** means the elevation of the bedrock surface at the location in question. If site-specific information is available, the site-specific information shall be utilized. Otherwise, regional map(s) of the top of bedrock approved by the Department shall be utilized.
- (80) **Top of channel** means an edge or point on the landscape landward from the ordinary high-water mark of a surface water of the State where the slope of the land begins to be less than twelve percent (12%) continually for at least fifty (50) feet. If the slope of the land is twelve percent (12%) or less continually for the initial fifty (50) feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (81) **TR-55** means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, or its successor.
- (82) **Transportation facility** means a highway, railroad, public mass transit facility, public-use airport, public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). **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 Department of Natural Resources pursuant to Wis. Stat. § 281.33. This includes but is not limited to the portions of County or Town roads classified as major collectors in the Sheboygan Area Transportation Plan.
- (83) **Type II distribution** means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973."
- (84) **Waters of the State** has the meaning given in Wis. Stat. § 281.01(18).
- (85) **Wisconsin Pollutant Discharge Elimination System (WPDES) stormwater discharge permit** means a Wisconsin pollutant discharge elimination system permit issued pursuant to Wis. Stat. ch. 283.
- (86) **Work in conjunction with the stormwater management plan** means any construction directly related to the stormwater management features designed to meet the performance standards outlined in this Chapter including but not limited to detention basins, infiltration systems, detention basin outlet structures, and conveyance features.

75.04 SEVERABILITY. If a court of competent jurisdiction judges any Section, clause, provision, or portion of this Chapter unconstitutional or invalid, the remainder of the Chapter shall remain in force and not be affected by such judgment.

75.05 FEE SCHEDULE. The fees referred to in these Subchapters shall be established by the Sheboygan County Planning, Resources, Agriculture, and Extension Committee and may from time to time be modified. A schedule of the fees shall be available for review in the Department office and on its web page.

SUBCHAPTER A – EROSION CONTROL

75.06 PURPOSE. The general purpose of this **Subchapter A** is to establish construction-time runoff management requirements that will diminish the threats to public health, safety, welfare, and aquatic environment 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 Sheboygan County. Specific purposes are to:

- (1) Further the maintenance of safe and healthy conditions.
- (2) Prevent and control soil erosion and water pollution.
- (3) Protect spawning grounds, fish, and aquatic life.
- (4) Control building sites, placement of structures, and land uses.
- (5) Preserve ground cover and scenic beauty.
- (6) Promote sound economic growth.

75.07 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) This **Subchapter A** applies to land-disturbing construction activities on a construction site which has one (1) or more acres of land-disturbing construction activity and sites less than one (1) acre if they are part of a larger common plan of development or sale under the jurisdiction of the permittee, except as provided under Subsection 75.07(1)(b), below.

(b) This **Subchapter A** does not apply to the following:

1. Land-disturbing construction activity that includes the construction of a building that is otherwise regulated by the Wisconsin Department of Commerce Safety and Professional Services under Wis. Admin. Code §§ COMM SPS 21.125 or 360.20.
2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR, part 122, for land-disturbing construction activity.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites, such as resurfacing pavement, that have less than five (5) acres of land disturbance, if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

(c) Notwithstanding the applicability requirements in Subsection (a), above, this **Subchapter A** applies to construction sites of any size that in the opinion of the Department 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.

- (2) JURISDICTION. This **Subchapter A** applies to land-disturbing construction activity meeting the applicability criteria in Subsection (1), above, located within the boundaries and jurisdiction of the:
 - (a) Unincorporated portions of Sheboygan County with the exception of the Towns of Wilson and Sheboygan.
 - (b) Any other Village or City within the County upon the Village or City's written request to the County and the County accepting the request.
 - (c) Land-disturbing construction activity in other townships within Sheboygan County that adopt a separate stormwater ordinance that is equivalent or more stringent than this **Subchapter A** are exempt from this Section but are subject to the applicable township ordinance.
- (3) EXCLUSIONS. This **Subchapter A** is not applicable to activities conducted by a state agency as defined under Wis. Stat. § 227.01(1) but also including the Office of the District Attorney which is subject to the State plan promulgated or a memorandum of understanding entered into under Wis. Stat. § 281.33(2).

75.08 TECHNICAL STANDARDS. All BMPs required to comply with this **Subchapter A** shall meet the design criteria, standards, and specifications based on any of the following:

- (1) Technical standards identified, developed, or disseminated by the Wisconsin Department of Natural Resources under Subchapter V of Wis. Admin. Code Ch. NR 151.
- (2) The Sheboygan County Erosion Control and Stormwater Manual (hereafter referred to as Manual).
- (3) Other technical standards, provided they are approved by the Department.

75.09 PERFORMANCE STANDARDS.

- (1) RESPONSIBLE PARTY. The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs is the responsible party.
- (2) PLAN. The responsible party shall develop and implement a written plan in accordance with Section 75.11 of this Code that incorporates the requirements of this Section for each construction site as either a separate document or as a portion of the construction plan.
- (3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS.

- (a) The plan required under Subsection (2), above, shall by design limit the total off-site aggregate soil loss for exposed areas resulting from sheet and rill erosion to an annual, cumulative soil loss rate not to exceed five (5) tons per acre per year. Unless more stringent requirements are mandated as outlined in Subsection (5), below, no person shall be required to reduce the annual, cumulative soil loss rate below the specified rate to meet the requirements of this Subsection.
- (b) Notwithstanding Subsection (a), above, if BMPs cannot be designed and implemented to reduce the sediment load below the rate specified in Section 75.08(3)(a) on an average annual basis, the plan shall include a written and site-specific explanation as to why the reduction goal is not attainable, and the sediment load shall be reduced to the maximum extent practicable as determined by the Department of Natural Resources.
- (c) Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of Subsection (a), above.
- (d) In addition to the erosion control practices necessary to meet the requirements outlined in Subsection (a) above, the plan shall include erosion and sediment controls where appropriate to do all of the following to the maximum extent practicable:
 - 1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
 - 2. Prevent the discharge of sediment as part of site dewatering.
 - 3. Protect the separate storm drain inlet structure from receiving sediment.
 - 4. Prevent rill erosion on steep slopes and in areas of channelized flow.
 - 5. Provide stable outlets at all discharge locations.
 - 6. Divert off-site runoff around the construction limits.
 - 7. Provide measure to clean up sediment that has migrated off-site from the site.
 - 8. Prevent the discharge of sediment eroding from soil stockpiles left undisturbed for more than fourteen (14) days.
 - 9. Prevent the transport of runoff from disturbed areas left for fourteen (14) days.
 - 10. Prevent the discharge of sediment from disturbed areas any waters of the State.
 - 11. Prevent the transport of runoff into waters of the State of untreated wash water from vehicle and wheel washing.
 - 12. Prevent the transport of runoff into waters of the State of chemicals, cement, and other building compounds and materials on the construction site during the construction period.

Projects that require the placement of these materials in waters of the State such as BMP installation are not prohibited by this Subsection.

- (4) PREVENTATIVE MEASURES. The plan shall incorporate all of the following:
- (a) Maintenance of existing vegetation especially adjacent to surface waters whenever possible;
 - (b) Minimization of soil compaction and preservation of topsoil;
 - (c) Minimization of land-disturbing construction activity on slopes of twenty percent (20%) or more; and
 - (d) Development of spill prevention and response procedures if applicable.
- (5) LOCATION. The BMPs used to comply with this Section shall be located prior to runoff entering regulatory wetlands, waters of the State, or other natural resources as determined by the Department.
- (6) 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 in accordance with the plan developed.
 - (b) Erosion and sediment control practices shall be maintained until final stabilization.
 - (c) Temporary stabilization activity shall commence when land-disturbing construction activities have temporarily ceased and will not resume for a period exceeding fourteen (14) calendar days.
 - (d) Final stabilization activity shall commence when land-disturbing activities cease and final grade has been reached on any portion of the site.
 - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party once final stabilization is complete.
- (7) TRANSPORTATION FACILITIES. This Subsection applies to any transportation facility construction site that consists of one (1) acre or more of land-disturbing construction activity.
- (a) Exceptions: This Subsection does not apply to the following:
 - 1. Transportation facility construction projects that are exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR, part 11, for land-disturbing construction activity.
 - 2. Transportation facility construction projects are part of a larger common plan of development such as a

residential or industrial development and are otherwise in compliance with the provisions of this Subsection (a).

3. Routine maintenance for transportation facilities that have less than five (5) acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- (b) Requirements. Transportation facilities are required to comply with the provisions of Section 75.09 of this Chapter.
- (8) ALTERNATE REQUIREMENTS. The Department may establish erosion control requirements more stringent than those set forth in this Section if they determine that an added level of protection is needed for sensitive resources.

75.10 PERMITTING REQUIREMENTS, PROCEDURES, AND FEES.

- (1) PERMIT REQUIRED. No responsible party may commence a land-disturbing construction activity subject to this **Subchapter A** without receiving prior approval of an erosion control plan for the site and a permit from the Department.
- (2) PERMIT APPLICATION AND FEES. At least one (1) responsible party desiring to undertake a land disturbing construction activity subject to this **Subchapter A** shall submit an application for a permit and an erosion control plan that meets the requirements of Section 75.11 of this Code and shall pay an application fee as described in the Department's fee schedule. By submitting an application, the applicant is authorizing the Department to enter the site to obtain information required for the review of the erosion control plan.
- (3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The Department shall review any permit application that has been submitted with an erosion control plan submitted in person or via registered mail and the required fee. The following approval procedure shall be used:
 - (a) Within thirty (30) calendar days of the receipt of a complete permit application as required by Subsection (2), above, the Department shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this **Subchapter A**.
 - (b) If the permit application and plan are approved, the Department shall issue the permit.
 - (c) If the permit application or plan is disapproved, the Department shall state in writing the reasons for disapproval.
 - (d) If the Department deems the application to be incomplete, the Department may request additional information from the applicant. If additional information is submitted, the Department shall have thirty (30) calendar days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

- (e) Failure by the Department to inform the permit applicant of a decision within thirty (30) calendar days of a receipt of a permit application shall be deemed to mean approval of the permit application. The applicant may proceed as if a permit had been issued. If application was not submitted in person, the applicant shall verify in writing that the application was received by Department prior to commencing land-disturbing construction activities.
- (4) SURETY BOND. As a condition of approval and issuance of the permit, the Department may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- (5) PERMIT REQUIREMENTS. 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. All permits shall require the responsible party to:
- (a) Notify the Department within two (2) business days of commencing any land-disturbing construction activity.
 - (b) Obtain permission in writing from the Department prior to any modification pursuant to Section 75.11(2), below, of the erosion control plan.
 - (c) Install properly all BMPs as identified in the approved erosion control plan and according to the standards outlined in the Manual.
 - (d) Notify the Department of completion of any BMPs within fourteen (14) days after their installation.
 - (e) Maintain all road drainage systems, stormwater drainage systems, BMPs, and other facilities identified in the erosion control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land-disturbing construction activities and document repairs in a site inspection log.
 - (g) During the active construction period, inspect all erosion control BMPs once per week minimum and within twenty-four (24) hours after each rainfall event exceeding five-tenths (0.5) of an inch. Repairs shall be made within twenty-four (24) hours of the inspection unless the responsible party can demonstrate that additional erosion would be caused by the repair due to unsuitable working conditions. All inspections and repairs shall be documented in a site inspection log with the date of inspection, the name of the person conducting the inspection, a description of the present phase of the construction at the site, any repairs made, and corresponding date of repairs.
 - (h) Allow the Department to enter the site for the purpose of inspecting compliance with erosion control plan or for performing any work necessary to bring the site into compliance with the

control plan. The Planning & Conservation Director and his or her staff designated to administer this Ordinance has inspection responsibility and enforcement authority.

1. At minimum, the Department shall inspect the site prior to disturbance activities commencing to confirm the erosion control BMPs have been installed correctly every two (2) weeks during construction activities and after land-disturbing activities are complete. This does not limit the Department from performing additional inspections.
 2. The applicant must also allow Department staff to enter the site so that the Department can address information or complaints received by the public in regard to the subject construction site and enforce any violations Department staff finds.
- (6) **PERMIT CONDITIONS.** Permits issued under this Section may include conditions established by Department in addition to the requirements set forth in Subsection (5), above, where needed to assure compliance with the performance standards in Section 75.09 of this Code.
- (7) **PERMIT DURATION.** Permits issued under this Section shall be valid for a period of one hundred eighty (180) days or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Department may extend the period one or more times for up to an additional one hundred eighty (180) days. The Department may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this **Subchapter A**.
- (8) **MAINTENANCE.** The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this **Subchapter A** until the site has undergone final stabilization.

75.11 EROSION CONTROL PERMIT APPLICATION REQUIREMENTS.

- (1) **EROSION CONTROL PLAN.**
- (a) An erosion control plan shall be prepared and submitted to the Department. The plan submittal shall consist of a cover letter identifying the applicant and landowner, an erosion control plan summary checklist as described in the Manual, and the technical elements of the plan described in this Chapter. A site map shall also accompany the plan.
 - (b) The erosion control plan shall be designed to meet the performance standards in Section 75.09 of this Code and other requirements of this **Subchapter A**.
 - (c) The erosion control plan shall include at a minimum the following items:
 1. A narrative and supporting documents (or equivalent as approved by Department), including:

- A. The name(s), e-mail address(es), and mailing address(es) of the owner or developer of the site and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm.
- B. Site location and approximate site boundaries shown on a United States Geological Survey 7.5-minute series topographic map or equivalent as approved by the Department.
- C. The start and end dates for construction, and where appropriate, any additional project milestones pertinent to the erosion control plan.
- D. Description of the site and the nature of the construction activity.
- E. A sequence of construction activities of the development site, including but not limited to clearing; topsoil stripping; rough grading, construction of utilities, infrastructure, and buildings; installation of erosion control measures; final grading; and establishment of permanent vegetation and landscaping. Sequencing shall identify the expected start and end dates of each construction activities.
- F. Description of all erosion control measures and their intended use to meet the performance requirements of this **Subchapter A**.
- G. Description of interim and permanent stabilization practices and maintenance of existing vegetation where possible, including a practice implementation schedule.
- H. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
- I. Estimates, including calculations if any of the runoff coefficient of the site before and after construction activities are completed.
- J. Calculations demonstrating that the site plan and proposed erosion control plan meets the performance standards outlined in Section 75.08 of this Code.
- K. Existing data describing the surface soil as well as subsoils.
- L. Depth to seasonal high-water table.

M. Name of the immediate named receiving water from the United States Geological Survey 7.5-minute series topographic maps.

2. A site drawing including at a minimum the following items at a legible scale not to exceed 1 inch equals 200 feet and at a contour interval not to exceed 2 feet if the maximum elevation difference on the site is greater than 100 feet or at a contour interval not to exceed 1 foot otherwise.

A. Existing and proposed topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site shall be shown. Any identified one hundred- (100-) year floodplains, flood fringes, floodways, and the shoreland zoning district shall also be shown.

B. Construction limits.

C. Topsoil and general fill stockpile locations.

D. Drainage patterns and approximate slopes anticipated after major grading activities.

E. Area(s) used for infiltration of post-construction stormwater runoff.

F. Areas of soil disturbance (if different than the construction limits).

G. Location of all structural and non-structural erosion controls identified in the plan.

H. Location of areas where stabilization BMPs will be employed.

I. Areas which will be vegetated following construction.

J. Area(s) and location(s) of wetland boundaries on the site and locations where stormwater is discharged to waters of the State or wetlands within one-quarter (1/4) mile downstream of the construction site.

K. An alphanumeric or equivalent grid overlying the entire construction site map.

(2) AMENDMENTS. The applicant shall amend the erosion control plan and submit the proposed changes to the Department, and the Department shall have fourteen (14) days to review and approved the changes if any of the following occur:

- (a) There is a change in design, construction, schedule, operation, or maintenance of the site which has not otherwise been addressed in the erosion control plan.
- (b) The Department notifies the applicant of changes needed in the erosion control plan.

75.12 INSPECTION.

- (1) If land-disturbing construction activities are being carried out without a permit required by this **Subchapter A**, the Department may enter the land pursuant to the provisions of Wis. Stat. § 66.0119(1), (2), and (3).
- (2) The Planning & Conservation Director and his or her staff designated to administer this Ordinance has inspection responsibility and enforcement authority.

75.13 ENFORCEMENT.

- (1) The Department may post a stop-work order if any of the following occurs:
 - (a) Any land-disturbing construction activity regulated under this **Subchapter A** is being undertaken without a permit.
 - (b) The erosion control plan is not being implemented in a good faith manner as determined by the Department.
 - (c) The conditions of the permit are not being met.
- (2) 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 control plan or permit conditions, the Department may revoke the permit.
- (3) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Department or if a responsible party violates a stop-work order posted under Subsection (1), above, the Department may request the Corporation Counsel to seek a cease-and-desist order from the Circuit Court.
- (4) The County Board of Adjustments may retract the stop-work order issued under Subsection (1), above, or the permit revocation under Subsection (2), above.
- (5) After posting a stop-work order under Subsection (1), the Department may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this **Subchapter A**. The Department may go on the land and commence the work after issuing the notice of intent.
- (6) Any person violating any of the provisions of this **Subchapter A** shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) or more than Five Thousand Dollars (\$5,000.00) and the costs of prosecution for each violation to be prosecuted by the Corporation

Counsel at the request of the Department. Each day a violation exists shall constitute a separate offense.

- (7) As a substitute for or in addition to forfeiture actions, the Corporation Counsel, on behalf of the County, as requested by the Department, may seek enforcement of any and all parts of this **Subchapter A** by Court action seeking injunctive or restraining orders or orders for the restoration of the site.
- (8) Any engineering, construction, legal, and other related costs plus interest incurred by the Department related to enforcement actions taken by the Department under this Section shall be billed to the responsible party, deducted from any financial guarantee posted pursuant to Section 75.10 of this Code or entered on the tax roll as a special charge against the property and collected as a special assessment against the property pursuant to Wis. Stat. ch. 66, Subchapter VII.

75.14 APPEALS.

- (1) **BOARD OF ADJUSTMENT.** The Board of Adjustment created pursuant to Chapter 76 of this Code pursuant to Wis. Stat. § 59.694:
 - (a) Shall hear and decide appeals where it is alleged that there is error in any Order, decision, or determination made by the Department in administering this **Subchapter A** except for cease-and-desist Orders obtained under Section 75.13(3) of this Code.
 - (b) Upon appeal, may authorize variances from the provisions of this **Subchapter A** which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the Subchapter will result in unnecessary hardship, and
 - (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) **WHO MAY APPEAL.** Appeals to the Board of Adjustments may be taken by any aggrieved person or by any office, Department, Board, or bureau of Sheboygan County affected by any decision of the Department.

SUBCHAPTER B: STORMWATER MANAGEMENT

75.15 **PURPOSE.** The General purpose of this **Subchapter B** is to establish long-term stormwater management requirements that will diminish the threats to public health, safety, welfare, and the aquatic environment by limiting the rate of runoff and sediment loads discharged from development to waters of the State and regulatory wetlands in Sheboygan County. Specific purposes are to:

- (1) Further the maintenance of safe and healthy conditions.
- (2) Prevent and control soil erosion and water pollution.
- (3) Protect spawning grounds, fish, and aquatic life.
- (4) Preserve ground cover and scenic beauty.
- (5) Promote sound economic growth.

- (6) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies.
- (7) Prevent undue channel erosion.
- (8) Control increases in the scouring and transportation of total suspended solids.
- (9) Prevent conditions that endanger downstream property.

75.16 INTENT. It is the intent of the County Board that this **Subchapter B** regulates post-construction stormwater discharges to waters of the State. This **Subchapter B** may be applied on a site-by-site basis. The County Board recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this **Subchapter B** 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 (1) site prior to discharge to waters of the State. Where such plans are in conformance with the performance standards developed under Wis. Stat. § 281.16 for regional stormwater management measures and have been approved by the County Board, it is the intent of this **Subchapter B** that the approved plan be used to identify post-construction management measures acceptable for the community.

75.17 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

- (a) Where not otherwise limited by law, this **Subchapter B** applies after final stabilization to a site of one (1) or more acres of land-disturbing construction activity and sites less than one (1) acre if they are part of a larger common plan of development or sale under the jurisdiction of the permittee unless the site is otherwise exempt from Subsection (b), below.
- (b) A site that meets any of the criteria in this Subsection is exempt from the requirements of this **Subchapter B**.
 - 1. A post-construction site with less than ten percent (10%) connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all impervious surfaces is less than one (1) acre.
 - 2. Nonpoint discharge from agricultural facilities and practices.
 - 3. Nonpoint discharges from silviculture activities.
 - 4. Routine maintenance for project sites if performed to maintain the original impervious area, line and grade, hydraulic capacity, or original purpose of the facility.
 - 5. Underground utility construction such as water, sewer, and fiber optic lines. This exemption does not apply to the construction of any above-ground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in Subsection (a), above, this **Subchapter B** applies to post-construction sites of any size that in the opinion of the Department is 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.

(2) JURISDICTION. This **Subchapter B** applies to post-construction sites meeting the applicability criteria in Subsection (1), above, within the boundaries and jurisdiction of the:

(a) Unincorporated portions of Sheboygan County except the Towns of Wilson and Sheboygan.

(b) Any other Village or City within the County upon the Village or City's written request to the County and the County accepting the responsibility.

(c) Post-construction sites in townships within Sheboygan County that adopt a separate stormwater ordinance that is determined by the Sheboygan County Board to be equivalent or more stringent than this **Subchapter B** are exempt from this **Subchapter B** but are subject to applicable township ordinances.

(3) EXCLUSIONS. This **Subchapter B** is not applicable to activities conducted by a state agency as defined under Wis. Stat. § 227.01(1) but also including the office of District Attorney which is subject to the State plan promulgated or a memorandum of understanding entered into under Wis. Stat. § 281.33(2).

75.18 TECHNICAL STANDARDS. The following methods shall be used in designing the water quality, peak discharge, and infiltration components of stormwater practices needed to meet the standards of this **Subchapter B**:

(1) The Sheboygan County Erosion Control and Stormwater Manual.

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

(3) Other technical standards, provided they are approved by the Department.

(4) In this **Subchapter B** the following year(s) and location(s) have been selected as average annual rainfall(s): Green Bay, 1969 (Mar. 29 - Nov. 25); Milwaukee, 1969 (Mar. 28 - Dec. 6). The location that shall be used shall be based on which location is closest to the site.

(5) Pre-development conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development

land cover is cropland and the curve number exceeds the values in Table 1 rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Table 1 – Maximum Pre-development Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	5 6	7 0	7 9	8 3

- (6) When utilizing the "DESIGN STORM METHOD" approach to designing infiltration systems, as outlined in Section 75.19(3)(c) of this Code, separate curve numbers for previous and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55.

75.19 PERFORMANCE STANDARDS.

- (1) **RESPONSIBLE PARTY.** The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain post-construction stormwater BMPs is the responsible party.
- (2) **PLAN.** The responsible party shall develop and implement a written stormwater management plan in accordance with Section 75.21 of this Code for each post-construction site.
- (3) **REQUIREMENTS.** The plan required under Subsection (2), above, shall include:
- (a) **Total Suspended Solids.** BMPs shall be designed, installed, and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
1. New development must, by design, reduce the total suspended solids load by eighty percent (80%) based on the average annual rainfall or equivalent method as compared to no runoff management controls to the maximum extent practicable.
 2. For redevelopment, by design, reduce the total suspended solids load for TSS generated on parking areas and roads by forty percent (40%) based on the average annual rainfall or equivalent method approved by the Department as compared to no runoff management controls to the maximum extent practicable.
 3. In-fill development must, by design, reduce the total suspended solids load by eighty percent (80%) based on an average annual rainfall or equivalent method approved by the Department as compared to no runoff management controls to the maximum extent practicable.

4. For in-fill development under five (5) acres for which the Department received a complete permit application prior to October 1, 2012, by design reduce TSS load by forty percent (40%) using the parameters described in Section 75.19(3)(a)(3), above, to the maximum extent practicable
5. Notwithstanding Subsections 1 through 4, above, if the design cannot achieve the TSS reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable. The maximum extent practicable total suspended solids reduction shall not exceed the applicable performance standard outlined in Subsections 1 through 4, above.
6. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) Peak Discharge.

1. All stormwater facilities shall be designed, installed, and maintained to effectively accomplish the following to the maximum extent practicable.
 - A. Maintain or reduce the one- (1-) year, 24-hour and the two- (2-) year, twenty-four- (24-) hour post-construction peak runoff discharge rates to the one- (1-) year, twenty-four- (24-) hour and the two- (2-) year, twenty-four- (24-) hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable.
 - B. Maintain the pre-development peak runoff rate for the ten- (10-) year design storm.
 - C. Maintain the pre-development peak runoff rate for the one hundred- (100-) year design storm.
2. Stormwater facilities shall be of a type, size, and grade to hydraulically accommodate the following:
 - A. Storm sewer – ten- (10-) year design storm peak runoff rate with no surcharge in the manhole.
 - B. Open channel – twenty-five- (25-) year design storm peak runoff rate with minimum one- (1-) foot of freeboard.

- C. Detention basins – one hundred- (100-) year design storm peak elevation with minimum one- (1-) foot of freeboard.
 - D. The site shall be designed to provide safe conveyance of the one hundred- (100-) year peak runoff rate.
3. This Subsection does not apply to any of the following:
- A. A redevelopment post-construction site.
 - B. An in-fill development area less than five (5) acres.
- (c) Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following except as provided in Subsections 3 and 4 below.
- 1. For development up to forty percent (40%) connected imperviousness, such as parks and low-density residential developments, the following shall apply:
 - A. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least ninety percent (90%) of the pre-development infiltration volume based on an average annual rainfall.
 - B. When designing appropriate infiltration systems to meet the requirement in Subsection 1.A, above, no more than one percent (1%) of the site is required as an effective infiltration area.
 - 2. For development with more than forty percent (40%) and up to eighty percent (80%) connected imperviousness, such as medium- and high-density residential, multi-family development, industrial and institutional development, and office parks, the following shall apply:
 - A. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least seventy-five percent (75%) of the pre-development infiltration volume based on an average annual rainfall.
 - B. When designing appropriate infiltration systems to meet the requirement in Subsection 2.A, above, no more than two percent (2%) of the impervious surface is required as an effective infiltration area.
 - 3. For development with more than eighty percent (80%) connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, the following shall apply:

- A. Annual average method.
 - (i) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least sixty percent (60%) of the pre-development infiltration volume based on an average annual rainfall.
 - (ii) When designing appropriate infiltration systems to meet the requirement in Subsection 3.A(i), above, no more than two percent (2%) of the impervious surface is required as an effective infiltration area.

4. Groundwater Quality and Clogging Protection.

- A. Upstream of the infiltration systems, pretreatment to reduce sediment and pollutant inflow to the infiltration system shall be required for all impervious surfaces except for rooftops, sidewalks, and other impervious surfaces where the applicant can demonstrate that the sediment and pollutant inflow will not adversely affect the infiltration system or groundwater to the satisfaction of the Department.
- B. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with this Subsection. Pretreatment options may include but are not limited to oil/grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.
- C. Infiltration systems designed in accordance with this Subsection 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. However, if site-specific information indicates that the preventative action limit has been exceeded, the infiltration system shall be modified to prevent infiltration to the maximum extent practicable.

(d) Source Areas.

- 1. Prohibitions.

- A. Runoff from the following source areas are prohibited from discharging to an infiltration system:
 - (i) Areas associated with tier 1 industrial facilities identified in Wis. Admin. Code § NR 216.21(2)(a) including storage, loading, rooftop, and parking.
 - (ii) Storage and loading areas of tier 2 industrial facilities identified in Wis. Admin. Code § NR 216.21(2)(b).
 - (iii) Fueling and vehicle maintenance areas.

- B. Runoff from the following source areas are credited toward meeting the requirements outlined in this Section when infiltrated, but the decision to infiltrate runoff from these areas is optional.
 - (i) Parking areas and access roads less than five thousand (5,000) square feet for commercial development.
 - (ii) Parking areas and access roads less than five thousand (5,000) square feet for industrial development not subject to the prohibitions under Subsection 1.A above.
 - (iii) Redevelopment post-construction sites.
 - (iv) In-fill development areas less than five (5) acres.
 - (v) Roads on commercial, industrial, and institutional land uses, and arterial residential roads.

(e) Location of Practices.

- 1. Infiltration systems located in the following areas are prohibited. If locating infiltration systems outside the following areas goes beyond the maximum extent practicable, the site is excluded from meeting the requirements of this Subsection.
 - A. Where the soil through which infiltration will occur has contaminants of concern as defined in Wis. Admin. Code § NR 720.03(2).

 - B. Where the infiltration systems are within four hundred (400) feet of a community water system as specified in Wis. Admin. Code § 811.16(4) or

within the separate distances as specified in Wis. Admin. Code § NR 812.08 for any private well or non-community well for runoff infiltrated from industrial or institutional land uses, if the source area includes residential roadways or regional devices for one- and two-family residential development.

C. Areas within one thousand feet (1,000') upgradient or within one hundred feet (100') downgradient of direct conduits to groundwater.

D. Infiltration practices located in the following areas are credited toward meeting the requirements outlined in this Section, but the decision to infiltrate under these conditions is optional:

(i) Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than six-tenths (0.6) of an inch per hour using a scientifically credible field test method.

(ii) Where the least permeable soil horizon up to five (5) feet below the proposed bottom of the infiltration system using the US 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.

E. A site that meets any of the criteria in this Section 75.19(3)(d)1 is exempt from the requirements of this Subsection.

(i) A redevelopment post-construction site.

(ii) An in-fill development area less than five (5) acres.

2. Where alternate uses of runoff are employed such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this Subsection.

3. Where conditions limit or restrict the use of infiltration practices, the performance standards of this Subsection shall be met to the maximum extent practicable.

(f) Protective Areas.

1. "Protective area" means an area of land that commences at the top of the channel of lakes or streams or at the delineated wetland boundary 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 waters of the State enclosed within a pipe or culvert such that runoff cannot enter the enclosure at this location.

- A. Seventy-five (75) feet for outstanding resource waters or exceptional resource waters.
 - B. Fifty (50) feet for lakes
 - C. Fifty (50) feet for perennial and intermittent streams.
 - D. Seventy-five (75) feet for highly susceptible wetlands as identified in Wis. Admin. Code § NR 151.125(1)(e).
 - E. For less susceptible wetlands as defined in Wis. Admin. Code § NR 151.125(1)(f), ten percent (10%) of the average wetland width but no less than ten (10) feet and no more than thirty (30) feet.
 - F. For wetland not subject to D, or E, fifty (50) feet.
 - G. Ten (10) feet for concentrated flow channels with drainage areas greater than one hundred thirty (130) acres.
- 2. The greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
 - 3. 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 in Wis. Admin. Code § NR 103.03.
 - 4. This paragraph 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 a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 - 5. This Subsection does not apply to:
 - A. Redevelopment post-construction sites.
 - B. In-fill development areas less than five (5) acres.

- C. Structures that cross or access surface waters such as boat landings, bridges, and culverts.
- D. Structures constructed in accordance with Wis. Stat. § 59.692(1v).
- E. Impervious areas from which runoff is treated to the performance standards of this **Subchapter B** prior to entering the resource described in Subsection 1, above.

6. The following requirements shall be met:

- A. Impervious surfaces shall not be located within the protective area to the maximum extent practicable. If impervious surfaces are located within the protective area, a written site-specific description shall be provided to Department outlining the reason(s) that placing the impervious surfaces outside the protective area is beyond the maximum extent practicable.
- B. Where land-disturbing construction activity occurs within a protective area, a self-sustaining vegetative cover or equivalent with greater than seventy percent (70%) coverage within the protective area shall be established and maintained.
- C. Best management practices outlined in the Manual that are designed to control pollutants from non-point sources may be located in the protective area.

(g) Fueling and Vehicle Maintenance Areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed, and maintained to reduce petroleum within runoff so that runoff that enters waters of the State contains no visible petroleum sheen. A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill clean-up materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

(h) Transportation Facilities.

- 1. Applicability. Except as provided in Subsection 2, below, transportation facilities that cause or may cause runoff pollution must meet all of the requirements of Sections 75.18 and 75.19 of this **Subchapter B**.
- 2. Swale Treatment. Except as provided in Subsection 2, below, transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of Section 75.19(a), (b), and (c) of this

Subchapter B except (b)2., if the swales are designed to the maximum extent practicable to do all of the following:

- A. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment such as rock riprap stabilization or check dams.
 - B. Carry runoff through a swale for two hundred (200) feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a two- (2-) year, twenty-four- (24-) hour design storm or a two- (2-) year storm with a duration equal to the time of concentration as appropriate. If a swale of two hundred (200) feet in length cannot be designed with a flow velocity of 1.5 feet per second or less then the flow velocity shall be reduced to the maximum extent practicable.
 - C. The Department may, consistent with water quality standards, require other provisions of this **Subchapter B** be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the State that the runoff directly enters is classified as one of the following:
 - (i) An outstanding resource water.
 - (ii) An exceptional resource water.
 - (iii) 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.
 - (iv) Waters where targeted performance standards are developed under Wis. Admin. Code § NR 151.004 to meet water quality standards.
3. Requirements. BMPs shall be designed, installed, and maintained to control total suspended solids carried in runoff from the transportation facility post-construction site. BMPs shall be designed as follows:
- A. For new transportation facilities, a TSS reduction of eighty percent (80%) based on average annual rainfall compared to no runoff management controls, to the maximum extent practicable.
 - B. For highway reconstruction projects, a TSS reduction of forty percent (40%) based on average annual rainfall compared to no runoff

management controls, to the maximum extent practicable.

- C. For non-highway transportation facility redevelopment, a TSS reduction of forty percent (40%) of the load from parking areas and roads based on average annual rainfall compared to no runoff management controls, to the maximum extent practicable.
- D. If the design cannot achieve the TSS reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable. The maximum extent practicable total suspended solids reduction shall not exceed the applicable performance standard outlined in this Subsection 3.

(4) GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORMWATER MANAGEMENT MEASURES. The following considerations shall be observed in managing runoff:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this Section.
- (b) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (c) Runoff volume control, beyond the requirements outlined in Section 75.19(c) for sites located within closed drainage basins.

(5) LOCATION.

- (a) The BMPs may be located on-site or off-site as part of a regional stormwater device, practice, or system.
- (b) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this **Subchapter B**. Post-construction BMPs may be located in non-navigable surface waters.
- (c) Except as allowed under Subsection (d), below, BMPs designed to treat post-construction runoff from any development may not be located within navigable waters.

- (d) Post-construction runoff from any development is allowed to flow into a navigable surface water prior to meeting the requirements of this **Subchapter B** if:
 - 1. The BMP was constructed prior to the most recent effective date of this **Subchapter B** and the BMP received all applicable permits ; and
 - 2, The BMP complies with all of the requirements of this **Subchapter B** and functions or will function to provide runoff treatment for the new development.
- (e) Runoff from existing development and post-construction runoff from redevelopment and in-fill areas may be located within navigable waterways if any of the following are met.
 - 1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
 - 2. The BMP is on an intermittent waterway.
 - 3. It conforms to Chapter 72 of the County Code, the County Shoreland Ordinance.
- (f) The Department may approve off-site management measures provided that all of the following conditions are met:
 - 1. The Department determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the municipality in which the measures are located and that it contains management requirements consistent with the purpose and intent of this Ordinance.
 - 2. The off-site facility is existing or established.
 - 3. The off-site facility meets all the performance standards outlined in this **Subchapter B** and is approved by the Department.
 - 4. The off-site facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (g) Where a regional treatment option exists such that the Department exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant may be required to pay a fee in an amount determined in negotiation with the Department. In determining the fee for post-construction runoff, the Department shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

(6) **ALTERNATE REQUIREMENTS.** The Department may establish stormwater management requirements more stringent than those set

forth in this Section of the Department determines that an added level of protection is needed to protect sensitive resources.

75.20 PERMITTING REQUIREMENTS, PROCEDURES, AND FEES.

- (1) **PERMIT REQUIRED.** If a stormwater management permit is required as outlined in this **Subchapter B**, no responsible party may undertake a land-disturbing construction activity without receiving a stormwater management permit from the Department.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this **Subchapter B**, any responsible party desiring a permit shall submit to the Department a permit application made on a form provided by the Department for that purpose.
 - (a) Unless otherwise exempted by this **Subchapter B**, a permit application must be accompanied by a stormwater management plan, a maintenance agreement, and a non-refundable permit administration fee. The maintenance agreement shall be recorded with the Sheboygan County Register of Deeds' Office upon completion of construction activities.
 - (b) The stormwater management plan shall be prepared to meet the requirements of Section 75.21 of this Code the financial guarantee shall meet the requirements of Section 75.23 of this Code, if applicable, and fees shall be those established as set forth in the Department's fee schedule.
- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Department shall review any complete permit application. The following approval procedure shall be used:
 - (a) Within thirty (30) calendar days of the receipt of a complete permit application, including all items as required by Subsection (2), above, the Department shall inform the applicant whether the application, plan, and maintenance agreement are approved or disapproved based on the requirements of this **Subchapter B**.
 - (b) If the stormwater permit application, plan, and maintenance agreement are approved, or if an agreement upon payment of fees in lieu of stormwater management practices is made, the Department shall issue the permit.
 - (c) If the stormwater permit application, plan, or maintenance agreement is disapproved, the Department shall detail in writing the reasons for disapproval.
 - (d) If the Department deems the application to be incomplete, the Department may request additional information from the applicant. If additional information is submitted, the Department shall have thirty (30) calendar days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
 - (e) Failure by the Department to inform the permit applicant of a decision within thirty (30) calendar days of receipt of the permit

application shall be deemed to mean approval of the permit application. The applicant may proceed as if a permit had been issued. If application was not submitted in person, the applicant shall verify in writing with the Department prior to commencing land-disturbing construction activities that the application was received by the Department.

- (4) **PERMIT REQUIREMENTS.** All permits issued under this **Subchapter B** shall be subject to the following conditions and holders of permits issued under this **Subchapter B** shall be deemed to have accepted these conditions. The Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Department to suspend or revoke this permit may be appealed in accordance with Section 75.26 of this Code. 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.
- (a) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
 - (b) The responsible party shall notify the Department of any significant modifications it intends to make to an approved stormwater management plan. The Department may require that the proposed modifications be submitted to the Department for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
 - (c) The responsible party shall notify the Department within two (2) business days of commencing any work in conjunction with the stormwater management plan.
 - (d) The responsible party shall permit property access to the Department or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (e) The responsible party shall notify the Department within seven (7) calendar days upon completion of the stormwater management practices.
 - (f) Completed stormwater management practices must pass a final inspection by the Department or its designee to determine if they are in accordance with the approved stormwater management plan and Subchapter.
 - (g) The Department or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit. The changes shall be completed within thirty (30) calendar days of the Department's written notification unless working conditions are unsuitable as determined by the Department.
 - (h) If the Department requests in writing, the responsible party shall provide record drawings completed by a licensed professional

engineer at the expense of the responsible party. The record drawings shall be completed within thirty (30) calendar days of the Department's request.

- (i) The responsible party authorizes the Department to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan and consents to a special assessment or charge against the property as authorized under Wis. Stat. ch. 66, Subchapter VII or to charging such costs against the financial guarantee posted under Section 75.10 of this Code.
 - (j) If so directed by the Department the responsible party shall repair a 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.
 - (k) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Department may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (l) The responsible party is subject to the enforcement actions and penalties detailed in Section 75.25 of this Code if the responsible party fails to comply with the terms of this permit.
 - (m) 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 County Board or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (5) PERMIT CONDITIONS. Permits issued under this Subsection may include conditions established by the Department in addition to the requirements needed to meet the performance standards in Section 75.19 of this Code or a financial guarantee as provided for in Section 75.23 of this Code.
- (6) PERMIT DURATION. Permits issued under this Section shall be valid from the date of issuance through the date the Department notifies the responsible party that all stormwater management practices have passed the final inspection required under Subsection (4)(c), above.
- (7) RESPONSE TO COMPLAINTS. The Department shall endeavor to respond to complaints received within two (2) business days of receiving the complaint regarding a party's stormwater management practices or other similar matters.

75.21 STORMWATER MANAGEMENT PERMIT APPLICATION REQUIREMENTS.

- (1) STORMWATER MANAGEMENT PLAN.

- (a) A stormwater management plan shall be prepared and submitted to the Department. The plan submittal shall consist of a cover letter identifying the applicant and landowner, a stormwater management plan summary checklist as described in the Manual, and the technical elements of the plan described in this **Subchapter B**.
- (b) The stormwater management plan shall be designed to meet the performance standards in Section 75.19 of this Code and other requirements of this **Subchapter B**.
- (c) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed Wisconsin professional engineer to be prepared in accordance with accepted engineering practice and requirements of this **Subchapter B**.
- (d) The stormwater management plan shall include at a minimum the following items:
 - 1. A narrative and supporting documents (or equivalent as approved by the Department) including:
 - A. Name, address, e-mail address, and telephone number for the following or their designees: landowner, developer, project engineer for practice design and certification, person(s) responsible for installation of stormwater management practices, and person(s) responsible for maintenance of stormwater management practices prior to the transfer if any of maintenance responsibility to another party.
 - B. A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system, the Sheboygan County Coordinate System, or to block and lot numbers within a recorded land subdivision plat.
 - C. Site location and approximate site boundaries shown on a United States Geological Survey 7.5-minute series topographic map, or equivalent as approved by the Department.
 - D. Site location and approximate site boundaries shown on a Sheboygan County Soil Survey Map or equivalent as approved by the Department.
 - E. Description of the soil classifications found on the site and their associated Hydrologic Soil Groups as identified on the Sheboygan County Soil Survey and TR-55.
 - F. A description and installation schedule for the stormwater management practices needed to meet the performance standards in Section 75.19 of this Code.

- G. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures.
 - H. Hydrology and pollutant loading computations for pre-and post-development conditions as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development and the geographic area used in making the calculations shall be clearly cross-referenced to the required plan(s) and/or map(s).
 - I. All major assumptions used in developing input parameters for all required analyses shall be clearly stated.
 - J. A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.
 - K. Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 - L. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
 - M. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
 - N. Other information requested in writing by the Department to determine compliance of the proposed stormwater management measures with the provisions of this **Subchapter B**.
2. An existing conditions site drawing(s) including at a minimum the following items at a legible scale not to exceed 1 inch equals 200 feet and at a contour interval not to exceed 2 feet if the maximum elevation difference on the site is greater than 100 feet or at a contour interval not to exceed 1 foot otherwise.
- A. Existing site topography.
 - B. Existing vegetative cover.
 - C. Existing impervious surfaces.
 - D. Existing roads.

- E. Existing natural and engineered drainage systems.
 - F. Waters of the State and regulatory wetlands on the site or within two hundred (200) feet of the site limits.
 - G. One hundred- (100-) year floodplain, floodway, and floodfringe boundaries on the site or within two hundred (200) feet of the site limits, as applicable.
 - H. Property boundaries of the site.
 - I. Property boundaries and names of adjacent landowners.
 - J. All existing easements.
 - K. Watershed boundaries used in hydrologic and hydraulic computations.
 - L. Hydrologic parameters for each watershed utilized in the hydrologic and hydraulic computations.
3. A post-development conditions site drawing(s) including at a minimum the following items at a legible scale not to exceed 1 inch equals 200 feet and at a contour interval not to exceed 2 feet if the maximum elevation difference on the site is greater than 100 feet or at a contour interval not to exceed 1 foot otherwise.
- A. Existing and post-development site topography.
 - B. Post-development vegetative cover extents and type.
 - C. Impervious surfaces and designations for all buildings, structures, pavement, etc., including designation of any remaining impervious area from existing conditions.
 - D. Existing and post-development roads.
 - E. Post-development natural and engineered drainage systems including but not limited to swales, culverts, inlets, and storm sewers.
 - F. Flow path and direction for all stormwater conveyance sections.
 - G. Location and type of all stormwater management conveyance and treatment practices.

- H. Waters of the State and regulatory wetlands on the site or within two hundred (200) feet of the site limits.
 - I. One hundred- (100-) year floodplain, floodway, and floodfringe boundaries on the site or within two hundred (200) feet of the site limits as applicable.
 - J. Property boundaries of the site.
 - K. Property boundaries and names of adjacent landowners.
 - L. Location and type of all existing and post-development easements.
 - M. Watershed boundaries used in hydrologic and hydraulic computations.
 - N. Hydrologic parameters for watershed utilized in the hydrologic and hydraulic computations.
 - O. Location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Admin. Code § NR 811.16.
4. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
- (2) ALTERNATE REQUIREMENTS. The Department may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under Section 75.20(5) of this Code.
- (3) AMENDMENTS. The applicant shall amend the stormwater management plan if any of the following occur:
- (a) There is a change in the design or maintenance of any stormwater management BMPs or conveyance features which has not otherwise been addressed in the stormwater management plan.
 - (b) The Department notifies the applicant of changes needed in the stormwater management plan.

75.22 MAINTENANCE AGREEMENT.

- (1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement for stormwater management practices shall be an agreement between the Department 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 Register of Deeds as a property deed restriction so that it is binding upon all

subsequent owners of the land served by the stormwater management practices.

- (2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan:
- (a) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan.
 - (c) Identification of the responsible party approved by the Department responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan.
 - (d) Requirement that the responsible party shall maintain stormwater management practices in accordance with the schedule included in Subsection (b), above.
 - (e) Authorization for the Department to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (f) A requirement on the Department to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
 - (g) Agreement that the responsible party shall be notified by the Department of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Department.
 - (h) Authorization of the Department to perform the corrected actions identified in the inspection report if the responsible party does not make the required corrections in the specified time period. The Department shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stat. ch. 66, Subchapter VII.

75.23 FINANCIAL GUARANTEE.

- (1) ESTABLISHMENT OF THE GUARANTEE. The Department may require the submittal of a financial guarantee shall be in an amount determined by the Department 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 Department 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 Department that the requirements of this **Subchapter B** have not been met.

- (2) **CONDITIONS FOR RELEASE.** Conditions for the release of the financial guarantee are as follows:
 - (a) The Department shall release the portion of the financial guarantee established under this Section less any costs incurred by the Department to complete installation of practices, upon submission of record drawings by a licensed professional engineer. The Department may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (b) The Department shall release the portion of the financial guarantee established under this Section to assure maintenance of stormwater practices less any costs incurred by the Department at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

75.24 ENFORCEMENT.

- (1) Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this **Subchapter B** by any person, firm, association, or corporation subject to the Subchapter provisions shall be deemed a violation unless conducted in accordance with the requirements of this **Subchapter B**.
- (2) The Department shall notify the responsible party by certified mail of any non-complying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (3) Upon receipt of written notification from the Department under Subsection (2), above, 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 Department in the notice.
- (4) If the violations issued pursuant to this **Subchapter B** are likely to result in damage to properties, public facilities, or waters of the State, the Department may enter the land and take emergency actions necessary to prevent such damage.
- (5) The Department is authorized to post a stop-work order on all land-disturbing construction activity that is in violation of this **Subchapter B** or to request the Corporation Counsel to seek a cease-and-desist order in any court with jurisdiction.
- (6) The Department may revoke a permit issued under this **Subchapter B** for non-compliance with Subchapter provisions.

- (7) Any permit revocation, stop-work order, or cease-and-desist order shall remain in effect unless retracted by the Department or by a court with jurisdiction.
- (8) The Department is authorized to refer any violation of this **Subchapter B** or of a stop-work order or cease-and-desist order issued pursuant to this **Subchapter B** to the Corporation Counsel for the commencement of further legal proceedings in any court with jurisdiction.
- (9) Any person, firm, association, or corporation who does not comply with the provisions of this **Subchapter B** shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) nor more than Five Thousand Dollars (\$5,000.00) per offense together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (10) Compliance with the provisions of this **Subchapter B** may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease-and-desist order before resorting to injunctive proceedings.
- (11) When the Department determines that the responsible party 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 Department or a party designated by the Department may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan.
- (12) Any engineering, construction, legal, and other related costs plus interest incurred by the Department related to enforcement actions taken by the Department under this Section shall be billed to the responsible party, deducted from any financial guarantee posted pursuant to Section 75.23 of this Code or entered on the tax roll as a special charge against the property and collected as a special assessment against the property pursuant to Wis. Stat. ch. 66, Subchapter VII.

75.25 APPEALS.

- (1) **BOARD OF ADJUSTMENT.** The Board of Adjustment created pursuant to Chapter 76 of this Code pursuant to Wis. Stat. § 59.694:
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Department in administering this **Subchapter B** except for cease-and-desist orders obtained under Section 75.25(3) of this Code.
 - (b) Upon appeal, may authorize variances from the provisions of this **Subchapter B** which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this **Subchapter B** will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.

- (2) WHO MAY APPEAL. Appeals to the Board of Adjustments may be taken by any aggrieved person or by an officer, Department, Board, or bureau of Sheboygan County affected by any decision of the Department.

SUBCHAPTER C: ILLICIT DISCHARGE DETECTION AND ELIMINATION

75.26 PURPOSE AND INTENT. The purpose of this Subchapter is to provide for the health, safety, and general welfare of the citizens of Sheboygan County through regulation of non-stormwater discharges to the stormwater conveyance system to the maximum extent practicable as required by federal and State law. The intent of this Subchapter is:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (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 and enforcement procedures necessary to ensure compliance with this Ordinance.

75.27 APPLICABILITY. This **Subchapter C** applies to all waters or discharges entering the Sheboygan County MS4 areas that are generated on any land within the boundaries and jurisdiction of the urbanized areas of Sheboygan County unless explicitly exempted by an authorized enforcement agency.

75.28 PROHIBITION OF ILLICIT DISCHARGES. No person shall discharge or cause to be discharged into the MS4 any pollutants or waters containing any pollutants other than stormwater, except as follows, which are allowed discharges.

- (1) Water line flushing, landscape irrigation, diverted stream flows that have been properly permitted, rising ground waters, 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, de-chlorinated swimming pool discharges, and street wash water.
- (2) Discharges or flow from firefighting and other discharges authorized by the Department as being necessary to protect public health and safety.
- (3) Discharges associated with dye testing; however, this activity requires notification to the Department and the DNR a minimum of one (1) day prior to the time of the test.
- (4) Any non-stormwater discharge permitted under 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.

75.29 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 Ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
- (4) Improper connection in violation of this Ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Department.
- (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 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.

75.30 COMPLIANCE MONITORING.

- (1) Right of entry: inspecting and sampling. The Department shall be permitted to enter and inspect facilities subject to regulation under this Subchapter as often as may be necessary to determine compliance with this Subchapter.
 - (a) 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.
 - (b) Facility operators shall allow the Department ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records.
 - (c) The Department shall have the right to set up on any facility such devices as are necessary in the opinion of the Department to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (2) The Department 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 properly 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.
- (3) 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 and shall not be replaced. The costs of clearing such access shall be borne by the operator.

- (4) Unreasonable delays in allowing the Department access to a facility are a violation. A person who is the operator of a facility commits an offense if the person denies the Department reasonable access to the facility for the purposes of conducting any activity authorized or required by this Ordinance.

75.31 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BMPS

- (1) 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 owner's own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of structural and non-structural BMPs.
- (2) Any person responsible for a property or premise that is the source of an illicit discharge may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4 or watercourses.
- (3) 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 compliant with the provisions of this Section. These BMPs shall be part of a Stormwater Management Plan/Stormwater Pollution Prevent Plan (SWPPP) as necessary for compliance with the requirements of the WPDES permit.

75.32 NOTIFICATION OF SPILLS

- (1) 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 the 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 materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Department in person or by phone no later than the next business day. 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 (3) years.
- (2) Failure to provide notification of a release as provided above is a violation of this Subsection.

75.33 VIOLATIONS, ENFORCEMENT, AND PENALTIES

- (1) Violations.
 - (a) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Subsection. Any person who has violated or continues to violate the provisions of this Subsection may be subject to the enforcement actions outlined in this Subsection or may be restrained by injunction or otherwise abated in a manner provided by law.
 - (b) In the event the violation constitutes an immediate danger to public health or public safety, the Department 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 is authorized to seek the costs of abatement which may be pursued by entering the costs on the tax roll as a special charge against the property and collected as a special assessment against the property pursuant to Wis. Stat. Ch. 66, Subchapter VII.
- (2) Warning notice. When the Department finds that any person has violated or continues to violate any provisions of this Ordinance or any order issued hereunder, the Department 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 charge will cease. Investigation and/or resolution of the matter in response to the warning notice does not relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice unless expressly made part of the resolution approved by the Department. Nothing in this Subsection shall limit the authority of the Department to take action, including emergency action or any other enforcement action, without first issuing a warning notice.
- (3) Suspension due to illicit discharges in emergency situations. The Department may without prior notice suspend MS4 discharge access to a person when such suspension is necessary to stop a 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 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.
- (4) Termination of access due to the detection of an illicit discharge.
 - (a) Any person discharging to the MS4 in violation of this Subchapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Department will notify a violator of the proposed terminations of its MS4 access.
 - (b) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Subchapter without the prior approval of the Department.

- (1) Any person aggrieved by a decision made or violation issued according to this Subsection may appeal to the Board of Adjustments pursuant to Section 75.14.
- (2) If the violation has not been corrected pursuant to the requirements set forth in the notice of violations or, in the event of an appeal, the decision of the Board of Adjustments, then representatives of the Department 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 Department or contractor to enter upon the premises for the purposes set forth above.
- (3) Any person who has violated or continues to violate this Ordinance 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 otherwise fails to cure the violations described therein within the set time period specified by the Department, the Department may impose a penalty of at least Twenty-five Dollars (\$25.00) and up to One Thousand Dollars (\$1,000.00) for each day the violation remains unremediated after receipt of the notice of violation. Representatives of the Department may issue citations pursuant to Chapter 90 of this Code to enforce the provisions of this Subchapter.

Section 2. **Effective Date.** The herein Ordinance shall take effect upon enactment.

Respectfully submitted this 20th day of December, 2016.

PLANNING, RESOURCES, AGRICULTURE, AND EXTENSION COMMITTEE*

Keith Abler
Keith Abler, Chairperson

Fran Damp
Fran Damp, Vice-Chairperson

Libby Ogea, Secretary

Steven Bauer
Steven Bauer

ENACTED 01.17.2017

James Baumgart
James Baumgart

Opposed to Introduction:

*County Board members signing only

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