

Chapter 325. Water Control

[HISTORY: Adopted by the Village Board of the Village of Elm Grove as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. [106](#).

Plumbing — See Ch. [212](#).

Sewers — See Ch. [232](#).

Land division — See Ch. [305](#).

Article I. Construction Site Erosion and Sediment Control

[Adopted 8-10-1987]

§ 325-1. Intent.

The intent of this article is to require erosion control practices that will reduce the amount of sediment and other pollutants leaving construction sites during land development or land disturbance activities. This article applies to all land disturbing construction activities.

§ 325-2. Statutory authority.

This article is adopted under the authority granted by § 61.354, Wis. Stats.

§ 325-3. Findings and purpose.

A.

Findings. The Village of Elm Grove finds that runoff from construction sites carries a significant amount of sediment and other pollutants to the waters of the state and this Village.

B.

Purpose. It is the purpose of this ordinance to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the Village.

§ 325-4. Applicability.

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This article applies to land disturbing and land developing activities on lands within the boundaries and jurisdiction of the Village. All state-funded or state-conducted construction is exempt from this article.

(a) Except as provided under par. (b), this ordinance applies to any construction site as defined in S. 325-5.

(b) This ordinance does not apply to the following:

1. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
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 chapter 40, Code of Federal Regulations, 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 that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size that, as determined by the Village, 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, or that increases water pollution by scouring or transporting of particulate.

§ 325-5. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADMINISTERING AUTHORITY

A governmental employee or a regional planning commission empowered under s. 62.234, Wis. Stats. that is designated by the Village to administer this ordinance.

AGRICULTURAL FACILITIES AND PRACTICES

Has the meaning in s. 281.16 (1), Wis. Stats.

BEST MANAGEMENT PRACTICE OR BMP

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.

COMMERCIAL LAND USE

Use of land for the retail or wholesale sale of goods or services.

CONSTRUCTION SITE

An area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

DESIGN STORM

A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

EROSION

The detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

EROSION AND SEDIMENT CONTROL PLAN

A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

FINAL STABILIZATION

All land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

LAND DEVELOPING ACTIVITY

The construction of buildings, roads, parking lots, paved storage areas and similar facilities.

LAND DISTURBING CONSTRUCTION ACTIVITY

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Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

[LANDOWNER](#)

Any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

[PERFORMANCE STANDARD](#)

A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

[PERMIT](#)

A written authorization made by the Village to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

[POLLUTANT](#)

Has the meaning given in s. 283.01 (13), Wis. Stats.

[POLLUTION](#)

Has the meaning given in s. 281.01 (10), Wis. Stats.

[RUNOFF](#)

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

[SILVICULTURE ACTIVITY](#)

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

[SITE](#)

The entire area included in the legal description of the land on which the land disturbing or land development activity is proposed in the permit application.

TECHNICAL STANDARD

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

TRANSPORTATION FACILITY

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

WATERS OF THE STATE

Includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

§ 325-6 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Village'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.

§ 325-7. Technical Standards

All BMPs required for compliance with this ordinance shall meet design criteria, standards and specifications based on any of the following:

- (1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (2) Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.

(3) Technical standards and methods approved by the Village.

§ 325-8 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES OF ONE ACRE OR MORE.

(1) RESPONSIBLE PARTY. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with § 325-10.

(2) EROSION AND SEDIMENT CONTROL PLAN. A written site-specific erosion and sediment control plan shall be developed in accordance with § 325-10 of this ordinance and implemented for each construction site.

(3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS. The erosion and sediment control plan required under sub. (2) shall include the following:

(a) EROSION AND SEDIMENT CONTROL PRACTICES. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all the following:

1. The deposition of soil from being tracked onto streets by vehicles.
2. The discharge of sediment from disturbed areas into on-site storm water inlets.
3. The discharge of sediment from disturbed areas into adjacent waters of the state.
4. The discharge of sediment from drainage ways that flow off the site.
5. The discharge of sediment by dewatering activities.
6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
7. The discharge of sediment from erosive flows at outlets and in downstream channels.
8. The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.

(b) SEDIMENT PERFORMANCE STANDARDS. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

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1. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
3. Notwithstanding subd. 1., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(c) PREVENTIVE MEASURES. The erosion and sediment control plan shall incorporate all the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
2. Minimization of soil compaction and preservation of topsoil.
3. Minimization of land disturbing construction activity on slopes of 20 percent or more.
4. Development of spill prevention and response procedures.

(d) LOCATION. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state.

(4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed in S. § 325-8 (2).
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

§ 325-9 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

(1) **PERMIT REQUIRED.** No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Village.

(2) **PERMIT APPLICATION AND FEES.** The responsible party that will undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of § 325-10 and shall pay an application fee to the Village in the amount specified in § 325-11. By submitting an application, the applicant is authorizing the Village to enter the site to obtain information required for the review of the erosion and sediment control plan.

(3) **PERMIT APPLICATION REVIEW AND APPROVAL.** The Village shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

(a) Within thirty business days of the receipt of a complete permit application, as required by sub. (2), the Village shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this ordinance.

(b) If the permit application and erosion and sediment control plan are approved, the Village shall issue the permit.

(c) If the permit application or erosion and sediment control plan is disapproved, the Village shall state in writing the reasons for disapproval.

(d) The Village may request additional information from the applicant. If additional information is submitted, the Village shall have thirty business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.

(e) Failure by the Village to inform the permit applicant of a decision within thirty business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

(4) **SURETY BOND.** As a condition of approval and issuance of the permit, the Village may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.

(5) **PERMIT REQUIREMENTS.** All permits shall require the responsible party to:

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- (a) Notify the Village within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the Village of completion of any BMPs within 14 days after their installation.
 - (c) Obtain permission in writing from the Village prior to any modification pursuant to § 325-10 (3) of the erosion and sediment control plan.
 - (d) Install all BMPs as identified in the approved erosion and sediment control plan.
 - (e) Maintain all road drainage systems, storm water drainage systems, BMPs and other facilities identified in the erosion and sediment 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) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (h) Allow the Village to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (6) PERMIT CONDITIONS. Permits issued under this section may include conditions established by Village in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in § 325-7 or § 325-8.
- (7) PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Village may grant one or more extensions not to exceed 180 days cumulatively. The Village may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this ordinance.
- (8) MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

§ 325-10 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT AND AMENDMENTS.

- (1) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. For each construction site identified under § 325-04 (1)(c), an erosion and sediment control plan statement shall be

prepared. This statement shall be submitted to the Village. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the ordinance. A site map shall also accompany the erosion and sediment control plan statement.

(2) EROSION AND SEDIMENT CONTROL PLAN REQUIREMENTS.

- (a) An erosion and sediment control plan shall be prepared and submitted to the Village.
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in **§ 325-7**, **§ 325-8** and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1. Name(s) and 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. The application shall also include start and end dates for construction.
 - 2. Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - 3. Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - 4. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
 - 5. Calculations to show the compliance with the performance standard in **§ 325-8 (3)(b)1**.
 - 6. Existing data describing the surface soil as well as subsoils.
 - 7. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 - 8. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.

(d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.

1. Existing 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 100-year flood plains, flood fringes and floodways shall also be shown.
2. Boundaries of the construction site.
3. Drainage patterns and approximate slopes anticipated after major grading activities.
4. Areas of soil disturbance.
5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
6. Location of areas where stabilization BMPs will be employed.
7. Areas which will be vegetated following land disturbing construction activities.
8. Area(s) and location(s) of wetland on the construction site, and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
9. Areas(s) used for infiltration of post-construction storm water runoff.
10. An alphanumeric or equivalent grid overlying the entire construction site map.

(e) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented.

The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

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2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Village, structural measures shall be installed on upland soils.
 3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
 4. Trapping of sediment in channelized flow.
 5. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
 6. Protection of downslope drainage inlets where they occur.
 7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
 8. Clean up of off-site sediment deposits.
 9. Proper disposal of building and waste material.
 10. Stabilization of drainage ways.
 11. Installation of permanent stabilization practices as soon as possible after final grading.
 12. Minimization of dust to the maximum extent practicable.
- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (3) EROSION AND SEDIMENT CONTROL PLAN AMENDMENTS. The applicant shall amend the erosion and sediment control plan if any of the following occur:
- (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the erosion and sediment control plan.
 - (b) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
 - (c) The Village notifies the applicant of changes needed in the erosion and sediment control plan.
- § 325-11 FEE SCHEDULE.

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The fees referred to in other sections of this ordinance shall be established by the Village and may from time to time be modified by resolution. A schedule of the fees established by the Village shall be available for review in [location].

§ 325-12 INSPECTION.

If land disturbing construction activities are occurring without a permit required by this ordinance, the Village may enter the land pursuant to the provisions of ss. 66.0119 (1), (2), and (3), Wis. Stats.

§ 325-13 ENFORCEMENT.

(1) The Village may post a stop work order if any of the following occurs:

(a) Land disturbing construction activity regulated under this ordinance is occurring without a permit.

(b) The erosion and sediment control plan is not being implemented in good faith.

(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 and sediment control plan or permit conditions, the Village may revoke the permit.

(3) If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the Village, or if a responsible party violates a stop work order posted under sub. (1), the Village may request the village attorney to obtain a cease and desist order in any court with jurisdiction.

(4) The Village may retract the stop work order issued under sub. (1) or the permit revocation under sub. (2).

(5) After posting a stop work order under sub. (1), the Village may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Village may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the Village, plus interest at the rate authorized by the Village shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats. (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than [amount] nor more than [amount] and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

(7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

§ 325-14 APPEALS.

(1) BOARD OF APPEALS. The board of appeals created pursuant to section [number] of the Village's ordinance pursuant to s. [59.694, 60.65, 61.354 (4)(b) or 62.23 (7)(e)], Wis. Stats.:

(a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village in administering this ordinance except for cease and desist orders obtained under § 325-13 (3).

(b) May authorize, upon appeal, variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance 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 appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the Village of Elm Grove affected by any decision of the Village.

§ 325-15 SEVERABILITY.

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

Article II. Surface Drainage Management

[Adopted 5-13-1991]

§ 325-16. Findings; purpose.

The Village of Elm Grove is reliant upon roadside drainage ditches, driveway culverts and storm sewers at limited locations for management of surface drainage. The purpose of this article is to promote the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of stormwater; control

building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

§ 325-17. Drains.

A.

"Drain" means any device for the drainage of water from land or protection of land from water, including without limitation any open ditch, channel, swale, creek, tiles or pipeline, whether natural or man-made.

B.

No person shall deliberately or by negligence obstruct or fill a drain without first obtaining a permit from the Public Works Director.^[1] Such permit may be withheld for a period not to exceed 90 days for the purpose of providing alternative drainage, by storm sewers or other means.

[1]

Editor's Note: Throughout this article, references to the "Public Works Director" were amended to read "Public Works Director" at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

C.

The Public Works Director may remove from drains any obstructions or fill installed without a permit.

D.

No person shall construct, reconstruct, alter, repair or install any drainage structure in any drain without obtaining a permit from the Public Works Director. Issuance of such permit shall be predicated upon a finding by the Public Works Director that such drainage structure does not substantially retard the flow of water and does not adversely affect the public health, safety or welfare.

§ 325-18. Application for permit.

A.

Any person seeking a permit to alter or install a drainage structure or to fill or obstruct a drain or to construct, reconstruct, alter, repair or install any drainage structure in any drain shall fill out a written application with the Public Works Director containing the following information:

(1)

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The name and address of the applicant and, if a corporation, the names and addresses of the officers thereof.

(2)

The location of the proposed work.

(3)

The plans and specifications for such work in triplicate. This shall include the drainage area and the design of the structures or alteration and such other information as the Public Works Director shall determine to be necessary to process the application.

B.

The permit fee shall be \$25.

§ 325-19. Enforcement; violations and penalties.

A.

Whenever a drain is obstructed by the negligence or deliberate action of the owner without a permit or when a drainage structure is constructed, reconstructed, altered, repaired or installed without a permit in either a natural watercourse or a drain, the Public Works Director shall serve a written order by certified mail on the owner demanding removal within a reasonable time, as specified within the letter.

[Amended 4-10-2000]

(1)

Any person aggrieved by the administration of this article may appeal the decision to the Board of Appeals established by the Village pursuant to § 62.23(7)(e), Wis. Stats. The Board shall hear and decide appeals where it is alleged that there is an error in any order, decision or determination made by the Public Works Director or Zoning Administrator in administering this article.

(2)

The owner may appeal to the Board of Appeals within 10 calendar days of actual service of the order. If an appeal is not taken by filing in writing with the Village Clerk within such 10 days, the order shall be final. Hearings before the Board of Appeals shall be conducted pursuant to § 62.23(7)(e), Wis. Stats.

B.

If the owner neglects or refuses to comply with a removal order after his or her appeal period has expired, the Public Works Director shall promptly refer the matter to the Village Attorney's office for prosecution.

C.

Any person who shall violate any provision of this article or any rule or regulation made under this article shall be subject to a penalty as provided in § [1-16](#) of this Code, except that the forfeiture shall not be less than \$100.

[Amended 4-10-2000; 7-26-2005]

§ 325-20. Right of entry; recovery of costs.

Pursuant to § 88.87(3)(c), Wis. Stats., the Public Works Director may enter onto any property for the purpose of removing an obstruction in a drain which is in violation of § 88.87(3)(a), Wis. Stats., and which is flooding or causing damage to a Village highway. The reasonable cost of removal of an obstruction under this article shall be charged to the property owner without further notice by a special charge pursuant to § 66.60(16), Wis. Stats. In the event any special charge remains unpaid for longer than 30 days, a lien against the property shall be created in accordance with the provisions of § 66.60(16)(b), Wis. Stats.

§ 325-21. Interference with Village officers prohibited.

No person shall interfere with or impede any Village officer, employee or contractor in removing an obstruction.

§ 325-22. Emergencies.

Where a drainage obstruction in a natural watercourse or drain is determined by the Public Works Director to constitute an immediate danger to the public health, safety or welfare, the Public Works Director shall proceed forthwith to enter upon the lands involved and have the obstruction removed, either by public agency or by contract. If such obstruction was caused by the negligence or deliberate act of the owner and not by natural causes, the reasonable cost of removal shall be charged and assessed as provided in § [325-18](#) of this article.

Article III. Stormwater Management

[Adopted 4-10-2000]

§ 325-23. Authority.

This article is adopted under the authority granted by §§ 61.34(1), 61.354 and 62.234, Wis. Stats.

§ 325-24. Purpose.

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The Village acknowledges 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

PURPOSE. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:

- (a) Further the maintenance of safe and healthful conditions.
- (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
- (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
- (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.

§ 325-25. Intent.

Intent. It is the intent of the Village that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Village recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the Village, it is the intent of this ordinance that the approved storm water management plan be used to identify post-construction management measures acceptable for the community.

§ 325-26 Applicability and Jurisdiction.

- (1) Applicability.

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(a) Except as provided under par. (b), this ordinance applies to a post-construction site whereupon one acre or more of land disturbing construction activity occurs during construction.

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

1. A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.

2. Agricultural facilities and practices.

3. Underground utility construction, but not including the construction of any aboveground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to postconstruction

sites of any size that, as determined by the Village, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.

(2) Exclusions.

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

§ 325-27. Abrogation and greater restrictions.

It is not intended by this article to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to laws. However, wherever this article imposes greater restrictions, the provisions of this article shall govern.

§ 325-28. Interpretation.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

§ 325-29. Title.

This article shall be known as, referred to or cited as the "Stormwater Management Ordinance, Village of Elm Grove, Wisconsin."

§ 325-30 Jurisdiction.

The jurisdiction of this article shall include all lands or waters within the corporate limits of the Village of Elm Grove.

§ 325-31. Definitions.

The definitions used in this article are as follows:

ADEQUATE SOD, OR SELF-SUSTAINING VEGETATIVE COVER – Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved.

Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

ADMINISTERING AUTHORITY – A governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Village to administer this ordinance.

AGRICULTURAL FACILITIES AND PRACTICES – has the meaning given in s. 281.16 (1), Wis. Stats.

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

AVERAGE ANNUAL RAINFALL – A typical calendar year of precipitation as determined by the

Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

BEST MANAGEMENT PRACTICE OR BMP – Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

BUSINESS DAY – A day the office of the Village is routinely and customarily open for business.

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

COMBINED SEWER SYSTEM – A system for conveying both sanitary sewage and storm water runoff.

CONNECTED IMPERVIOUSNESS – An impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.

DESIGN STORM – a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

DEVELOPMENT – Residential, commercial, industrial or institutional land uses and associated roads.

DIRECT CONDUITS TO GROUNDWATER – Wells, sinkholes, swallets, fractured bedrock at the

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surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

EFFECTIVE INFILTRATION AREA – The area of the infiltration system that is used to infiltrate runoff

and does not include the area used for site access, berms or pretreatment.

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

EXCEPTIONAL RESOURCE WATERS – Waters listed in s. NR 102.11, Wis. Adm. Code.

FILTERING LAYER – Soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.

FINAL STABILIZATION – All land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

FINANCIAL GUARANTEE – A performance bond, maintenance bond, surety bond, irrevocable

letter of credit, or similar guarantees submitted to the Village by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.

GOVERNING BODY – Town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

IMPERVIOUS SURFACE – An area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel or paved parking lots and streets are examples of areas that typically are impervious.

IN-FILL – An undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.

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

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

LAND DISTURBING CONSTRUCTION ACTIVITY – Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

LANDOWNER – Any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

MAINTENANCE AGREEMENT – A legal document that provides for long-term maintenance of storm water management practices.

MAXIMUM EXTENT PRACTICABLE – The highest level of performance that is achievable

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but is

not equivalent to a performance standard identified in this ordinance as determined in accordance with § 325-6 of this ordinance.

NEW DEVELOPMENT – Development resulting from the conversion of previously undeveloped land or agricultural land uses.

NRCS MSE3 OR MSE4 DISTRIBUTION – A specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.

OFF-SITE – Located outside the property boundary described in the permit application.

ON-SITE – Located within the property boundary described in the permit application.

ORDINARY HIGH-WATER MARK – has the meaning given in s. NR 115.03 (6), Wis. Adm. Code.

OUTSTANDING RESOURCE WATERS – Waters listed in s. NR 102.10, Wis. Adm. Code.

PERCENT FINES – The percentage of a given sample of soil, which passes through a # 200 sieve.

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

PERMIT – A written authorization made by the Village to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

PERMIT ADMINISTRATION FEE – A sum of money paid to the Village by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

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

POLLUTANT – has the meaning given in s. 283.01 (13), Wis. Stats.

POLLUTION – has the meaning given in s. 281.01 (10), Wis. Stats.

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

PRE-DEVELOPMENT CONDITION – 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.

PREVENTIVE ACTION LIMIT – has the meaning given in s. NR 140.05 (17), Wis. Adm. Code.

PROTECTIVE AREA – An area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.

REDEVELOPMENT – Areas where development is replacing older development.

RESPONSIBLE PARTY – The landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement.

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

SEPARATE STORM SEWER – A conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm

drains, which meets all of the following criteria:

- (a) Is designed or used for collecting water or conveying runoff.
- (b) Is not part of a combined sewer system.
- (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- (d) Discharges directly or indirectly to waters of the state.

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

SITE – The entire area included in the legal description of the land on which the land disturbing construction activity occurred.

STOP WORK ORDER – An order issued by the Village which requires that all construction activity on the site be stopped.

STORM WATER MANAGEMENT PLAN – A comprehensive plan designed to reduce the discharge

of pollutants from storm water, after the site has undergone final stabilization, following completion of the construction activity.

STORM WATER MANAGEMENT SYSTEM PLAN – A comprehensive plan designed to reduce the

discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

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

TOP OF THE CHANNEL – An edge, or point on the landscape landward from the ordinary highwater

mark of a surface water of the state, where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

TOTAL MAXIMUM DAILY LOAD OR TMDL – The amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

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

TR-55 – the United States department of agriculture, natural resources conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.

TRANSPORTATION FACILITY – A highway, a railroad, a public mass transit facility, a public-use

airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats. Transportation facility does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to s. 281.33, Wis. Stats.

TSS – Total suspended solids.

TYPE II DISTRIBUTION – A rainfall type curve as established in the United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973.

WATERS OF THE STATE – includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

§ 285-32. Applicability of maximum extent practicable.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrate to the Village'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.

§ 285-33. Technical standards.

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

- A. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wis. Adm. Code.
- B. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used, provided that the methods have been approved by the administering authority.
- C. Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance. The most recent rainfall data available from the Southeastern Wisconsin Regional Planning Commission or more protective data shall be the basis for the analyses required by this article.

§ 285-34. Performance standards.

- A. Responsible party. The responsible party shall implement a postconstruction stormwater management plan that incorporates the requirements of this section.
- B. Plan. A written stormwater quality and quantity management plan in accordance with §

285-33 shall be developed and implemented for each postconstruction site.

C. Maintenance of Effort. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.

D. Requirements. The water quality plan required under Subsection B shall include the following:

(1) Total suspended solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the postconstruction site as follows:

(a) For new development, by design, reduce to the maximum extent practicable the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.

(b) For redevelopment, by design, reduce to the maximum extent practicable the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

(c) For infill development under five acres that occurs within 10 years after October 1, 2002, by design, reduce to the maximum extent practicable the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

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

(e) Maximum Extent Practicable. If the design cannot meet a total suspended solids or phosphorus reduction performance standard of Table 1, the storm water management plan shall include a written, site-specific explanation of why the total suspended solids or phosphorus reduction performance standard cannot be met and why the pollutant loads will be reduced only to the maximum extent practicable.

(f) Off-Site Drainage. 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.

(1) **REQUIREMENTS.** The plan required under par. (B) shall include the following:

(a) **POLLUTANT CONTROL.** BMPs shall be designed, installed and maintained to control total suspended solids and phosphorus carried in runoff from the post-construction site as follows:

1. BMPs shall be designed in accordance with Table 1 or to the maximum extent practicable as provided in par. (b). The design shall be based on an average annual rainfall, as compared to no runoff management controls.

Table 1: Pollutant Reduction Standards

Development Type	TSS Reduction	Phosphorus
New development	80%	30%
In-fill development	80%	30%
Redevelopment	60% of load from parking areas and roads	30%

2. **Maximum Extent Practicable.** If the design cannot meet a total suspended solids or phosphorus reduction performance standard of Table 1, the storm water management plan shall include a written, site-specific explanation of why the total suspended solids or phosphorus reduction performance standard cannot be met and why the pollutant loads will be reduced only to the maximum extent practicable.

3. **Off-Site Drainage.** 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.

(2) **Peak Runoff.** By design, BMPs shall be employed to maintain or reduce the 1-year, 24-hour; and the 2-year, 24-hour post-construction peak runoff discharge rates to the 1-year, 24-hour; and the 2-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable. The runoff curve numbers in the table below shall be used to represent the actual pre-development conditions. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS Wisconsin MSE3 or MSE4 precipitation distribution. On a case-by-case basis, the Village may allow the use of TP-40 precipitation depths and the Type II distribution.

Maximum Pre-Development Runoff Curve Numbers	
Runoff Curve Number	Hydrologic Soil Group

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	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

(3) Runoff management requirements.

(a) The responsible party shall manage the volume, timing, and peak flow rate of runoff from development or redevelopment approved by the Village after the effective date of this chapter. The responsible party may implement runoff management requirements on a watershed basis or at individual sites.

(b) Standards for development; demolition or construction during redevelopment.

[1] For development, runoff management shall prevent increases in the regional flood and stream bank erosion rates.

[2] If demolition or construction during redevelopment will disturb an area larger than two acres, then the responsible party shall reduce the runoff release rate by the amount listed in the following table for the one- percent/one-hundred-year and fifty-percent/two-year storms, except as provided in Subsection C(2)(e).

Area Disturbed by Demolition or Construction	Reduction to the Existing Runoff Release Rate as of October 25, 2010
Between 2 and 3.5 acres	10%
From 3.5 to 5 acres	15%
Greater than 5 acres	20%

(c) The responsible party may prepare a watershed or sub- watershed stormwater management plan or a local stormwater management plan for multiple sites considered together. These analyses shall show how runoff volume is distributed over the critical time of the watershed sufficient to comply with Subsection C(2)(b). The responsible party shall analyze runoff and determine the critical time according to guidance provided by the Milwaukee Metropolitan Sewerage District (MMSD). When evaluating how a development will affect the watercourses, the responsible party shall use models and conditions approved by the MMSD. The responsible party shall use 2020 or later land use conditions. The responsible party shall use pre-project channel conditions. The responsible party shall submit these plans and analyses to the MMSD for review and approval. Such plans are subject to approval of the MMSD, in addition to

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the approval of the Village.

(d) In the absence of an approved watershed management plan that covers development at a particular site, the responsible party shall implement either site-specific maximum runoff release rates that will distribute runoff over the critical time sufficient to comply with Subsection C(2)(b)[1], calculated according to guidance provided by MMSD, or the following uniform rates:

Storm (Probability/recurrence Interval)	Maximum Runoff Release Rate (cubic feet per second per acre)
1% / 100-year	0.5
50% / 2-year	0.15

(e) Redevelopment may reduce the runoff release rate by an amount less than required by Subsection C(2)(b)[2] when conditions make compliance unreasonable. Relevant conditions include, but are not limited to, soil contamination, groundwater contamination, land use requirements, land availability, opportunities for off-site management, construction delays, marginal costs, and the availability of financing. In this case, redevelopment shall achieve the greatest practicable reduction.

(f) When selecting the runoff management techniques appropriate for a particular development, responsible parties shall consider the following techniques, in order of preference:

[1] Preservation of the natural features of development sites, including natural storage and infiltration characteristics;

[2] Preservation of existing natural streams, channels, and drainageways;

[3] Minimizing new impervious surfaces;

[4] Conveyance of stormwater in open vegetated channels;

[5] Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and

[6] Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.

(g) If impervious surface is removed after the effective date of this chapter, then the responsible party may reduce the degree of runoff management necessary for new impervious surface within the same watershed or sub- watershed, to the extent that the net result complies

with Subsection C(2)(b). The responsible party shall implement this subsection according to guidance provided by the MMSD.

(h) Runoff management systems may be either public or private.

(i) The responsible party shall ensure that facilities constructed to manage runoff are maintained to preserve their effectiveness.

(j) If a runoff management system is not constructed or maintained according to an approved site development stormwater management plan or otherwise fails to comply with Subsection C(2)(a), then the responsible party shall construct new facilities, expand or correct previously constructed facilities, or implement other remedial action.

(4) Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in Subsection C(3)(e) through (g), or to the maximum extent practicable:

[1] *Low imperviousness.* For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low-density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.

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

[3] *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

(b) For residential developments, one of the following shall be met:

[1] Infiltrate sufficient runoff volume so that the postdevelopment infiltration volume shall be at least 90% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

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

(c) For nonresidential development, including commercial, industrial and institutional development, one of the following shall be met:

[1] Infiltrate sufficient runoff volume so that the postdevelopment infiltration volume shall be at least 60% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

[2] Infiltrate 10% of the runoff from the two-year, twenty- four-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(d) Predevelopment condition shall be the same as in Subsection C(3)(b).

(e) Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with Subsection C(3)(g). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

(f) Infiltration exclusions. The runoff from the following areas is prohibited from meeting the requirements of this subsection:

[1] Areas associated with Tier 1 industrial facilities identified in § NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop, and parking.

[2] Storage and loading areas of Tier 2 industrial facilities identified in § NR 216.21(2)(b), Wis. Adm. Code.

[3] Fueling and vehicle maintenance areas.

[4] Areas within 1,000 feet up gradient or within 100 feet down gradient of karst features.

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

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

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

[8] Areas where contaminants of concern, as defined in § NR 720.03(2), Wis. Adm. Code, are present in the soil through which infiltration will occur.

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

(g) Infiltration exemptions. The following are not required to meet the requirements of this subsection:

[1] Areas where the infiltration rate of the soil is less than 0.6 inch per hour measured at the site.

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

[3] Redevelopment postconstruction sites.

[4] Infill development areas less than five acres.

[5] Infiltration areas during periods when the soil on the site is frozen.

[6] Roads in commercial, industrial and institutional land uses, and arterial residential roads.

(h) Protection of groundwater quality.

[1] 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 in accordance with Ch. NR 140, Wis. Adm. Code. However, if site-specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

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[2] Notwithstanding Subsection C(3)(g)[1], the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(1) Protective areas.

(i) "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this subsection, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

[1] For outstanding resource waters and exceptional resource waters, 75 feet.

[2] For perennial and intermittent streams identified on a United States Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

[3] For lakes, 50 feet.

[4] For wetlands not subject to par. (5) or (6), 50 feet.

[5] For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps and ephemeral ponds.

[6] For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass, cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

[7] In pars. (4) through (6), determinations of the extent of the protective area adjacent to wetlands shall be made based on the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03, Wis. Adm. Code.

[8] Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m), Wis. Adm. Code. This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

[9] For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

[10] Notwithstanding pars. (1) to (9), the greatest protective area width shall apply where

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rivers, streams, lakes and wetlands are contiguous.

(j) This subsection applies to postconstruction sites located within a protective area, except those areas exempted pursuant to Subsection C(4)(d) of this section.

(k) The following requirements shall be met:

[1] Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction. The plan shall also include a site plan of the proposed construction including existing trees, proposed landscaping, vegetative cover, and if requested, appropriate elevations, building, and additional landscape information. The site plan should include the relationship between landscaping, drainage, and stormwater management for the site.

[2] Where land-disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Nonvegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

[3] Best management practices such as filter strips, swales, or wet detention basins that are designed to control pollutants from nonpoint sources may be located in the protective area.

(l) This subsection does not apply to:

[1] Except as provided under S. 07 (C), redevelopment post-construction sites.

[2] In-fill development areas less than 1 acre.

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

[4] Structures constructed in accordance with s. 59.692(1v), Wis. Stats.

[5] Areas of post-construction sites from which runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(2) Fueling and vehicle maintenance areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

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(3) Swale treatment for transportation facilities.

(m) Applicability. Except as provided in Subsection C(6)(b), transportation facilities that use swales for runoff conveyance and pollutant removal meet all the requirements of this section if the swales are designed to the maximum extent practicable to do all of the following:

[1] Be vegetated. However, where appropriate, nonvegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

[2] Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second based on a two-year, twenty-four-hour design storm. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

(n) Exemptions. The administering authority may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

[1] An outstanding resource water.

[2] An exceptional resource water.

[3] 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.

[4] Waters where targeted performance standards are developed under § NR 151.004, Wis. Adm. Code, to meet water quality standards.

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

(1) Natural topography and land cover features such as natural swales, natural depressions, native soil-infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.

(a) Parking lots with over 24 stalls shall have a minimum of one tree island not less than 180 square feet for each group of 24 stalls or an equivalent number of perimeter plantings or tree rows that are designed as part of an overall landscape plan acceptable to the Plan Commission.

(2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

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(3) BMPs for water quantity management shall use the following techniques, in order of preference:

- (a) Preservation of the natural features of development sites, including natural storage and infiltration characteristics;
- (b) Preservation of existing natural streams, channels, and drainageways;
- (c) Minimizing new impervious surfaces;
- (d) Conveyance of stormwater in open vegetated channels;
- (e) Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and
- (f) Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.

F. Location and regional treatment option.

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

(2) Postconstruction runoff within a nonnavigable drainage way that flows into a BMP, such as a wet pond, is not required to meet water quality performance standards unless designed to provide treatment. Postconstruction BMPs may be located in nonnavigable surface waters.

(3) Except as allowed under Subsection E(4), postconstruction runoff from new development shall meet the postconstruction performance standards prior to entering a navigable surface water.

(4) Postconstruction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this article if:

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

(b) The BMP is designed to provide runoff treatment from future upland development.

(5) Runoff from existing development, redevelopment and infill areas shall meet the postconstruction performance standards in accordance with this subsection.

(a) To the maximum extent practicable, BMPs shall be located to treat runoff prior to

discharge to navigable surface waters.

(b) Postconstruction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state, and local regulations, such as Ch. NR 103, Wis. Adm. Code, and Ch. 30, Wis. Stats.

(6) The discharge of runoff from a BMP, such as a wet pond, or after a series of such BMPs is subject to this article.

(7) The administering authority may approve off-site management measures, provided that all of the following conditions are met:

(a) The administering authority determines that the postconstruction runoff is covered by a stormwater management system plan that is approved by the Village of Elm Grove and that contains management requirements consistent with the purpose and intent of this article.

(b) The off-site facility meets all the following conditions:

[1] The facility is in place.

[2] The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this article.

[3] The facility has a legally obligated entity responsible for its long-term operation and maintenance.

(8) Where a regional treatment option exists such that the administering authority exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the administering authority. In determining the fee for postconstruction runoff, the administering authority shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

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

§ 325-32. Prohibited discharges; exemptions.

A.

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No person shall discharge, spill or otherwise deposit substances or materials which are not entirely composed of stormwater into receiving bodies of surface water, storm sewers or other drainage facilities or onto driveways, sidewalks, parking lots or other impervious or pervious areas that drain into the streams and watercourses of the area. No person shall connect a building wastewater sewer or drain to storm sewers or other stormwater drainage facilities.

B.

The following discharges are exempt from the provision of this article:

(1)

Discharge authorized by a permit issued by the Wisconsin Department of Natural Resources;

(2)

Discharges resulting from fire-fighting activities;

(3)

Discharges from uncontaminated groundwater, potable water sources, roof drains, foundation drains and foundation drain sump pump discharges, air-conditioning condensation, lawn watering, water main and hydrant flushing and swimming pools, if the pool water has been dechlorinated;

(4)

Discharges from individual automobile washing by automobile owners not involving any commercially zoned site;

(5)

Agricultural activities, such activities, however, being subject to good soil and water conservation practices; and

(6)

Facility maintenance activities undertaken by any federal, state, county or municipal agency, such activities, however, being subject to construction erosion control measures.

§ 325-33. Stormwater management plan and facilities required.

[Amended 12-17-2002]

A.

No person shall proceed with any residential, commercial, industrial or institutional land use development or redevelopment or with the division or subdivision of property without providing

appropriate stormwater management facilities that adequately control stormwater runoff from such development or redevelopment or subdivided property. A site-specific stormwater management plan must be submitted and approved by the Public Works Director before any required new stormwater management facilities are constructed, unless exempted or waived pursuant to the provisions of this article. An approved site-specific stormwater management plan is also required before an existing drainage system is relocated, deepened, widened, enlarged, filled, obstructed or otherwise altered in preparation for land use development and redevelopment or division or subdivision of property. The plan must be submitted and approved before any land use development and redevelopment is commenced or a land subdivision plat or certified survey map is approved and recorded.

[B.](#)

Milwaukee Metropolitan Sewerage District Rules ("MMSD Rules") contained in Chapter 13 on Surface Water and Stormwater Runoff Management (effective January 1, 2002) and all future amendments thereto are hereby adopted by reference. There shall be compliance with all applicable provisions contained in MMSD Rules Chapter 13 as may be amended from time to time that pertain to stormwater runoff management and plan submittal requirements in addition to the stormwater requirements of the Village of Elm Grove ordinances. This shall include, but not be limited to, plat approval under Chapter 236 Wis. Stats., construction site erosion control and post-construction stormwater quality best management practices to abate pollutant runoff.

[C.](#)

The Village Clerk or Village Zoning Administrator shall have available a current copy of MMSD Rules Chapter 13 which shall be open to public inspection.[\[1\]](#)

[\[1\]](#)

NOTE: The MMSD Rules and Stormwater Quality Guidance materials on best management practices for peak stormwater runoff apply to any development adding 0.5 acre or more of impervious surface. They are available to read and print at www.mmsd.com [[MMSD website](#)].

[§ 325-34. Applicability.](#)

This article applies to land use development, redevelopment and property division or subdivision activities which meet the following criteria:

[A.](#)

Residential land use development, redevelopment or property division or subdivision occurring within a gross aggregate area of more than five acres;

[B.](#)

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Residential land use development or redevelopment occurring within, or property division of, a gross aggregate area of more than three acres, if 1.5 acres or more of impervious surfaces are proposed;

C.

Nonresidential land use development, redevelopment or property division or subdivision occurring within a gross aggregate area of more than 1.5 acres, if 0.5 acre or more of impervious surfaces are proposed; and

D.

Land use development, redevelopment or property division or subdivision of any size area that in the opinion of the Public Works Director is likely to result in stormwater runoff which exceeds the safe capacity of existing drainage facilities or receiving watercourse; which causes undue channel erosion; which increases surface water pollution; or which endangers property or public health and safety.

§ 325-35. Exemptions.

The following development and redevelopment activities are exempt from the requirement of this article:

A.

Maintenance, alteration, improvement or use of an existing structure which does not significantly affect the water quality or hydrologic and hydraulic conditions of the surface water resources of the subwatershed concerned as determined by the Public Works Director in writing;

B.

Maintenance activities undertaken by any federal, state or municipal governmental agency;

C.

Stormwater management facilities to be constructed or measures to be undertaken by the Village when the Public Works Director has determined that a stormwater management plan is not required; and

D.

Agricultural activities not associated with development and redevelopment.

§ 325-36. Waivers.

The Public Works Director may waive the requirements of this article in part or in whole. A request for waiver shall be submitted to the Public Works Director and shall include a narrative

description and drawings of the proposed development or redevelopment or subdivision for which the waiver is being requested. The Public Works Director may grant a waiver if the Public Works Director finds that:

A.

The development or redevelopment or subdivision is not likely to:

(1)

Significantly increase or decrease the rate or volume of stormwater runoff from the development, redevelopment or subdivision site;

(2)

Have a significant adverse impact on a wetland or other environmentally sensitive area;

(3)

Significantly contribute to the degradation of surface or ground water quality; or

(4)

Otherwise significantly impair attainment of the purpose of this article; and

B.

The applicable adopted stormwater management system plan does not indicate the need for any site-specific stormwater management measures on the site concerned.

§ 325-37. Site-specific stormwater management plan.

The site-specific stormwater management plan required by this article shall contain the following requirements:

A.

General.

- (1) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
- (2) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

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- (3) Predevelopment site conditions, including:
 - (a) One or more site maps at a scale of not less than one inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the regional flood (the 1% probability storm event) floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to § NR 811.16, Wis. Adm. Code.
 - (b) Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (4) Postdevelopment site conditions, including:
 - (a) 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.
 - (b) Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
 - (c) One or more site maps at a scale of not less than one inch equals 100 feet showing the following: postconstruction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; postconstruction topographic contours of the site at a scale not to exceed two feet; postconstruction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainageway; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
 - (d) Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the

development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

- (e) Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
 - (5) A description and installation schedule for the stormwater management practices needed to meet the performance standards in § 285-31.
 - (6) A maintenance plan developed for the life of each stormwater management practice, including the required maintenance activities and maintenance activity schedule.
 - (7) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 - (8) Other information requested in writing by the administering authority to determine compliance of the proposed stormwater management measures with the provisions of this article.
- B. Certification. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this article.
- C. Alternate requirements. The administering authority may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under § 285-31E.

§ 325-38. Design methodology.

The site-specific stormwater management system plan required under the provisions of this article shall be designed in accordance with good engineering practice. The specific methods to be used in the calculation of peak rates of discharge, volumes and water quality conditions and of the hydraulic capacities of storage and conveyance facilities shall be left to the judgment of the professional engineer preparing the plan, subject, however, to the approval of the Public Works Director. The site-specific stormwater management system shall be designed such that the natural topography and land cover, including such features as high-quality woodlands, wetlands, swales, natural depressions, native soil infiltration capacity and natural groundwater recharge areas, are protected and preserved to the maximum extent practicable.

§ 325-39. Water quality criteria.

The stormwater management facilities and measures required to serve land use development, redevelopment and property subdivision activities subject to this article shall be designed to meet the following minimum standards:

A.

Stormwater discharges shall be treated to achieve the levels of pollutant removals specified in the adopted Village stormwater management system plan. Unless otherwise specified in the above-noted plans, stormwater management measures shall be designed with the general goal of removing, on an average annual basis, 80% of the suspended solids load that may be expected in the absence of control. To achieve this level of removal, the stormwater management measures shall be designed to accommodate, at a minimum, the runoff volume resulting from 1.5 inches of rainfall.

B.

Discharge of urban stormwater pollutants to wetlands shall be minimized to the extent practicable. Significant degradation of wetland functional values due to stormwater pollutant loading shall be avoided.

C.

Stormwater discharges shall be pretreated prior to infiltration to prolong maintenance of the infiltration capacity and to prevent discharge of stormwater pollutants and concentrations that would result in exceeding groundwater quality standards established by the Wisconsin Department of Natural Resources.

D.

Stormwater detention, retention and infiltration facilities shall not be located closer than allowed by applicable sections of the Wisconsin Administrative Code. The stormwater management plan shall show all wells within the following areas: 100 feet from a well serving a private water system; or 1,200 feet from a well serving a municipal or a community/subdivision water supply system; or within the wellhead protection areas of a well serving a municipal or a community/subdivision water supply system, if such a protection area has been delineated. Copies of any variances to the Administrative Code obtained from the state must be furnished to the Village prior to the start of construction.

E.

In the design of the stormwater facilities and measures, due consideration shall be given to the design criteria and standards set forth in the Wisconsin Stormwater Manual prepared and

published by the Wisconsin Department of Natural Resources and as may be revised from time to time.

§ 325-40. Stormwater discharge criteria.

A.

The conveyance and storage facilities incorporated into the site-specific stormwater management system plan required under this article shall be designed as an integral part of existing stormwater systems, provided that there is no downstream flooding. In the event that there is downstream flooding, the Public Works Director may require site-specific measures that will not increase downstream storm flows.

B.

Design criteria and standards for stormwater management measures shall be made available by the Village Clerk in cooperation with the Public Works Director.

C.

Peak flow shaving components of stormwater structures shall be designed in accordance with standard engineering practice.

D.

Runoff volumes and peak flows rates used in designing the water quantity and quality components of stormwater structures shall be based on the principles of the document entitled "Urban Hydrology for Small Watersheds" (Technical Release 55: Engineering Division, United States Department of Agriculture, June 1992), Natural Resources Conservation Service or other methods approved by the Public Works Director.

E.

Unless otherwise specified in the Village stormwater management system plan or where determined by the Public Works Director to be not needed, the peak flow discharge rates of stormwater runoff from the site under post-development conditions shall not exceed the rates under existing conditions, as calculated under § [325-34F](#).

§ 325-41. Stormwater volume criteria.

Stormwater detention and retention control facilities included in the stormwater management system plan required under this article shall be designed in conformance with the adopted Village stormwater management system plan.

§ 325-42. Variation of requirements.

The Public Works Director may establish stormwater management requirements either more or less stringent than those set forth in this article provided that the Public Works Director finds that one or more of the following conditions applies:

A.

A higher level of quality in the stormwater discharge is required to protect sensitive environmental resources.

B.

A higher level of protection from ponding or flooding is required to protect the public health and safety.

C.

Provisions are available to manage the stormwater runoff by off-site facilities, provided that all of the following conditions are met for the off-site facilities: the facilities are in place; the facilities are adequately sized to provide a level of stormwater runoff control equal to or greater than that which would be afforded by on-site facilities and measures meeting the requirements of this article; and a legal entity exists that is responsible for the maintenance of the facilities.

§ 325-43. Financial guaranty.

An irrevocable letter of credit of sufficient duration or certified check shall accompany the plan to guarantee implementation of the proposed stormwater management measures recommended in the plan. The amount of the guaranty shall be based upon the estimated initial construction costs and shall be for 125% of those costs. Upon completion of the recommended measures and submittal of the as-built plan required under § [325-44D\(5\)](#) of this article, any portion of the guaranty not utilized shall be released or returned.

§ 325-44. Maintenance.

If the Public Works Director at any time finds that the stormwater management measures constructed in accordance with the system plan are not being properly maintained or if they are altered in any way from the location, configuration and capacity of the measures specified in the approved plan, the Village Zoning Administrator, upon the recommendation of the Public Works Director, shall issue an order to the owner to undertake the needed maintenance or repair. In the event of noncompliance by the owner within 10 calendar days of actual service of the order or the taking of an appeal, the Village may seek an injunction to compel action by the owner. The cost of such legal enforcement action for maintenance shall be levied as a special charge pursuant to § 66.60(16), Wis. Stats., against the property concerned. The special charge shall be collectible in the manner as provided in § 66.60(16) and (17), Wis. Stats.

§ 325-45. Public nuisances.

The following shall be deemed to constitute public nuisances and may be prosecuted as such by the Village and may be enforced by injunction:

A.

Any development, redevelopment or property subdivision that is commenced without an approved stormwater management plan as required by this article;

B.

Any stormwater drainage facility which is not constructed in accordance with the stormwater management plan required under this article;

C.

Any drainage facility not maintained in accordance with § [325-41](#) of this article; and

D.

Any activity which adversely impacts on surface or ground water quality.

§ 325-46. Compliance order.

When the Public Works Director finds that a willful violation of the provisions of this article exists, the Public Works Director shall inform the Zoning Administrator, who may order the owner of the site concerned to correct the violation by issuing a notice of violation or stop-work order.

A.

Any person who commences any site improvements without an approved plan as required by this article may be required to restore the land to its original condition within a period of 30 days.

B.

If the owner fails to take corrective action after being noticed, the Village may take all steps necessary to correct the violation, including but not limited to using Village forces or engaging contractors after obtaining an injunction in the absence of consent of the owner.

C.

If the owner concerned has filed an irrevocable letter of credit or certified check under § [325-40](#) of this article, the appropriate guaranty shall be drawn upon.

D.

If the owner has not filed an irrevocable letter of credit or certified check the cost shall be levied as a special charge against the property concerned under § 66.60(16), Wis. Stats.

E.

Any person who does not comply with the provisions of this article shall be subject to a forfeiture of not less than \$100 and not more than \$1,000 for each offense, together with the costs of prosecution. Each day a violation exists shall be deemed to constitute a separate offense.

§ 325-47. Permit requirements.

A.

No person shall undertake a land development, redevelopment or property subdivision activity subject to the requirements of this article without receiving a permit from the Public Works Director prior to commencing the proposed land development, redevelopment or property subdivision activity.

B.

Permit application and fee. Any person desiring a permit shall submit to the Public Works Director a permit application made on a form provided by the Village. The application must be accompanied by the site-specific stormwater management plan required under the provisions of this article, the financial guarantee required under the provisions of this article and a nonrefundable permit administration fee of \$225.

C.

The Public Works Director shall, within 30 calendar days of the receipt of a permit application, review the application for compliance with the requirements of this article and shall advise the Zoning Administrator, who shall inform the applicant whether the application plan and financial guaranty are approved or disapproved. If the application is approved, the permit shall be issued by the Village Zoning Administrator. If the application is disapproved, the applicant shall be advised in writing of the reasons for disapproval.

D.

Permit conditions. All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The Village Zoning Administrator may suspend or revoke a permit for violation of a permit condition following written notification to the permit holder.

(1)

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Compliance with a permit issued under this article does not relieve the permit holder of responsibility to comply with other applicable federal, state and municipal laws and regulations.

[\(2\)](#)

The permit holder shall properly install all structural and nonstructural stormwater management measures recommended in the approved site-specific stormwater management plan.

[\(3\)](#)

The permit holder shall notify the Public Works Director at least three working days before commencing any work to implement the approved site-specific stormwater management plan and within the next working day upon completion of the work.

[\(4\)](#)

Upon completion of the stormwater management facilities and other measures required by the approved plan, the Public Works Director shall conduct an inspection of those facilities and measures to determine if they were constructed in accordance with the approved plan and the requirements of this article. The Public Works Director shall inform the Zoning Administrator, who shall notify the permit holder in writing of any changes required in the facilities and measures to bring them into compliance with the approved plan and the requirements of this article.

[\(5\)](#)

Upon final approval of the constructed stormwater management facilities, the developer or subdivider shall have an as-built plan prepared by a licensed professional engineer or registered land surveyor correctly showing the locations, configurations and elevations of the completed facilities and measures. The as-built plan shall be prepared to the same scale, contour interval and vertical datum as the approved site-specific stormwater management plan and shall be subject to the approval of the Public Works Director.

[\(6\)](#)

If so directed by the Village Zoning Administrator, the permit holder shall repair, at the permit holder's own expense, any and all damage to adjoining municipal facilities and drainageways caused by stormwater runoff where such damage was caused by activities not in compliance with the approved site-specific stormwater management plan.

[\(7\)](#)

The permit holder shall permit access to the site and property concerned by the Public Works Director and Zoning Administrator for the purpose of inspecting the stormwater management

facilities and measures for compliance with the approved site-specific stormwater management plan.

(8)

Where a site-specific stormwater management plan proposes changes in the direction, in the peak rates or in the total volume of runoff from a site, the Public Works Director shall advise the Zoning Administrator, who may require the permit holder to present written evidence that appropriate legal arrangements have been implemented with adjacent property owners concerning the prevention of damage to property or danger to public health and safety.

E.

Permits issued under this article shall be valid from the date of issue through the date upon which the Village Zoning Administrator notifies the permit holder that all stormwater management facilities and measures have satisfactorily met final inspection by the Public Works Director.

§ 325-48. Appeals.

A.

Any person aggrieved by the administration of this article may appeal the decision to the Board of Appeals established by the Village pursuant to § 62.23(7)(e), Wis. Stats. The Board shall hear and decide appeals where it is alleged that there is an error in any order, decision or determination made by the Public Works Director or Zoning Administrator in administering this article and upon appeal may authorize variances from the provisions of this article which are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provision of this article would result in unnecessary hardship and shall use the rules, procedures, duties, and powers authorized by state statute in hearing and deciding appeals and authorizing variances.

B.

The owner may appeal to the Board of Appeals within 10 calendar days of actual service of the order. If an appeal is not taken by filing in writing with the Village Clerk within such 10 days, the order shall be final. Hearings before the Board of Appeals shall be conducted pursuant to § 62.23(7)(e), Wis. Stats.

Article IV. Stormwater and Sewer Illicit Discharge Connections.

[Adopted 7-28-2009]

§ 325-49. Purpose.

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The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Village of Elm Grove through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this article are:

A.

To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.

B.

To prohibit illicit connections and Discharges to the municipal separate storm sewer system.

C.

To delegate authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article.

§ 325-50. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADMINISTERING AUTHORITY — The Village Manager or the Director of Public Works.

AGRICULTURAL FACILITIES AND PRACTICES — Has the meaning given in § 281.16, Wis. Stats.

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

AVERAGE ANNUAL RAINFALL — A typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality., excluding snow, which is considered typical.

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

BUSINESS DAY — A day the office of the administering authority is routinely and customarily open for business.

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

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

CONNECTED IMPERVIOUSNESS — An impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

CRITICAL TIME — The period starting at the time of peak rainfall intensity with a duration equal to the time of concentration of the watershed.

DESIGN STORM — A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

DEVELOPMENT — The construction of buildings, roads, parking lots, and paved or unpaved storage areas.

DIVISION OF LAND — The creation from one parcel of two or more parcels of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

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

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

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

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

FINAL STABILIZATION — All land disturbing construction activities at the construction site have been completed and a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.

FINANCIAL GUARANTEE — An irrevocable letter of credit, in a form approved by the Village Attorney, or similar guarantees that are approved by the Director of Public Works as to amount, and by the Village Attorney as to form, submitted to the administering authority by the responsible party to assure that requirements of this article are carried out in compliance with the stormwater management plan.

FILTERING LAYER — Soil that has at least a three-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the Director of Public Works.

ILLEGAL DISCHARGE

Any direct or indirect Non-stormwater Discharge to the storm drainage system, except as exempted elsewhere in these ordinances. This includes, but is not limited to, activities related to spills, dumping and disposal of any substance or material.

ILLICIT CONNECTIONS

An illicit connection is defined as either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances which allow any Non-stormwater Discharge, including sewage, processed wastewater, and wash water, to enter the storm drain system and any connections to the storm drainage system from indoor drains and sinks, provided that said drain or connection had not been previously allowed, permitted, or approved in writing by the Village of Elm Grove; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by the Village of Elm Grove.

IMPERVIOUS SURFACE — Any pavement or structural element that prevents rain, surface water runoff, or melting snow from infiltrating into the ground below, including, but not limited to, roofs and paved roads, driveways, and parking lots.

INFILL AREA — An undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.

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

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

KARST FEATURE — An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

LAND DISTURBING CONSTRUCTION ACTIVITY — Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover,

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that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

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

MEP or MAXIMUM EXTENT PRACTICABLE — The highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 285-29 of this ordinance. A level of implementing best management practices in order to achieve a performance standard specified in this article which takes into account the best available technology, cost-effectiveness and other competing issues, such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

NEW DEVELOPMENT — Development resulting from the conversion of previously undeveloped land or agricultural land uses.

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

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

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

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

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

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

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

PERMIT — A written authorization made by the administering authority to the applicant to conduct land-disturbing construction activity or to discharge postconstruction runoff to waters of the state.

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

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

POLLUTANT — The meaning given in § 283.01(13), Wis. Stats.

POLLUTION — The meaning given in § 281.01(10), Wis. Stats.

POSTCONSTRUCTION SITE — A construction site following the completion of land disturbing construction activity and final site stabilization.

PREDEVELOPMENT CONDITION — 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.

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

PROTECTIVE AREA — An area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.

PUBLIC RIGHT-OF-WAY — Any road, alley, street, parking lot, sidewalk, plaza, mall, or pathway owned by or dedicated to a governmental unit.

RECREATIONAL TRAIL — A path that is:

- A. Distinctly set apart from a roadway, street, or sidewalk;
- B. Designed for activities such as jogging, walking, hiking, bird watching, bicycle riding, roller skating, or similar recreational activities not involving the use of motorized vehicles; and
- C. Not a sidewalk according to § 340.01(58), Wis. Stats.

REDEVELOPMENT — New development that replaces older development.

REGIONAL FLOOD — The peak flow and peak elevation of water with a one-percent probability of occurring during any one year, considering rainfall time and intensity patterns, rainfall duration, area distribution, antecedent moisture, and snow melt. The common misnomer, "one-hundred-year flood or floodplain" implies a temporal element rather than a one in 100 random probability of the event.

RESPONSIBLE PARTY — Any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain postconstruction

stormwater BMPs.

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

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

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

SITE — The entire area included in the legal description of the land on which the land disturbing construction activity occurred.

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

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

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

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

TIME OF CONCENTRATION — The time period for the furthest runoff from the outlet of a watershed to contribute to flow at the watershed outlet.

TOP OF THE CHANNEL — An edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the

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initial 50 feet landward from the ordinary high- water mark, the top of the channel is the ordinary high-water mark.

TOTAL MAXIMUM DAILY LOAD (TMDL) — The amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

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

TR-55 — The United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

TSS — Total suspended solids.

TYPE II DISTRIBUTION — A rainfall type curve as established in the United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

VILLAGE OF ELM GROVE — When referring to the governing body and not the geographical area, means Village Board of Trustees.

WATER QUALITY MANAGEMENT — The stormwater standards and duties established under the Clean Water Act, 33 U.S.C. § 1251 et seq., parallel state law regulating the discharge of pollutants, and implementing regulations.

WATER QUANTITY MANAGEMENT — Runoff management requirements to manage the volume, timing, and peak flow rate from development or redevelopment pursuant to Chapter 13 of the Milwaukee Metropolitan Sewerage District (MMSD) rules as implemented and enforced by this municipality.

WATERS OF THE STATE — The meaning given in § 281.01(18), Wis. Stats.

§ 325-51. Applicability.

This article shall apply to all water entering the storm drainage system or MS4 generated on any developed and undeveloped lands unless explicitly exempted by the Elm Grove Public Works Director.

§ 325-52. Responsibility for administration.

The Elm Grove Public Works Director shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon Elm Grove may be delegated in writing

by the Elm Grove Public Works Director to persons or entities acting in the beneficial interest of or in the employ of the Village of Elm Grove or as otherwise directed by the Elm Grove Board of Trustees.

§ 325-53. Ultimate responsibility.

The standards set forth herein and incorporated by reference from the Wisconsin Statutes and the Wisconsin Administrative Code as they may relate to point and nonpoint sources of pollution and promulgated pursuant to this article are minimum standards; therefore, this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

§ 325-54. Discharge prohibitions; exemptions.

A.

Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the storm drainage system or MS4 or watercourses any materials, including but not limited to pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards as referenced in § [325-50](#), above, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1)

The following discharges are exempt from discharge prohibitions established by this article: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration into storm drains, uncontaminated pumped groundwater, foundation or footing drains or sump pump (not including active groundwater dewatering systems), crawl space pumps, air-conditioning condensation, springs, individual residential washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated, typically less than one ppm chlorine), fire-fighting activities, and any other water source not containing pollutants.

(2)

Discharges specified in writing by the Elm Grove Public Works Director as being necessary to protect public health and safety.

(3)

Dye testing is an allowable discharge, but requires notification to the Elm Grove Public Works Department prior to the time of the test.

(4)

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The prohibition shall not apply to any nonstormwater discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Wisconsin Department of Natural Resources, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

B.

Prohibition of illicit connections.

(1)

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2)

This prohibition expressly includes, without limitation, illicit connections made in the past, unless the connection:

(a)

was permissible under law or practices applicable or prevailing at the time of connection; and

(b)

Was documented as allowable contemporaneously with the installation of each connection; and

(c)

Does not currently allow any pollutant to enter the MS4.

(3)

A person shall be deemed to be in violation of this article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. In the event there is any modification of a property or structure that requires a permit of any kind, all connections that may otherwise presently be illicit connections shall be corrected even if they have a documented allowable prior status.

§ 325-55. Suspension of MS4 access.

A.

Suspension due to illicit discharges in emergency situations. The Public Works Director may, without prior notice, suspend MS4 discharge access to a person when such suspension is

necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment or to the health or welfare of persons or to the MS4 or navigable waters of the State of Wisconsin, as defined by Wisconsin case law. If the violator fails to comply with a suspension order issued in an emergency, the Elm Grove Public Works Director may take such steps as deemed necessary to prevent or minimize damage to the MS4 or navigable waters of the State of Wisconsin or to minimize danger to persons.

B.

Suspension due to the detection of illicit discharge.

(1)

Any person discharging to the MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The Elm Grove Public Works Director or his designee will notify a violator of the proposed termination of its MS4 access. The violator may petition the Elm Grove Public Works Director or his designee for a reconsideration and hearing.

(2)

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior written approval of the Elm Grove Public Works Director.

§ 325-56. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity WPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Public Works Director prior to the allowing of discharges to the MS4.

§ 325-57. Monitoring of discharges.

A.

Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including, but not limited to, construction activity.

B.

Access to facilities.

(1)

The Public Works Director or his designee, having reasonable cause, shall be permitted to enter and inspect facilities subject to this article as often as may be necessary to determine compliance

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with this article. 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 Elm Grove Public Works Director.

(2)

Owners or their agent(s) shall allow the Public Works Director access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a WPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3)

The Public Works Director, having reasonable cause, shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Elm Grove Public Works Director to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4)

The Public Works Director, having reasonable cause, shall have the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5)

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Public Works Director and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6)

Unreasonable delays in allowing the Public Works Director access to a permitted facility is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility with a WPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Elm Grove Public Works Director or his designee reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

(7)

If the Public Works Director or his designee has been refused access to any part of the premises from which stormwater is discharged, and he is able to demonstrate probable cause to believe

that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Elm Grove Public Works Director or his designee may seek issuance of a special inspection warrant pursuant to § 66.0119, Wis. Stats., from any court of competent jurisdiction.

§ 325-58. Prevention, control and reduction of stormwater pollutants by use of best management practices.

The Public Works Director may provide requirements identifying best management practices (BMP) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the State of Wisconsin. The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises which is, or may be, the source of an illicit discharge may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the WPDES permit.

§ 325-59. Waters of the State of Wisconsin protection.

Every person owning or occupying property through which waters of the State of Wisconsin passes shall keep and maintain that part of the waters of the State of Wisconsin within the property free of pollution.

§ 325-60. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the State of Wisconsin, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify the Elm Grove Police Department of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Village of Elm Grove in person or by phone or facsimile within 24 hours of

becoming aware of the release. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Public Works Director within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 325-61. Enforcement.

A.

Notice of violation. Whenever the Public Works Director finds that a person has violated a prohibition or failed to meet a requirement of this article, he may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

(1)

The performance of monitoring, analyses, and reporting;

(2)

The elimination of illicit connections or discharges;

(3)

That violating discharges, practices, or operations shall cease and desist;

(4)

The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(5)

Payment of administrative and remediation costs; and

(6)

The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a subcontractor and the expense thereof shall be imposed as a special charge under § 66.0627, Wis. Stats., and § [325-61](#) hereafter.

§ 325-62. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the Elm Grove Public Works Director. The notice of appeal must be received within 90 days from the date of the notice of violation. Hearing on the appeal before the Elm Grove Board of Appeals shall take place within a reasonable time from the date of receipt of the notice of appeal.

§ 325-63. Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of an appeal, within 30 days following the decision of the Elm Grove Board of Appeals upholding the decision of the Elm Grove Public Works Director, then representatives of the Elm Grove Public Works Director may, upon prior notice, enter upon the subject property, unless the property owner presents a compliance plan with specific and prompt implementation dates, and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the representatives of the Village of Elm Grove or its designated contractor to enter upon the premises for the purposes set forth above.

§ 325-64. Cost of abatement of the violation.

Cost recovery. Upon notification from the Director of Public Works that a violation of this article has been identified, the Village Clerk shall charge the property owner found to be in violation of this article the costs associated with abatement and correction, including administrative in full. The Village of Elm Grove may recover all attorney's fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses. Such costs shall be imposed as a special charge pursuant to § 66.0627, Wis. Stats. Such costs shall be due in full within 35 days upon mailing of invoice. Pursuant to § 66.0627, Wis. Stats., all costs so charged and not paid when due shall constitute a lien upon such property and may be assessed and collected as a special charge on the next property tax bill if not paid within the thirty-day period upon invoicing. Interest at 1% per month shall be assessed on any unpaid balance. The Village shall establish a reasonable charge for the costs of administration and enforcement imposed hereunder.

§ 325-65. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the Village Attorney, upon the concurrence of the Director of Public Works and the Village Manager, may petition for a preliminary or permanent injunction from the Circuit Court of Waukesha County restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. The seeking of injunctive relief shall not preclude the seeking of any other enforcement or cause of action allowable by law.

§ 325-66. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare and is declared and deemed a public nuisance and may be summarily abated or restored at the violator's expense and/or a civil action to abate, enjoin, or otherwise compel the cessation of such public nuisance may be taken. The bringing of a public nuisance action shall not preclude the seeking of any other enforcement or cause of action allowable by law.

§ 325-67. Fine.

Violation of Article [IV](#) of Chapter [325](#), Stormwater and Sewer Illicit Discharge Connection, shall result in a fine as in § [1-16](#) of the Village of Elm Grove Code of Ordinances, as amended from time to time by the Village of Elm Grove Board of Trustees.

§ 325-68. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the Director of Public Works to seek cumulative remedies.