

ARTICLE IV. - POST CONSTRUCTION CONTROL REGULATIONS

DIVISION 1. - GENERALLY

Sec. 68-501. - Intent.

The intent of this article is to reduce the amount of post-construction stormwater and associated pollutants reaching waters of the state. Use of this article will foster the consistent statewide application of post-construction performance standards for new development and redevelopment contained in Wis. Adm. Code, ch. NR 151, subchapters III and IV.

(Ord. No. 2009-05, § 3, 3-30-2009)

Sec. 68-502. - Authority.

- (a) This article is adopted by the common council under the authority granted by Wis. Stats. § 62.234. This article supersedes all provisions of an ordinance previously enacted under Wis. Stats. § 62.23, that relate to stormwater management regulations. Except as otherwise specified in Wis. Stats. § 62.234, Wis. Stats. § 62.23 applies to this article and to any amendments to this article.
- (b) The provisions of this article are deemed not to limit any other lawful regulatory powers of the same governing body.
- (c) The common council hereby designates the zoning administrator, director of public works or their designee to administer and enforce the provisions of this article.
- (d) The requirements of this article do not pre-empt more stringent stormwater management requirements that may be imposed by any of the following:
 - (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under Wis. Stats. §§ 281.16 and 283.33.
 - (2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Adm. Code § NR 151.004.

(Ord. No. 2009-05, § 4, 3-30-2009)

Sec. 68-503. - Findings of fact.

- (a) The common council finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:
 - (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
 - (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
 - (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
 - (4) Reduce the quality of groundwater by increasing pollutant loading.

- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

(Ord. No. 2009-05, § 5, 3-30-2009)

Sec. 68-504. - Purpose and intent.

- (a) *Purpose.* The general purpose of this article is to establish long-term, post- construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
 - (1) Further the maintenance of safe and healthful conditions.
 - (2) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (3) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
- (b) *Intent.* It is the intent of the common council that this article regulates post-construction stormwater discharges to waters of the state. This article may be applied on a site-by-site basis. The common council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this article is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under Wis. Stats. § 281.16, for regional stormwater management measures and have been approved by the common council, it is the intent of this article that the approved plan be used to identify post-construction management measures acceptable for the community.

(Ord. No. 2009-05, § 6, 3-30-2009)

Sec. 68-505. - Applicability and jurisdiction.

- (a) *Applicability.*
 - (1) Where not otherwise limited by law, this article applies after final stabilization to a site of land-disturbing construction activity meeting any of the criteria in this paragraph, unless the site is otherwise exempt under subdivision (2).
 - a. A post construction site that had one or more acres of land-disturbing construction activity.
 - b. A post-development construction site that had one or more acres of land-disturbing construction activity after March 10, 2003.
 - (2) A site that meets any of the criteria in this paragraph is exempt from the requirements of this article.
 - a. A redevelopment post-construction site with no increase in exposed parking lots or roads.

- b. A post-construction site with less than ten percent connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
 - c. Nonpoint discharges from agricultural facilities and practices.
 - d. Nonpoint discharges from silviculture activities.
 - e. Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - f. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
- (3) Notwithstanding the applicability requirements in paragraph (a), this article applies to post-construction sites of any size that, in the opinion of the zoning administrator is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (b) *Jurisdiction.* This article applies to post construction sites within the boundaries and jurisdiction of the city as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Wis. Stats. § 236.45(2) and (3).
- (c) *Exclusions.* This article is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01 (1), but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stats. § 281.33(2).

(Ord. No. 2009-05, § 7, 3-30-2009; Ord. No. 2016-06, § 1, 6-13-2016)

Sec. 68-506. - Definitions.

Administering authority means a governmental employee, or a regional planning commission empowered under Wis. Stats. § 62.234 that is designated by the common council to administer this article.

Agricultural facilities and practices has the meaning given in Wis. Stats. § 281.16.

Average annual rainfall means a typical calendar year of precipitation, as determined by the Wisconsin Department of Natural Resources for users of models such as SLAMM, 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" means 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 means a day the office of the zoning administrator is routinely and customarily open for business.

Cease and desist order means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.

Combined sewer system means a system for conveying both sanitary sewage and stormwater runoff.

Connected imperviousness means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path or a minimally pervious flow path.

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

Development means residential, commercial, industrial or institutional land uses and associated roads.

Division of land means the creation from one parcel of two or more parcels or building sites of two 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 means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

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

Exceptional resource waters means waters listed in Wis. Adm. Code § NR 102.11.

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

Financial guarantee means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the zoning administrator by the responsible party to assure that requirements of the article are carried out in compliance with the stormwater management plan.

Governing body means the common council of the city.

Impervious surface means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious.

In-fill area means an undeveloped area of land located within existing development.

Infiltration means the entry of precipitation or runoff into or through the soil.

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

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

Land-disturbing construction activity means any manmade 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.

Maintenance agreement means a legal document that provides for long-term maintenance of stormwater management practices.

"MEP" or maximum extent practicable means 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, geographic features, and other competing issues such as public safety and welfare, protection of endangered and threatened resources, and preservation of 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 means development resulting from the conversion of previously undeveloped land or agricultural land uses.

Off-site means located outside the property boundary described in the permit application.

On-site means located within the property boundary described in the permit application.

Ordinary high-water mark has the meaning given in Wis. Adm. Code § NR 115.03(6).

Outstanding resource waters means waters listed in Wis. Adm. Code § NR 102.10.

Percent fines means the percentage of a given sample of soil, which passes through a #200 sieve.

Performance standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

Permit means a written authorization made by the zoning administrator to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the state.

Permit administration fee means a sum of money paid to the zoning administrator by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

Pervious surface means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

Pollutant has the meaning given in Wis. Stats. § 283.01(13).

Pollution has the meaning given in Wis. Stats. § 281.01(10).

Post-construction site means a construction site following the completion of land-disturbing construction activity and final site stabilization.

Pre-development condition means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

Preventive action limit has the meaning given in § NR 140.05(17), Wis. Adm. Code.

Redevelopment means areas where development is replacing older development.

Responsible party means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.

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

Separate storm sewer means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

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

Site means the entire area included in the legal description of the land on which the land-disturbing construction activity occurred.

Stop work order means an order issued by the zoning administrator which requires that all construction activity on the site be stopped.

Stormwater management plan means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.

Stormwater management system plan is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

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

Top of the channel means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12 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.

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

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

Waters of the state has the meaning given in Wis. Stats; § 281.01(18).

(Ord. No. 2009-05, § 8, 3-30-2009; Ord. No. 2016-06, § 2, 6-13-2016)

Secs. 68-507—68-700. - Reserved.

DIVISION 2. - STANDARDS

Sec. 68-701. - 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 water quality standards of this article:

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Wis. Adm. Code, ch. NR 151, subch. V.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the zoning administrator.
- (3) In this article, the following year(s) and location(s) has been selected as average annual rainfall(s): Green Bay, 1969 (Mar. 29—Nov. 25).
- (4) Reserved.

(Ord. No. 2009-05, § 10, 3-30-2009; Ord. No. 2016-06, § 3, 6-13-2016)

Sec. 68-702. - Performance standards.

- (a) *Responsible party*. The landowner of the post-construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain post-construction stormwater BMPs is the responsible party and shall comply with the requirements of this article.
- (b) *Plan*. A written stormwater management plan in accordance with section 68-1011 shall be developed and implemented for each post-construction site.
- (c) *Requirements*. The 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 post-construction site as follows:

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

Table 1. TSS Reduction Standards

Development Type	TSS Reduction
New Development	80 percent
In-fill development	80 percent
Redevelopment	40 percent of load from parking areas and roads

- b. *Maximum extent practicable.* If the design cannot meet a total suspended solids reduction performance standard of Table 1, the stormwater management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable. No person shall be required to exceed the applicable total suspended solids reduction performance standard to meet the requirements of maximum extent practicable.
 - c. *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 discharge.*
- a. By design, BMPs shall be employed to maintain or reduce the one-year, 24-hour and the two-year, 24-hour post-construction peak runoff discharge rates to the one-year, 24-hour and the two-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable. The runoff curve numbers in Table 2 shall be used to represent the actual pre-development conditions:

Table 2. Maximum Pre-Development Runoff Curve Numbers

Pre-development condition	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

- b. This subsection of the article does not apply to any of the following:
 - 1. A post-construction site where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.
 - 2. A redevelopment post-construction site.
 - 3. An in-fill development area less than five acres.

(3) *Infiltration* .

- a. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following 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 one 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 two percent of the post-construction site is required as an effective infiltration area.
- b. *Pre-development*. Pre-development condition shall be the same as specified in Table 2 of the peak discharge section of this article.
- c. *Source areas*.
 - 1. *Prohibitions* . Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions of Wisconsin Department of Natural Resources groundwater standards in NR § 151.124(6):
 - a. Areas associated with a tier 1 industrial facility identified in NR § 216.21(2)(a), including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
 - b. Storage and loading areas of a tier 2 industrial facility identified in NR § 215.21(2)(b).
 - c. Fueling and vehicle maintenance areas. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

2. *Exemptions.* Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
 - a. Parking areas and access roads less than 5,000 square feet for commercial development.
 - b. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under subdivision 1 of this article.
 - c. In-fill development areas less than five acres.
 - d. Roads on commercial, industrial and institutional land uses, and arterial residential roads.
- d. *Location of practices.*
 1. *Prohibitions .* Infiltration practices may not be located in the following areas:
 - a. Areas within 1,000 feet up gradient or within 100 feet downgradient of direct conduits to groundwater.
 - b. Areas within 400 feet of a community water system well as specified in NR § 811.16(4) or within the separation distances listed in NR § 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses or regional devices for one- and two-family residential development.
 - c. Areas where contaminants of concern, as defined in NR § 720.03(2), are present in the soil through which infiltration will occur.
 2. *Separation distances.*
 - a. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3:

Table 3. Separation Distances and Soil Characteristics

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

All Other Impervious Source Areas	3 feet or more	Filtering Layer
-----------------------------------	----------------	-----------------

- b. Notwithstanding subdivision 2, applicable requirements for injection wells classified under NR ch. 815 shall be followed.
 - 3. *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:
 - a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - b. Where the least permeable soil horizon to five feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
 - e. *Alternate use.* Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
 - f. *Groundwater standards.*
 - 1. Infiltration systems designed in accordance with this section 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 NR ch. 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - 2. Notwithstanding subdivision a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
 - g. *Pretreatment.* Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subdivision f. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
 - h. *Maximum extent practicable.* Where the conditions of subdivisions c. and d. limit or restrict the use of infiltration practices, the performance standard of NR § 151.124 shall be met to the maximum extent practicable.
- (4) *Protective areas.*
 - a. *Definition .* In this section, "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 section, "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 subdivision 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, ten percent of the average wetland width, but no less than ten 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 subsections a.4. and a.5., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in NR § 103.03.
 8. Wetland boundary delineations shall be made in accordance with current Wisconsin Department of Natural Resources procedures. 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. When 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, ten feet.
 10. Notwithstanding subsections a.1. to a.9., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.
- b. *Applicability* . This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection d. below.
- c. *Requirements* . The following requirements shall be met:
1. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is not practical alternative to locating an impervious surface in the protective area, the stormwater management plan shall contain a written, site-specific explanation.
 2. Where land-disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.
 3. Best management practices such as filter strips, swales, or wet detention basins that are designed to control pollutants from non-point sources may be located in the protective area.
- d. *Exemptions* . This paragraph does not apply to:
1. In-fill development areas less than five acres.
 2. Structures that cross or access surface waters such as boat landings, bridges and culverts.

3. Structures constructed in accordance with Wis. Stats. § 59.692(1v).
 4. 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.
- (5) *Fueling and vehicle maintenance areas.* Fueling and vehicle maintenance areas shall 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.
- (6) *Swale treatment for transportation facilities.*
- a. *Requirement .* Except as provided in subsection (b) below, transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:
 1. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
 2. Swales shall comply with the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Infiltration Swales" dated May 2007, or a superseding document.
 - b. *Other requirements.* Notwithstanding subdivision a., the zoning administrator may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily 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 pursuant to NR § 151.004.
 - c. The transportation facility authority shall contact the zoning administrator to determine if additional BMPs beyond a water quality swale are needed under this subsection.
- (d) *General considerations for on-site and off-site stormwater management measures.* The following considerations shall be observed in managing runoff:
- (1) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
 - (2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (e) *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.

- (2) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this article. Post-construction BMPs may be located in non-navigable surface waters.
- (3) Except as allowed under subparagraph (4), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
- (4) Post-construction 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, Stats., or the BMP did not require a Wis. Stats. ch. 30, permit; and
 - b. The BMP is designed to provide runoff treatment from future upland development.
- (5) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
 - a. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
 - b. Post-construction 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 detention pond, or after a series of such BMPs is subject to this chapter.
- (7) The zoning administrator may approve off-site management measures provided that all of the following conditions are met:
 - a. The zoning administrator determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Mosinee and that contains management requirements consistent with the purpose and intent of this article.
 - b. The off-site facility meets all of 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 zoning administrator 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 zoning administrator. In determining the fee for post-construction runoff, the zoning administrator shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (f) *Alternate requirements.* The zoning administrator may establish stormwater management requirements more stringent than those set forth in this section if the zoning administrator determines that an added level of protection is needed to protect sensitive resources.
- (g) *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 maintain the existing level of control for TSS, infiltration and peak flow reduction, or meet the redevelopment standards of NR §§ 151.122 to 151.125, whichever is more stringent.

(Ord. No. 2016-06, § 4, 6-13-2016)

Editor's note— Ord. No. 2016-06, § 4, adopted June 13, 2016, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter. For prior history, see Code Comparative Table.

Secs. 68-703—68-900. - Reserved.

DIVISION 3. - ADMINISTRATION

Sec. 68-901. - Permitting requirements, procedures and fees.

- (a) *Permit required.* No responsible party may undertake a land-disturbing construction activity without receiving a post-construction runoff permit from the zoning administrator prior to commencing the proposed activity.
- (b) *Permit application and fees.* Unless specifically excluded by this article, any responsible party desiring a permit shall submit to the zoning administrator a permit application made on a form provided by the zoning administrator for that purpose.
 - (1) Unless otherwise excepted by this article, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a non-refundable permit administration fee.
 - (2) The stormwater management plan shall be prepared to meet the requirements of section 68-702 and section 68-1011, the maintenance agreement shall be prepared to meet the requirements of section 68-1012, the financial guarantee shall meet the requirements of section 68-1013, and fees shall be those established by the common council as set forth in section 68-1101.
- (c) *Review and approval of permit application.* The zoning administrator shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
 - 1. Within 30 calendar days of the receipt of a complete permit application, including all items as required by subsection (b), the zoning administrator shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this article.
 - 2. If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the zoning administrator shall issue the permit.
 - 3. If the stormwater permit application, plan or maintenance agreement is disapproved, the zoning administrator shall detail in writing the reasons for disapproval.
 - 4. The zoning administrator may request additional information from the applicant. If additional information is submitted, the zoning administrator shall have 30 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
- (d) *Permit requirements.* All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The zoning administrator may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the zoning administrator to suspend or revoke this permit may be appealed in accordance with this article.

- (1) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations. Copies of all applicable state, federal and local permits shall be submitted to administering authority.
 - (2) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
 - (3) The responsible party shall notify the zoning administrator at least seven business days before commencing any work in conjunction with the stormwater management plan, and within seven business days upon completion of the stormwater management practices. If required as a special condition under subsection (e), the responsible party shall make additional notification according to a schedule set forth by the zoning administrator so that practice installations can be inspected during construction.
 - (4) Practice installations required as part of this article shall be surveyed by a registered land surveyor or professional engineer and certified "as built" by a licensed professional engineer or hydrologist. Completed stormwater management practices must pass a final inspection by the zoning administrator or its designee to determine if they are in accordance with the approved stormwater management plan and this article. The zoning administrator or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
 - (5) The responsible party shall notify the zoning administrator of any significant modifications it intends to make to an approved stormwater management plan. The zoning administrator may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
 - (6) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the city or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (7) The responsible party authorizes the zoning administrator to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Wis. Stats. ch. 66, subch. VII, or to charging such costs against the financial guarantee posted under section 68-1013.
 - (8) If so directed by the zoning administrator, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - (9) The responsible party shall permit property access to the zoning administrator or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (10) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the zoning administrator will require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of encroachment to property or public safety.
 - (11) The responsible party is subject to the enforcement actions and penalties detailed in section 68-1102, if the responsible party fails to comply with the terms of this permit.
- (e) *Permit conditions.* Permits issued under this subsection may include conditions established by zoning administrator in addition to the requirements needed to meet the performance standards in section 68-702 or a financial guarantee as provided for in section 68-1013.

- (f) *Permit duration.* Permits issued under this section shall be valid from the date of issuance through the date the zoning administrator notifies the responsible party that all stormwater management practices have passed the final inspection required under subsection (d)(4).

(Ord. No. 2009-05, § 13, 3-30-2009; Ord. No. 2016-06, § 5, 6-13-2016)

Secs. 68-902—68-1010. - Reserved.

DIVISION 4. - STORMWATER MANAGEMENT PLAN AND MAINTENANCE AGREEMENT

Sec. 68-1011. - Stormwater management plan.

- (a) *Plan requirements.* The stormwater management plan required under section 68-901(b) shall contain at a minimum the following information:
- (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.
 - (3) Pre-development site conditions, including:
 - a. One or more site maps at a scale of not less than one inch equals 40 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, WiDNR and Army Corps of Engineers certified wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Adm. Code § NR 811.16.
 - 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) Post-development 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 40 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces, including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction 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 drainage way; 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) Description and installation schedule for the stormwater management practices needed to meet the performance standards in section 68-702.
 - (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 zoning administrator to determine compliance of the proposed stormwater management measures with the provisions of this article.
 - (9) All site investigations, plans, designs, computations, and drawings shall be certified by a professional engineer or hydrologist licensed in the state to be prepared in accordance with accepted engineering practice and requirements of this article.
- (b) *Alternate requirements.* The zoning administrator may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under section 68-702(e).

(Ord. No. 2009-05, § 15, 3-30-2009)

Sec. 68-1012. - Maintenance agreement.

- (a) *Maintenance agreement required.* The maintenance agreement required under section 68-901(b) for stormwater management practices shall be an agreement between the city and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the county register of deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.
- (b) *Agreement provision.* The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by section 68-1011(a)(6):
 - (1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under section 68-901(b).

- (3) Identification of the party(s) responsible for long term maintenance of the stormwater management practices identified in the stormwater management plan required under section 68-901(b).
- (4) Requirement that the responsible party(s) shall maintain stormwater management practices in accordance with the schedule included in subsection (2).
- (5) Authorization for the zoning administrator or designee to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
- (6) A requirement on the zoning administrator to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
- (7) Agreement that the party designated under subsection (3), as responsible for long term maintenance of the stormwater management practices, shall be notified by the zoning administrator of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the zoning administrator.
- (8) Authorization of the zoning administrator to perform the corrected actions identified in the inspection report if the responsible party designated under subsection (3) does not make the required corrections in the specified time period. The zoning administrator shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stats. ch. 66, subch. VII.

(Ord. No. 2009-05, § 16, 3-30-2009)

Sec. 68-1013. - Financial guarantee.

- (a) *Establishment of guarantee.* The zoning administrator will require the submittal of a financial guarantee, the form and type of which shall be acceptable to the zoning administrator. The financial guarantee shall be in an amount determined by the zoning administrator to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the zoning administrator the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the zoning administrator that the requirements of this article have not been met.
- (b) *Conditions for release.* Conditions for the release of the financial guarantee are as follows:
 - (1) The zoning administrator shall release the portion of the financial guarantee established under this section, less any costs incurred by the zoning administrator to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The zoning administrator may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (2) The zoning administrator shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the zoning administrator, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

(Ord. No. 2009-05, § 17, 3-30-2009)

Secs. 68-1014—68-1100. - Reserved.

DIVISION 5. - FEES, ENFORCEMENT, APPEALS, AND SEVERABILITY^[5]

Footnotes:

--- (5) ---

Editor's note— Ord. No. 2009-05, § 18, adopted March 30, 2009, set out a new div. 5 entitled "Administration." As div. 3 of this article also pertains to administration, div. 5 has been renamed at the discretion of the editor.

Sec. 68-1101. - Fee schedule.

The fees referred to in other sections of this article shall be established by the common council and may from time to time be modified by resolution. A schedule of the fees established by the common council shall be available for review at city hall.

(Ord. No. 2009-05, § 19, 3-30-2009)

Sec. 68-1102. - Enforcement.

- (a) Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this article by any person, firm, association, or corporation subject to the article provisions shall be deemed a violation unless conducted in accordance with the requirements of this article.
- (b) The zoning administrator shall notify the responsible party by certified mail of any non-complying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (c) Upon receipt of written notification from the zoning administrator under subsection (b), the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the zoning administrator in the notice.
- (d) If the violations to a permit issued pursuant to this article are likely to result in damage to properties, public facilities, or waters of the state, the zoning administrator may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the city plus interest and legal costs shall be billed to the responsible party.
- (e) The zoning administrator is authorized to post a stop work order on all land-disturbing construction activity that is in violation of this article, or to request the city attorney to obtain a cease and desist order in any court with jurisdiction.
- (f) The zoning administrator may revoke a permit issued under this article for non-compliance with article provisions.
- (g) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the zoning administrator or by a court with jurisdiction.
- (h) The zoning administrator is authorized to refer any violation of this article, or of a stop work order or cease and desist order issued pursuant to this article, to the city attorney for the commencement of further legal proceedings in any court with jurisdiction.

- (i) Any person, firm, association, or corporation who does not comply with the provisions of this article shall be subject to a forfeiture of not less than \$100.00 or more than \$5,000.00 per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (j) Compliance with the provisions of this article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (k) When the zoning administrator determines that the holder of a permit issued pursuant to this article has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the zoning administrator or a party designated by the zoning administrator, may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The zoning administrator shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to section 68-1013 of this article. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

(Ord. No. 2009-05, § 20, 3-30-2009)

Sec. 68-1103. - Appeals.

- (a) *Board of appeals.* The zoning board of appeals, created pursuant to section 2-686 of this Code to Wis. Stats. § 62.23(7)(e), shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the zoning administrator in administering this article. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this article that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the article will result in unnecessary hardship.
- (b) *Who may appeal.* Appeals to the zoning board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the city affected by any decision of the zoning administrator.

(Ord. No. 2009-05, § 21, 3-30-2009)

Sec. 68-1104. - Severability.

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

(Ord. No. 2009-05, § 22, 3-30-2009)