TITLE 7 - LICENSING AND REGULATION

Chapter 15 - Storm Water Management and Erosion Control

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7.15.1 Storm Water Management and Erosion Control.

7.15.1.01 Purpose

The general purpose of this ordinance is to establish long-term, post-construction runoff storm water 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) Prevent and control exceeding 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.

7.15.1.02 Intent

It is the intent of the Town Board 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 Town Board 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 Sec. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the Town Board, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

7.15.2 Applicability and Jurisdiction.

7.15.2.01 Applicability

(A) This ordinance applies to any post-development construction site that has one or more acres of land disturbing construction activity. Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activities meeting any of the criteria in this paragraph, unless the site is otherwise exempt under Section 7.15.2.01(B)(1).

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

(1) A redevelopment post-construction site with no increase in exposed parking lots or roads.

(2) A post-construction site with less than 10% 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.

(3) Nonpoint discharges from agricultural facilities and practices.

(4) Nonpoint discharges from silviculture activities.

(5) Routine maintenance for project sites under five (5) acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

(6) Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

(C) Notwithstanding the applicability requirements in Section 7.15.2.02, this ordinance also applies to post-construction sites of any size that, in the opinion of the Town Engineer, 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.

7.15.2.02 Jurisdiction

(A) This ordinance applies to post-construction land development sites within the boundaries and jurisdiction of the Town of Grafton.

(B) Exclusions. This ordinance is not applicable to activities conducted by a state agency, as defined under Sec. 227.01(1), Wis. Stats., including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Sec. 281.33(2), Wis. Stats.

7.15.3 Definitions.

The following definitions shall apply to this chapter:

(A) Administering authority means a governmental employee, or a regional planning commission empowered under Sec. 61.354, Wis. Stats., that is designated by the Town Board to administer this ordinance.

(B) Agricultural facilities and practices have the meaning given in Sec. 281.16, Wis. Stats.

(C) Average annual rainfall means a calendar year of precipitation, excluding snow, which is considered typical.

(D) 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 or to manage the rate or volume or runoff.

(E) Business day means a day the office of the Town of Grafton is routinely and customarily open for business.

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

(G) Combined sewer system means a system for conveying both sanitary sewage and storm water runoff.

(H) Connected imperviousness means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

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

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

(K) Division of land means the creation of one or more parcels and/or building sites of 10 or fewer acres each in area where such creation occurs at one time or through successive partitions within a 5 year period.

(L) 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.

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

(N) Exceptional resource waters means waters listed in Sec. NR 102.11, Wis. Adm. Code.

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

(P) Financial guarantee means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Town Engineer by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.

(Q) Governing body means the Town of Grafton Board of Supervisors.

(R) Impervious surface means any area that prevents rain surface runoff or melting snow from infiltrating into the ground below (except frozen soil), and releases as runoff all or a large portion of the precipitation that falls on it, including, but not limited to, roofs, sidewalks, driveways, parking lots, paved roads and streets.

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

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

(U) 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.

(V) 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.

(W) Land disturbing construction activity means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activities include, but are not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(X) Maintenance agreement means a legal document that provides for long-term maintenance of storm water management practices.

(Y) Maximum extent practicable or "MEP" means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance 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.

(Z) New development means development resulting from the conversion of previously undeveloped land or agricultural land uses.

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

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

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

(DD) Outstanding resource waters means waters listed in Section NR 102.10, Wis. Adm. Code.

(EE) Percent fine means the percentage of a given sample of soil, which passes through a #200 sieve.

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

(GG) Permit means a written authorization made by the Town Engineer to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

(HH) Permit administration fee means a sum of money paid to the Town Engineer by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

(II) 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.

(JJ) Pollutant has the meaning given in Sec. 283.01(13), Wis. Stats.

(KK) Pollution has the meaning given in Sec. 281.01(10), Wis. Stats.

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

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

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

(OO) Redevelopment means areas where development is replacing older development.

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

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

(RR) 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 draining to a storm water treatment device or system.

(4) Discharges directly or indirectly to waters of the state.

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

(TT) Stop work order means an order issued by the Town Engineer which requires that all construction activity on the site be stopped.

(UU) Storm water management plan means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has under gone final stabilization following completion of the construction activity.

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

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

(XX) Top of the channel means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

(YY) 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.

(ZZ) 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.

(AAA) Waters of the state has the meaning given in Sec. 281.01(18), Wis. Stats.

7.15.4 Technical Standards.

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

(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 Town Engineer.

(C) In this ordinance, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28-Dec. 6).

(D) The most recent rainfall data available from the Southeastern Wisconsin Regional Planning Commission or more protective data shall be the basis for storm water management calculations and analyses required by this ordinance.

7.15.5 Performance Standards.

7.15.5.01 Responsible Party

The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.

7.15.5.02 Plan

A written storm water management plan in accordance with Section 7.15.7 shall be developed and implemented for each post-construction site.

7.15.5.03 Requirements

The plan required under Section 7.15.5.02 shall include the following:

(A) Total Suspended Solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

(1) 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 subdivision.

(2) 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 subdivision.

(3) For in-fill development under 5 acres that occurs within 10 years after the effective date of this rule, 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 subdivision.

(4) For in-fill development that occurs 10 or more years after the effective date of this rule, 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 subdivision.

(5) Notwithstanding subsections 7.15.5.03(A)(1) to 7.15.5.03(A)(4), if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(B) Peak Discharge.

(1) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions according to the peak discharge rate controls listed in the Town of Grafton Stormwater Management Plan as approved and updated by the Town Board.

(2) Pre-development conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Table 1 Maximum Pre-Development Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D

Runoff Curve Number	56	70	79	83

(3) At the discretion of the Town Engineer, the post-construction peak discharge may be required to be further reduced due to surrounding or downstream conditions.

(4) This subsection of the ordinance does not apply to any of the following:

(a) A redevelopment post-construction site.

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

(C) Infiltration. BMPs should be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subsections 7.15.5.03(C)(5) through 7.15.5.03(C)(8).

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

(a) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% 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 1% of the project site is required as an effective infiltration area.

(b) Infiltrate 25% of the post-development runoff from the 2-year, 24-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.

(2) For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:

(a) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% 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% of the project site is required as an effective infiltration area.

(b) Infiltrate 10% of the runoff from the 2-year, 24-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.

(3) Pre-development condition shall be the same as in Section 7.15.5.03(B) - Peak Discharge.

Note to Permittees: A model that calculates runoff volume, such as SLAMM, P8, or an equivalent methodology may be used.

(4) 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 7.15.5.03(C)(8). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

Note to Permittees: To achieve the infiltration requirement for the parking lots or roads, maximum extent practicable should not be interpreted to require significant topography changes that create an excessive financial burden. To minimize potential groundwater impacts, it is desirable to infiltrate the cleanest runoff. To achieve this, a design may propose greater infiltration of runoff from low pollutant sources such as roofs, and less from higher pollutant source areas such as parking lots.

(5) Exclusions. The runoff from the following areas is prohibited from meeting the requirements of this paragraph:

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

(b) Storage and loading areas of tier 2 industrial facilities identified in Sec. NR 216.21(2)(b), Wis. Adm. Code.

Note to Permittees: Runoff from tier 2 parking and rooftop areas may be infiltrated but may require pretreatment.

(c) Fueling and vehicle maintenance areas.

(d) Areas within 1000 feet up gradient or within 100 feet down gradient of karst features.

(e) Areas with less than 3 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 7.15.5.03(C)(5)(e) does not prohibit infiltration of roof runoff.

(f) Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5-feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

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

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

(i) 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 3-foot soil layer with 20% fines or greater; or at least a 5-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 7.15.5.03(C)(5)(i) does not prohibit infiltration of roof runoff.

Note to Permittees: The areas listed in subsection 7.15.5.03(C)(5)(e) - exclusions are prohibited from infiltrating runoff due to the potential for groundwater contamination.

(6) Infiltration Exemptions. The following are not required to meet the requirements of this paragraph:

(a) Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.

(b) Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

(c) Redevelopment post-construction sites.

(d) In-fill development areas less than 5 acres.

(e) Infiltration areas during periods when the soil on the site is frozen.

(f) Roads in commercial, industrial and institutional land uses, and arterial residential roads.

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

(8) Infiltration systems designed in accordance with this paragraph shall:

(a) 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.

(b) Notwithstanding subd. par. (a), the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(D) Protective Areas.

(1) "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and 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 paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

(a) For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Sec. NR 103.04, 75 feet.

(b) For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

(c) For lakes, 50 feet.

(d) For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Sec. NR 103.08(1m). 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.

(e) 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.

(f) In subsections 7.15.5.03(D)(1)(a), 7.15.5.03(D)(1)(d) and 7.15.5.03(D)(1)(e), 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 Sec. NR 103.03.

(g) For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

(2) This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection (4) of this section.

(3) The following requirements shall be met:

(a) Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

(b) 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. 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.

Note to Permittees: It is recommended that seeding of non-aggressive vegetative cover be used in the protective areas. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover can be measured using the line transect method described in the University of Wisconsin Extension Publication Number A3533, titled "Estimating Residue Using the Line Transect Method".

(c) 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.

Note to Permittees: Other regulations, such as Ch. 30, Wis. Stats., and Chs. NR 103, 115, 116 and 117, Wis. Adm. Code, and their associated review and approval process may apply in the protective area.

(4) This paragraph does not apply to:

(a) Redevelopment post-construction sites.

(b) In-fill development areas less than 5 acres.

(c) Structures that cross or access surface waters such as boat landings, bridges and culverts.

(d) Structures constructed in accordance with Sec. 59.692(1v), Wis. Stats.

(e) Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

Note to Permittees: A vegetated protective area to filter runoff pollutants from post-construction sites described in subsection 7.15.5.03(D) above, is not necessary since runoff is not entering the surface water at that location. Other practices, necessary to meet the requirements of this section, such as a swale or basin, will need to be designed and implemented to reduce runoff pollutants before the runoff enters a surface water of the state.

(E) 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.

Note to Permittees: A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

(F) Swale Treatment for Transportation Facilities.

(1) Applicability. Except as provided in subsection 7.15.5.03(F)(2), transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

(a) Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

Note to Permittees: It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.

(b) 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 for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. 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.

Note to Permittees: Check dams may be included in the swale design to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this paragraph.

However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

(2) Exemptions. The Town Engineer 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:

(a) An outstanding resource water.

(b) An exceptional resource water.

(c) Waters listed in Sec. 303(d), Federal Clean Water Act, that are identified as impaired in whole or in part, due to nonpoint source impacts.

(d) Waters where targeted performance standards are developed under Sec. NR 151.004, Wis. Adm. Code, to meet water quality standards.

Note to Permittees: The Department of Natural Resource's regional storm water staff can determine if additional BMPs, beyond a water quality swale, are needed under this paragraph.

7.15.5.04 General Considerations For On-Site and Off-Site Storm Water Management Measures

The following considerations shall be observed in managing runoff:

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

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

7.15.5.05 Location and Regional Treatment Option

(A) The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.

(B) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in non-navigable surface waters.

(C) Except as allowed under subsection 7.15.5.05(D), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.

(D) 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 ordinance if:

(1) The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under Ch.

30. Stats., or the BMP did not require a Ch. 30, Wis. Stats., permit; and

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

(E) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.

(1) To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

(2) 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.

Note to Permittees: This allows the location of BMPs in navigable surface waters where necessary to augment management practices upstream of the navigable surface water to meet the performance standards.

(F) 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.

Note to Permittees: This section does not supersede any other applicable federal, state or local regulation such as Ch. NR 103, Wis. Adm. Code and Ch. 30, Wis. Stats.

(G) The Town Engineer may approve off-site management measures provided that all of the following conditions are met:

(1) The Town Engineer determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Town of Grafton and that contains management requirements consistent with the purpose and intent of this ordinance.

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

(a) The facility is in place.

(b) The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.

(c) The facility has a legally obligated entity responsible for its long-term operation and maintenance.

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

7.15.5.06 Alternate Requirements

The Town Engineer may establish storm water management requirements more stringent than those set forth in this section if the Town Engineer determines that an added level of protection is needed to protect sensitive resources.

7.15.6 Permitting Requirements, Procedures and Fees.

7.15.6.01 Permit Required

No responsible party may undertake a land disturbing construction activity subject to this ordinance without receiving a post-construction runoff permit from the Town Engineer prior to commencing the proposed activity.

7.15.6.02 Permit Application and Fees

Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Town Engineer a permit application made on a form provided by the Town Engineer for that purpose.

(A) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.

(B) The storm water management plan shall be prepared to meet the requirements of Sections 7.15.5 and 7.15.7, the maintenance agreement shall be prepared to meet the requirements of Section 7.15.8, the financial guarantee shall meet the requirements of Section 7.15.9, and fees shall be those established by the Town Board as set forth in Section 7.15.10.

7.15.6.03 Review and Approval of Permit Application

The Town Engineer shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

(A) Within 10 business days of the receipt of a complete permit application, including all items as required by Section 7.15.6.02, the Town Engineer shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

(B) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the Town Engineer shall issue the permit.

(C) If the storm water permit application, plan or maintenance agreement is disapproved, the Town Engineer shall detail in writing the reasons for disapproval.

(D) The Town Engineer may request additional information from the applicant. If additional information is submitted, the Town Engineer shall have 10 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.

(E) Failure by the Town Engineer to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean

approval of the submittal and the applicant may proceed as if a permit had been issued.

7.15.6.04 Permit Conditions

All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Town Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Town Engineer to suspend or revoke this permit may be appealed in accordance with Section 7.15.12.

(A) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

(B) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.

(C) The responsible party shall notify the Town Engineer at least 10 business days before commencing any work in conjunction with the storm water management plan, and within 5 business days upon completion of the storm water management practices. If required as a special condition under Section 7.15.6.05, the responsible party shall make additional notification according to a schedule set forth by the Town Engineer so that practice installations can be inspected during construction.

(D) Practice installations required as part of this ordinance shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the Town Engineer or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The Town Engineer, or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

(E) The responsible party shall notify the Town Engineer of any significant modifications it intends to make to an approved storm water management plan. The Town Engineer may require that the proposed modifications be submitted to the Town Engineer for approval prior to incorporation into the storm water management plan and execution by the responsible party.

(F) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices are transferred to subsequent private owners as specified in the approved maintenance agreement.

(G) The responsible party authorizes the Town Engineer to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under Sec. 66.0627, Wis. Stats., or to charging such costs against the financial guarantee posted under Section 7.15.9.

(H) If so directed by the Town Engineer the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.

(I) The responsible party shall permit property access to the Town Engineer, or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.

(J) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Town Engineer may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

(K) The responsible party is subject to the enforcement actions and penalties detailed in Section 7.15.11, if the responsible party fails to comply with the terms of this permit.

7.15.6.05 Permit Conditions

Permits issued under this subsection may include conditions established by the Town Engineer in addition to the requirements needed to meet the performance standards in Section 7.15.5 or a financial guarantee as provided for in Section 7.15.9.

7.15.6.06 Permit Duration

Permits issued under this section shall be valid from the date of issuance through the date the Town Engineer notifies the responsible party that all storm water management practices have passed the final inspection required under subsection 7.15.6.04(D).

7.15.7 Storm Water Management Plan.

7.15.7.01 Plan Requirements

The storm water management plan required under Section 7.15.6 shall contain at a minimum the following information:

(A) 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 storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.

(B) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

(C) Pre-development site conditions, including:

(1) One or more site maps at a scale of not less than 1 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 2 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 storm water 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 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Sec. NR 811.16, Wis. Adm. Code.

(2) 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).

(D) Post-development site conditions, including:

(1) 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.

(2) Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.

(3) One or more site maps at a scale of not less than 1 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 2 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 storm water conveyance sections; location and type of all storm water 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.

(4) 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).

(5) Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.

(E) A description and installation schedule for the storm water management practices needed to meet the performance standards in Section 7.15.5.

(F) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.

(G) Cost estimates for the construction, operation, and maintenance of each storm water management practice.

(H) Other information requested in writing by the Town Engineer to determine compliance of the proposed storm water management measures with the provisions of this ordinance.

(I) 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 ordinance.

7.15.7.02 Alternate Requirements

The Town Engineer may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under Section 7.15.5.05.

7.15.8 Maintenance Agreement.

7.15.8.01 Maintenance Agreement Required

The maintenance agreement required under Section 7.15.6.02 for storm water management practices shall be an agreement between the Town and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be recorded 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 storm water management practices.

7.15.8.02 Agreement Provisions

The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by Section 7.15.7.01(F):

(A) Identification of the storm water facilities and designation of the drainage area served by the facilities.

(B) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under Section 7.15.6.02.

(C) Identification of the responsible party(s), organization or city, county, village or town responsible for long term maintenance of the storm water

management practices identified in the storm water management plan required under Section 7.15.6.02.

(D) Requirement that the responsible party(s), organization, or city, county, village or Town shall maintain storm water management practices in accordance with the schedule included in par. (B).

(E) Authorization for the Town Engineer to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

(F) A requirement on the Town Engineer to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

(G) Agreement that the party designated under Section 7.15.8.02(C), as responsible for long term maintenance of the storm water management practices, shall be notified by the Town Engineer of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Director of Public Works/Town Engineer.

(H) Authorization of the Town Engineer to perform the corrected actions identified in the inspection report if the responsible party designated under Section 7.15.8.02(C) does not make the required corrections in the specified time period. The Town Engineer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subch. VII of Ch. 66, Wis. Stats.

7.15.9 Financial Guarantee.

7.15.9.01 Establishment of the Guarantee

The Town Engineer may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Town Engineer. The financial guarantee shall be in an amount determined by the Town Engineer to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Town Engineer the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Town Engineer that the requirements of this ordinance have not been met.

7.15.9.02 Conditions for Release

Conditions for the release of the financial guarantee are as follows:

(A) The Town Engineer shall release the portion of the financial guarantee established under this section, less any costs incurred by the Town Engineer to complete installation of practices, upon submission of "as

built plans" by a licensed professional engineer. The Town Engineer may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

(B) The Town Engineer shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the Town Engineer, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

7.15.10 Fee Schedule.

The fees referred to in other sections of this ordinance shall be established by the Town Board and may from time to time be modified by resolution. Fees shall be related to costs involved in handling permit applications, reviewing plans, conducting inspections and administering the storm water management and erosion control program. A schedule of the fees established by the Town Board shall be available for review at the Town Hall, 1102 Bridge Street, Grafton, WI.

In addition to any other applicable fee required under this ordinance, permittees also shall pay a fee equal to the amount of actual costs incurred by the Town of Grafton for engineering and legal review and/or services in connection with either the implementation or enforcement of this ordinance.

7.15.11 Enforcement

The Town Board hereby designates the Town Engineer to administer and enforce the provisions of this chapter.

Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.

The Town Engineer 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.

Upon receipt of written notification from the Town Engineer, the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Town Engineer in the notice.

If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the Town Engineer may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Town Engineer plus interest and legal costs shall be billed to the responsible party.

The Town Engineer is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the Town Attorney to obtain a cease and desist order from any court of competent jurisdiction.

The Town Engineer may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.

Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Town Engineer or by a court of competent jurisdiction.

The Town Engineer is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the Town Attorney for the commencement of further legal proceedings.

Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than $50 dollars or more than $500 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

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

Note to Permittees: Injunctive relief is authorized pursuant to Sec. 59.69(11), 61.35, or 62.23(8), Wis. Stats., for counties, cities, villages and towns with village powers.

When the Town Engineer determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the Town Engineer or a party designated by the Town Engineer may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The Town Engineer 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 7.15.9 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

7.15.12 Inspection.

The Town Engineer is authorized to conduct such inspections, surveillance and monitoring as is necessary to determine compliance with the requirements of this ordinance, and to prohibit and require the disconnection of unpermitted or otherwise illicit discharges to the Town's separate storm sewer system, all in accordance with applicable provisions of State law and Town ordinances.

7.15.13 Appeals.

7.15.13.01 Board of Appeals

The board of zoning appeals shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Town Engineer in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.

7.15.13.02 Who May Appeal

Appeals to the board of zoning appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Town of Grafton affected by any decision of the Town Engineer.

7.15.14 Incorporation of Wisconsin Statutes and Wisconsin Administrative Code.

All Wisconsin Statutes and Wisconsin Administrative Code sections referred to in this ordinance and said statutes and code sections as may be amended from time to time hereafter are hereby incorporated by reference and shall be in full force and effect as though set forth in their entirety.

7.15.15 Erosion Control.

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

7.15.16 Applicability and Jurisdiction.

7.15.16.01 Applicability

This ordinance applies to construction of sanitary sewer and water mains and erosion control for Planned Unit Developments, Subdivisions, and other land disturbing construction activities except as provided under Subsection 7.15.16.01(A).

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

(1) Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under Sec. COMM 21.125 or COMM 50.115, Wis. Adm. Code.

(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 under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

(B) Notwithstanding the applicability requirements in paragraph (A), this ordinance applies to construction sites of any size that, in the opinion of the Town Engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

7.15.16.02 Jurisdiction

This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the Town of Grafton.

7.15.16.03 Exclusions

This ordinance is not applicable to activities conducted by a state agency, as defined under Sec. 227.01(1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Sec. 281.33(2), Wis. Stats.

7.15.17 Definitions.

The following definitions shall apply to this chapter:

(A) Administering authority means a governmental employee, or a regional planning commission empowered under Sec. 61.354, Wis. Stats., that is designated by the Town Board to administer this ordinance.

(B) Agricultural facilities and practices has the meaning in Sec. 281.16(1), Wis. Stats.

(C) Average annual rainfall means a calendar year of precipitation, excluding snow, which is considered typical.

(D) Best management practice or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(E) Business day means a day that the office of the Town of Grafton is routinely and customarily open for business.

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

(G) Construction site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

(H) Division of land means the creation of one or more parcels and/or building sites of 10 or fewer acres each in area where such creation occurs at one time or through successive partition within a 5-year period.

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

(J) Erosion and sediment control plan means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

(K) 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 that employ equivalent permanent stabilization measures.

(L) Governing body means Town Board of Supervisors.

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

(N) Maximum extent practicable or "MEP" means a level of implementing best management practices in order to achieve a performance standard specified in this chapter 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.

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

(P) Permit means a written authorization made by the Town Board to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

(Q) Pollutant has the meaning given in Sec 283.01(13), Wis. Stats.

(R) Pollution has the meaning given in Sec. 281.01(10), Wis. Stats.

(S) Responsible party means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.

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

(U) Sediment means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

(V) 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 draining to a storm water treatment device or system.
(4) Discharges directly or indirectly to waters of the state.

(W) Site means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

(X) Stop work order means an order issued by the Town Engineer, which requires that all construction activity on the site be stopped.

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

(Z) Waters of the state has the meaning given in Sec. 281.01(18), Wis. Stats.

7.15.18 Technical Standards.

7.15.18.01 Design Criteria, Standards and Specifications

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

(A) Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November 1993 Revision.

(B) Other 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.

(C) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

7.15.18.02 Other Standards

Other technical standards not identified or developed in Section 7.15.18.01 may be used provided that the methods have been approved by the Town Engineer.

7.15.19 Performance Standards.

7.15.19.01 Responsible Party

The responsible party shall implement an erosion and sediment control plan, developed in accordance with Section 7.15.20.09, that incorporates the requirements of this section.

7.15.19.02 Plan

A written plan shall be developed in accordance with Section 7.15.20.09 and implemented for each construction site.

7.15.19.03 Erosion and Other Pollutant Control Requirements

The plan required under Section 7.15.19.02 shall include the following:

(A) BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.

(B) Notwithstanding par. (A), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.

(C) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:

(1) Prevent tracking of sediment from the construction site onto roads and other paved surfaces.

(2) Prevent the discharge of sediment as part of site dewatering.

(3) Protect the separate storm drain inlet structure from receiving sediment.

(4) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. 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 paragraph.

7.15.19.04 Location

The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

7.15.19.05 Alternate Requirements

The Town Engineer may establish site erosion management requirements more stringent than those set forth in this section if the Town Engineer determines that an added level of protection is needed for sensitive resources.

7.15.20 Permitting Requirements, Procedures and Fees.

7.15.20.01 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 Town Engineer.

7.15.20.02 Permit Application and Fees

At least one responsible party desiring to 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 Section 7.15.20.09, and shall pay an application fee to the Town of Grafton. By submitting an application, the applicant is authorizing the Town Engineer to enter the site to obtain information required for the review of the erosion and sediment control plan.

7.15.20.03 Review and Approval of Permit Application

The Town Engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

(A) Within 10 business days of the receipt of a complete permit application, as required by Section 7.15.20.02, the Town Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.

(B) If the permit application and plan are approved, the Town Engineer shall issue the permit.

(C) If the permit application or plan is disapproved, the Town Engineer shall state in writing the reasons for disapproval.

(D) The Town Engineer may request additional information from the applicant. If additional information is submitted, the Town Engineer shall have 10 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

(E) Failure by the Town Engineer to inform the permit applicant of a decision within 15 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.

7.15.20.04 Financial Guarantee

As a condition of approval and issuance of the permit, the Town Engineer may require the applicant to deposit a surety bond, irrevocable letter of credit or other financial guarantee sufficient to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

7.15.20.05 Permit Requirements

All permits shall require the responsible party to:

(A) Notify the Town Engineer within 48 hours of commencing any land disturbing construction activity.

(B) Notify the Town Engineer of completion of any BMPs within 14 days after their installation.

(C) Obtain permission in writing from the Town Engineer prior to any modification pursuant to Section 7.15.20.12 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 erosion control 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 document the findings of the inspections in a site erosion control log with 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 Town Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.

7.15.20.06 Permit Conditions

Permits issued under this section may include conditions established by the Town Engineer in addition to the requirements set forth in Section 7.15.20.05, where needed to assure compliance with the performance standards in Section 7.15.19.

7.15.20.07 Permit Durations

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 Town Engineer may extend the period one or more times for up to an additional 180 days. The Town Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.

7.15.20.08 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.

7.15.20.09 Erosion and Settlement Control Plan, Statement and Amendments.

7.15.20.10 Erosion and Settlement Control Plan.

(A) An erosion and sediment control plan shall be prepared and submitted to the Town Engineer.

(B) The erosion and sediment control plan shall be designed to meet the performance standards in Section 7.15.19 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) The 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 site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.

(3) A sequence of construction of the development 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 site and the total area of the site that is expected to be disturbed by construction activities.

(5) Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.

(6) Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.

(7) Existing data describing the surface soil as well as subsoils.

(8) Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.

(9) 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 plan.

(6) Location of areas where stabilization practices will be employed.

(7) Areas which will be vegetated following construction.

(8) Area extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.

(9) Locations of all surface waters and wetlands within one mile of the construction site.

(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 controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

(1) Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

(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 Town Engineer structural measures shall be installed on upland soils.

(3) Management of overland flow at all sites, unless otherwise controlled by outfall controls.

(4) Trapping of sediment in channelized flow.

(5) Staging construction to limit bare areas subject to erosion.

(6) Protection of downslope drainage inlets where they occur.

(7) Minimization of tracking at all sites.

(8) Clean up of off-site sediment deposits.

(9) Proper disposal of building and waste materials at all sites.

(10) Stabilization of drainage ways.

(11) Control of soil erosion from dirt stockpiles.

(12) Installation of permanent stabilization practices as soon as possible after final grading.

(13) Minimization of dust to the maximum extent practicable.

(14) 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.

7.15.20.11 Erosion and Sediment Control Plan Statement

For each construction site identified under Section 7.15.16.01(A), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Town Engineer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.

7.15.20.12 Amendments.

The applicant shall amend the 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 plan.

(B) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.

(C) The Town Engineer notifies the applicant of changes needed in the plan.

7.15.21 Building Construction Activities.

7.15.21.01 Erosion Control

Construction sites involving building construction where a building permit has been issued shall comply with the following:

(A) One and Two Family Construction. On a site where a building permit has been issued for the construction of a one or two family residence, compliance shall be as required in COMM 21.125 Erosion Control Procedures, as adopted by reference; or

(B) Building Construction Under COMM 61 and 62. On a site where a building permit has been issued for the construction of a building or other structure, other than indicated is paragraph (A), and which is governed by and constructed under COMM 61 and 62, compliance shall be as required in COMM 61.115 Notice of Intent, as adopted by reference.

7.15.22 Fee Schedule.

The fees referred to in other sections of this ordinance shall be established by the Town Board and may from time to time be modified by resolution. Fees shall be related to costs involved in handling permit applications, reviewing plans, conducting inspections and administering the erosion control program. A schedule of the fees established by the Town Board shall be available for review at the Town Hall, 1102 Bridge Street, Grafton, WI.

In addition to any other applicable fee under this ordinance, Permittees also shall pay a fee equal to the amount of actual costs of the Town for engineering and legal review and/or services incurred in connection with either the implementation or enforcement of this ordinance.

7.15.23 Inspection.

The Town Engineer is authorized to conduct such inspections, surveillance and monitoring as is necessary to determine compliance with the requirements of this ordinance, and to prohibit and require the disconnection of unpermitted or otherwise illicit discharges to the Town's separate storm sewer system, all in accordance with applicable provisions of State law and Town ordinances.

7.15.24 Enforcement.

The Town Engineer may post a stop-work order if any of the following occurs:

(A) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
(B) The erosion and sediment control plan is not being implemented in a good faith manner.
(C) The conditions of the permit are not being met.

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 Town Engineer may revoke the permit.

If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Town Engineer or if a responsible party violates a stop-work order posted under Section 0, the Town Engineer may request the Town attorney to obtain a cease and desist order in any court of competent jurisdiction.

The Town Engineer may retract the stop-work order issued under Section 7.15.20.10 or the permit revocation under Section 7.15.24.02.

After posting a stop-work order under Section 7.15.24.01, the Town Engineer may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Town Engineer 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 Town Engineer, plus interest at the rate authorized by Town Board 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 Subchapter VII of Ch. 66, Wis. Stats.

Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than $50 nor more than $500 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

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

7.15.25 Appeals.

7.15.25.01 Board of Appeals

The Board of Zoning Appeals:

(A) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Town Engineer in administering this ordinance except for cease and desist orders obtained under Section 7.15.24.03.

(B) Upon appeal, may authorize 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.

7.15.25.02 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 Town of Grafton affected by any decision of the Town Engineer.

7.15.26 Incorporation of Wisconsin Statutes and Wisconsin Administrative Code.

All Wisconsin Statutes and Wisconsin Administrative Code sections referred to in this ordinance and said statutes and code sections as may be amended from time to time hereafter are hereby incorporated by reference and shall be in full force and effect as though set forth in their entirety.

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