

## Chapter 19

### STORM WATER MANAGEMENT ORDINANCE

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#### **19.01 AUTHORITY.**

(1) This ordinance is adopted by the Village Board of Trustees under the authority granted by s. 61.354, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 61.35, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 61.354, Wis. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

(3) The Village Board of Trustees hereby designates the administering authority to administer and enforce the provisions of this ordinance.

(4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:

(a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.

(b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

### **19.02 FINDINGS OF FACT.**

The Village Board of Trustees 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.

### **19.03 PURPOSE AND INTENT.**

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

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

(2) INTENT. It is the intent of the Village Board of Trustees that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Village Board of Trustees recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale.

Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the Village Board of Trustees, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

#### **19.04 APPLICABILITY AND JURISDICTION.**

##### **(1) APPLICABILITY.**

(a) Where not otherwise limited by law, this ordinance applies to all post-construction sites, unless the site is otherwise exempt under paragraph (b).

(b) A post-construction site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.

1. 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance.

2. Non-point discharges from agricultural activity areas.

3. Non-point discharges from silviculture activities.

4. Mill and crush operations.

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

**(2) JURISDICTION.** This ordinance applies to post construction sites within the boundaries and jurisdiction of the Village of North Fond du Lac.

**(3) EXCLUSIONS.** This ordinance is not applicable to activities conducted by a state agency, as defined under s. 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 s. 281.33 (2), Wis. Stats.

#### **19.05 DEFINITIONS.**

**(1)** “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 61.354, Wis. Stats., that is designated by the Village Board of Trustees to administer this ordinance.

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

(3) "Agricultural production area" means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.

(4) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical. For purposes of this ordinance, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.

(5) "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.

(6) "Business day" means a day the office of the administering authority is routinely and customarily open for business.

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

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

(9) "Common plan of development or sale" means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

(10) "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.

(11) "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.

(12) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The TR-55, Type II, 24-hour design storms for the Village of North Fond du Lac are: 1-year, 2.2 inches; 2-year, 2.5 inches; 5-year, 3.4 inches; 10-year, 3.9 inches; 25-year, 4.4 inches; 50-year, 4.9 inches; 100-year, 5.4 inches; and 500-year, 6.5 inches.

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

(14) "Division of land" means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.

(15) "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.

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

(17) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.

(18) "Extraterritorial" means the unincorporated area within 3 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.

(19) "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.

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

(21) "Governing body" means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

(22) "Highway" has the meaning given in s. 340.01 (22), Wis. Stats.

(23) "Highway reconditioning" has the meaning given in s. 84.013 (1)(b), Wis. Stats.

(24) "Highway reconstruction" has the meaning given in s. 84.013(1)(c), Wis. Stats.

(25) "Highway resurfacing" has the meaning given in s. 84.013(1)(d), Wis. Stats.

(26) "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. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

(27) "In-fill area" means a new development area less than 5 acres in size that is located within existing urban sewer service areas, surrounded by already existing development or existing development and natural or man-made features where development cannot occur..

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

(29) "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.

(30) "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.

(31) "Land disturbing construction activity" (or "disturbance") 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, and soil stockpiling.

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

(33) "MEP" or "maximum extent practicable" 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.

(34) “Minor reconstruction of a highway” means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening.

(35) “New development” means that portion of a post-construction site where impervious surfaces are being created or expanded. Any disturbance where the amount of impervious area for the post-development condition is greater than the pre-development condition is classified as new development. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

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

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

(38) “Ordinary high-water mark” has the meaning given in s. NR 115.03(6), Wis. Adm. Code.

(39) “Outstanding resource waters” means waters listed in s. NR 102.10, Wis. Adm. Code.

(40) “Percent fines” means the percentage of a given sample of soil, which passes through a # 200 sieve.

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

(42) “Permit” means a written authorization made by the administering authority to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

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

(44) “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.

(45) “Pollutant” has the meaning given in s. 283.01(13), Wis. Stats.

(46) “Pollution” has the meaning given in s. 281.01(10), Wis. Stats.

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

(48) “Post-development” means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.

(49) “Pre-development” 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.

(50) “Preventive action limit” has the meaning given in s. NR 140.05(17), Wis. Adm. Code.

(51) “Redevelopment” means that portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For

purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

**(52)** “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.

**(53)** “Routine maintenance” means that portion of a post-construction site where pre-development impervious surfaces are being maintained to preserve the original line and grade, hydraulic capacity, drainage pattern, configuration, or purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower ½ of the impervious surface’s granular base is not disturbed. The disturbance shall be classified as redevelopment if the lower ½ of the granular base associated with the pre-development impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

**(54)** “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.

**(55)** “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:

- (a) Is designed or used for collecting water or conveying runoff.
- (b) Is not part of a combined sewer system.
- (c) Is not draining to a storm water treatment device or system.
- (d) Discharges directly or indirectly to waters of the state.

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

**(57)** “Stop work order” means an order issued by the administering authority which requires that all construction activity on the site be stopped.

**(58)** “Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.

**(59)** “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.

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

**(61)** “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.

(62) “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.

(63) “Transportation facility” means a public street, a public road, a public highway, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under s. 85.095(1)(b), Stats.

(64) “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.

(65) “Waters of the state” has the meaning given in s. 281.01 (18), Wis. Stats.

#### **19.06 TECHNICAL STANDARDS.**

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

(1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

(2) Technical standards and guidance identified within the NEWSC Storm Water Reference Guide.

(3) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the administering authority.

(4) In this ordinance, the following year and location has been selected as average annual rainfall: Green Bay, 1969 (Mar. 29-Nov. 25).

#### **19.07 PERFORMANCE STANDARDS.**

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

(2) PLAN. A written storm water management plan in accordance with 19.09 shall be developed and implemented for each post-construction site.

(3) REQUIREMENTS. The storm water management plan shall meet the following minimum requirements to the maximum extent practicable:

(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. The total suspended solids reduction shall be based on the average annual rainfall, as compared to no runoff management controls.

1. For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required:

a. Reduce the total suspended solids load by 80% for new development.

- b. Reduce the total suspended solids load by 40% for redevelopment.
  - c. No total suspended solids load reduction is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed water quality BMP.
2. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce the total suspended solids load using BMPs from the NEWSOC Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.
  3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance (October 20, 2008) are required to satisfy the performance standards within 19.07(3)(a)1.a, b, and c.
  4. The amount of total suspended solids control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
  5. Notwithstanding subs. 1. to 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. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site as follows:

1. For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required:
  - a. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the 2-year, 10-year, and 100-year, 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.
  - b. TR-55 methodology shall be used for peak discharge calculations, unless the administering authority approves an equivalent methodology. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. Peak pre-development discharge rates shall be determined using the following “meadow” runoff curve numbers:

Maximum Pre-Development Runoff Curve Numbers - Meadow				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	30	58	71	78

2. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the NEWSOC Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.
3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance (October 20, 2008) are required to satisfy the performance standards within 19.07(3)(b)1.a and b.
4. The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

5. An adequate outfall shall be provided for each point of concentrated discharge from the post-construction site. An adequate outfall consists of non-erosive discharge velocities and reasonable downstream conveyance.

6. Exemptions. The following transportation facilities are not required to meet the peak discharge requirements of this paragraph (b) provided the transportation facility is not part of a larger common plan of development or sale:

a. A transportation facility where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving surface water by more than 0.01 of a foot for the 2-year, 24-hour storm event.

b. A highway reconstruction site.

c. A transportation facility that is part of a redevelopment project.

(c) INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following, except as provided in subds. 8. through 11.

1. For residential developments with 20,000 square feet or more of impervious surface disturbance and residential developments with 1 acre or more of land disturbance, 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 developments with 20,000 square feet or more of impervious surface disturbance and non-residential developments with 1 acre or more of land disturbance, 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 assume “good hydrologic conditions” for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. 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 following runoff curve numbers shall be used:

Maximum Pre-Development Runoff Curve Numbers - Cropland				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

4. For residential and non-residential developments with less than 20,000 square feet of new impervious surfaces, infiltrate runoff volume using BMPs from the NEWSW Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.

5. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance (October 20, 2008) are required to satisfy the performance standards within 19.07(3)(c)1, 2, and 3.

6. The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.

7. 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 subd. 11. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

8. Exclusions. Infiltration of runoff from the following areas are prohibited from meeting the infiltration requirements of this paragraph (c):

a. Areas associated with tier 1 industrial facilities identified in s. 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 s. NR 216.21(2)(b), Wis. Adm. Code.

c. Fueling and vehicle maintenance areas.

d. Areas within 1000 feet upgradient or within 100 feet downgradient 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 subd. 8.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 s. NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in s. 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 s. 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 subd. 8.i. does not prohibit infiltration of roof runoff.

9. Exemptions. Infiltration of runoff from the following areas are not required to meet the infiltration requirements of this paragraph (c):

- 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 and routine maintenance areas.
- d. In-fill 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.
- g. Highways provided the transportation facility is not part of a larger common plan of development or sale.

10. 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.

11. a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

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 s. 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.

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 sub d. 1.a., d. and 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 s. NR 103.03.

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

2. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m). This paragraph (d) 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.

3. This paragraph (d) applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 6 below.

4. 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.

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.

5. A protective area established or created after the adoption date of this ordinance (October 20, 2008) shall not be eliminated or reduced, except as allowed in subd. 6.b, c, or d below.

6. Exemptions. The following areas are not required to meet the protective area requirements of this paragraph (d):

a. Redevelopment and routine maintenance areas provided the minimum requirements within in subd. 5 above are satisfied.

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

c. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.

d. 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.

(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.

(f) SWALE TREATMENT FOR TRANSPORTATION FACILITIES. This 19.07(3)(f) is not applicable to transportation facilities that are part of a larger common plan of development or sale.

1. Applicability. Except as provided in subd. 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.

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.

2. Exemptions. The administering authority may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 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 s. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
- d. Waters where targeted performance standards are developed under s. NR 151.004, Wis. Adm. Code, to meet water quality standards.

(g) EXEMPTIONS. The following areas are not required to meet the performance standards within 19.07(3):

1. Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.

2. Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

3. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.

- a. Reconditioning or resurfacing of a highway.
- b. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements within NR 151.24(6) Wisconsin Administrative Code apply to minor reconstruction of a highway.
- c. A redevelopment transportation facility with no increase in exposed parking lots or roads.
- d. A transportation facility with less than 10% connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.
- e. Routine maintenance for transportation facilities if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

**(4) 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.

**(5) 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 par. (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.

(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.

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

1. The administering authority determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Village of North Fond du Lac 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 administering authority 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 administering authority. In determining the fee for post-construction runoff, the administering authority shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

(6) ALTERNATE REQUIREMENTS. The administering authority may establish storm water management requirements more stringent than those set forth in this section if the administering authority determines that an added level of protection is needed to protect sensitive resources. Also, the administering authority may establish storm water management requirements less stringent than those set forth in this section if the administering authority determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

### **19.08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.**

(1) PERMIT REQUIRED. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the administering authority prior to commencing the proposed activity.

(2) PERMIT APPLICATION AND FEES. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the administering authority a permit application made on a form provided by the administering authority 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 19.07 and 19.09, the maintenance agreement shall be prepared to meet the requirements of 19.10, the financial guarantee shall meet the requirements of 19.11, and fees shall be those established by the Village Board of Trustees as set forth in 19.12.

(3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The administering authority 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 30 calendar days of the receipt of a complete permit application, including all items as required by sub. (2), the administering authority 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 administering authority shall issue the permit.

(c) If the storm water permit application, plan or maintenance agreement is disapproved, the administering authority shall detail in writing the reasons for disapproval.

(d) The administering authority may request additional information from the applicant. If additional information is submitted, the administering authority shall have 30 calendar days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved (**see note (3)(a)**).

(e) Failure by the administering authority to inform the permit applicant of a decision within 30 calendar 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 (**see note (3)(a)**).

**(4) PERMIT REQUIREMENTS.** 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 administering authority may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the administering authority to suspend or revoke this permit may be appealed in accordance with 19.14.

(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 administering authority at least 2 business days before commencing any work in conjunction with the storm water management plan, and within the next business day upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the administering authority 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 administering authority or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The administering authority 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 administering authority of any significant modifications it intends to make to an approved storm water management plan. The administering authority may require that the proposed modifications be submitted to it 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 either become the responsibility of the Village Board of Trustees, or are transferred to subsequent private owners as specified in the approved maintenance agreement.

(g) The responsible party authorizes the administering authority 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 subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under 19.11.

(h) If so directed by the administering authority, 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 administering authority 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 administering authority 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 19.13, if the responsible party fails to comply with the terms of this permit.

(l) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.

(5) PERMIT CONDITIONS. Permits issued under this subsection may include conditions established by administering authority in addition to the requirements needed to meet the performance standards in 19.07 or a financial guarantee as provided for in 19.11.

(6) PERMIT DURATION. Permits issued under this section shall be valid from the date of issuance through the date the administering authority notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d).

(7) ALTERNATE REQUIREMENTS. The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 19.07 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

#### **19.09 STORM WATER MANAGEMENT PLAN.**

(1) PLAN REQUIREMENTS. The storm water management plan required under 19.08 (2) shall comply with the NEWSC Storm Water Reference Guide and contain at a minimum the following information:

- (a) Name, address, and telephone number of the landowner and responsible parties.
- (b) A legal description of the property proposed to be developed.
- (c) Pre-development site map with property lines, disturbed limits, and drainage patterns.
- (d) Post-development site map with property lines, disturbed limits, and drainage patterns.
  1. Total area of disturbed impervious surfaces within the site.
  2. Total area of new impervious surfaces within the site.
  3. Performance standards applicable to site.
  4. Proposed best management practices.
  5. Groundwater, bedrock, and soil limitations.
  6. Separation distances. Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water.

(2) ALTERNATE REQUIREMENTS. The administering authority may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under 19.07 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

#### **19.10 MAINTENANCE AGREEMENT.**

(1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under 19.08 (2) for storm water management practices shall be an agreement between the administering authority and the responsible party to provide for maintenance of storm water 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 storm water management practices.

(2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by 19.09(1)(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 19.08 (2).
- (c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under 19.08 (2).
- (d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in par. (b).
- (e) Authorization for the administering authority 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 administering authority 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 par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the administering authority of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the administering authority.
- (h) Authorization of the administering authority to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The administering authority 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.

(3) ALTERNATE REQUIREMENTS. The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 19.07 (5) or for

applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

#### **19.11 FINANCIAL GUARANTEE.**

(1) ESTABLISHMENT OF THE GUARANTEE. The administering authority may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the administering authority. The financial guarantee shall be in an amount determined by the administering authority 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 administering authority 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 administering authority that the requirements of this ordinance have not been met.

(2) CONDITIONS FOR RELEASE. Conditions for the release of the financial guarantee are as follows:

(a) The administering authority shall release the portion of the financial guarantee established under this section, less any costs incurred by the administering authority to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The administering authority may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

(b) The administering authority 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 administering authority, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

(3) ALTERNATE REQUIREMENTS. The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 19.07 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

#### **19.12 FEE SCHEDULE.**

The fees referred to in other sections of this ordinance shall be established by the administering authority and may from time to time be modified by resolution. A schedule of the fees established by the administering authority shall be available for review in the office of the Department of Public Works.

#### **19.13 ENFORCEMENT.**

(1) 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.

(2) The administering authority shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

(3) Upon receipt of written notification from the administering authority under sub. (2), 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 administering authority in the notice.

(4) 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 administering authority may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the administering authority plus interest and legal costs shall be billed to the responsible party.

(5) The administering authority 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 village attorney to obtain a cease and desist order in any court with jurisdiction.

(6) The administering authority may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.

(7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the administering authority or by a court with jurisdiction.

(8) The administering authority 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 village attorney for the commencement of further legal proceedings in any court with jurisdiction.

(9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than \$5 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.

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

(11) When the administering authority 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 administering authority or a party designated by the administering authority 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 administering authority 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 19.11 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.

**19.14 APPEALS.**

(1) BOARD OF APPEALS. The board of appeals, created pursuant to section 1.04(3)(a) of the Village of North Fond du Lac ordinances pursuant to s. 61.354(4)(b), Wis. Stats, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the administering authority 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.

(2) WHO MAY APPEAL. Appeals to the board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of North Fond du Lac affected by any decision of the administering authority.

**19.15 SEVERABILITY.**

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

**19.16 EFFECTIVE DATE.**

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the Board of Trustees of the Village of North Fond du Lac on the 20th day of October, 2008.

**19.17 STORM WATER UTILITY.**

(1) CREATION. There is hereby established a storm water utility in the Village of North Fond du Lac. The operation of the storm water utility shall be under the supervision of the Director of Public Works who shall oversee the operation and maintenance of the storm water management system, the provision of storm water management services, and compliance with storm water regulations.

(2) AUTHORITY. The Village, acting through the storm water utility, may without limitation due to enumeration, (i) acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance storm water management facilities; (ii) undertake operations and activities, as are deemed by the Village to be proper and reasonably necessary to manage the quantity and quality of storm water; and (iii) take the steps necessary to comply with storm water regulations. Storm water management facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other facilities as will support storm water management.

(3) RATES AND CHARGES.

(a) The basis for computing storm water utility charges is established under this Section. The establishment of formulas for the calculation of charges, the creation of customer classifications for the imposition of charges, the amount of charge to be imposed, and changes in such formulas, customer classifications, and charges may be made

by further resolution of the Board of Trustees. All charges established pursuant to this Section shall be fair and reasonable. A schedule of current charges shall be maintained and on file in the office of the Village Clerk.

(b) Charges shall be imposed to recover all or a portion of the costs of the storm water utility. Such charges, which shall be established pursuant to further resolution of the Village of North Fond du Lac Board of Trustees, may include the following components:

1. Equivalent runoff unit charge (ERU). An equivalent runoff unit charge may be imposed on all property that has an impervious area. The ERU charge shall be assessed based upon the impervious area as reasonably determined by the Village for a typical residential unit of property. Other units of property will be charged multiples of the ERU based on the impervious area of the property.

2. Special charge (SC). A special charge may be imposed on property that is in an area specially served by a particular storm water management measure. This charge will be developed to reflect the additional services provided in a particular area that may not be appropriate to allocate to property throughout the Village. The special charge will be calculated on an ERU basis.

(c) In the event the owner and users of a particular property are not the same, the liability for the charges attributable to that property shall be joint and severable.

**(4) APPLICATION FOR SERVICE.** The property owner shall be responsible for completing the storm water utility service application form any time a building permit is issued, exclusive of those issued to existing single family residences, or when a site plan review is conducted. The form shall be provided by the Building Inspector with each application for a building permit (exclusive of building permits for single family residences) or application for site plan review. Failure to submit a completed storm water utility service application form or providing false information on said form, shall result in denial of both the building permit and storm water utility service applications, and the imposition of a penalty as provided in 19.17(9). In addition to any other penalties, the owner shall also be liable for storm water charges which would have been imposed for the improvement from the date construction of the improvement began.

**(5) BILLING AND COLLECTION.**

(a) The charges established will be billed to the utility customer at the same time and in the same manner as the sanitary sewer bill. A storm water utility bill will be established for those properties that do not receive a sanitary sewer bill. Unless otherwise provided elsewhere, such charges shall not be payable in installments.

(b) Bills for storm water utility charges shall be mailed to the recipient designated by the owner of the property to which the bill relates, provided that such mailing shall not relieve the owner of any property from liability for the charges in the event payment is not made. The owner of any property which is occupied by tenants shall have the right to examine the appropriate records of the Village to determine whether such rates and charges have been paid by such tenants, provided that such examination shall be made at the office at which the records are kept during normal business hours.

(c) All storm water service charges shall be taxed and collected, and shall be a lien upon the property served in the same manner as water service charges are taxed and collected under the provisions of Sec. 66.0809, Wis. Stats.

(d) A late payment charge as established by further resolution of the Board of Trustees will be added to bills not paid within 20 days of issuance.

**(6) ADJUSTMENTS OF ERUS AND CREDIT POLICY.**

(a) A non-residential customer may apply for an adjustment to the ERUs assigned to his, her or its property if the customer believes the impervious area measurements on which the ERU calculation is based are inaccurate. Requests for adjustments of the ERUs allocated to a parcel of property shall be limited to the non-residential customer class.

(b) All requests for adjustments shall be submitted to the Director of Public Works, who shall have the authority to develop and administer the procedures and standards for the adjustment of ERUs as established in this subsection. Requests for adjustments shall be in writing and set forth in detail the grounds upon which relief is sought.

(c) The nonresidential customer requesting the adjustment shall be required, at his, her or its own expense, to provide any supplemental information requested by the Director of Public Works, including but not limited to survey data and engineering reports approved by a professional engineer (P.E.) Failure to provide such information within the time limits established by the Director, as may be reasonably extended, may result in denial of the adjustment request.

(d) Once a completed adjustment request and all required information is fully submitted, the Director shall have thirty (30) calendar days within which to render a written decision. In considering an adjustment request, the Director shall consider whether the calculation of the ERUs for the property is correct.

(e) The Director's decision shall be mailed to the address provided on the adjustment request and service shall be complete upon mailing. Appeals from the Director's decisions concerning ERUs adjustment requests shall follow the process set out in 19.17(7), except that no concurrent payment of any fees is required.

(f) All appeals must be in writing and shall specify the grounds for challenging the Director's decision. The appeal must specifically address the Director's conclusions and shall not merely repeat the bases for the initial adjustments request. All appeals shall be submitted within thirty (30) calendar days after the date of mailing the Director's decision. Failure to timely and properly appeal shall deprive the Village Administrator of jurisdiction to hear the appeal.

(g) Requests for adjustment to the user fees, as opposed to requests for adjustments of ERUs which are governed by this subsection, shall be governed by 19.17(7) below.

(h) Concurrent payment of any charges based on the ERUs allocated to the property is not required as a condition precedent to a request for review under this subsection 19.17(6).

(i) Customers may apply for a credit to their storm water charge if the property is eligible for a credit pursuant to the Village Storm Water Credit Policy. The Village Storm Water Credit Policy shall be available from the Village Clerk and on the Village's official web page.

**(7) Appeals.**

(a) The Village of North Fond du Lac elects not to be subject to the administrative review provisions contained within Chapter 68 of the Wisconsin Statutes, and establishes the following as a complete and final review procedure.

(b) As a condition precedent to challenging any storm water utility charge, the charge must be timely paid in full under protest to the Village.

(c) An appeal shall be to the Village Administrator and can be undertaken only by filing a written appeal with the Village Clerk concurrent with the date of payment. The written appeal shall specify all grounds for challenge to the amount of the charge and shall state the amount of charge that the appellant considers to be appropriate. Failure to timely and properly appeal shall deprive the Village Administrator of jurisdiction to hear the appeal.

(d) In considering an appeal, the Village Administrator shall determine whether the storm water utility charge is fair and reasonable and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of the refund. The Village Administrator shall conduct a formal or informal hearing at such time and place as designated in a hearing notice to the appellant, providing five (5) business days notice to the appellant. The Village Administrator shall obtain sufficient facts upon which to make a determination. The decision shall be based upon the evidence presented. The Village Administrator shall notify the appellant in writing of the determination by first class mail addressed to the individual and at the address listed within the appeal. Service is conclusive upon mailing.

(e) The decision of the Village Administrator is final except if the property owner appeals the decision to the Board of Trustees by filing a written appeal with the Village Clerk no later than thirty (30) calendar days after the date of mailing the decision of the Village Administrator. The written appeal shall specify all grounds for challenge to the Village Administrator's decision and shall again state the amount of charge that the appellant considers to be appropriate. The appeal must specifically address the Village Administrator's conclusions and shall not merely repeat the bases for the initial appeal. Failure to timely and properly appeal shall deprive the Board of Trustees of jurisdiction to hear the appeal.

(f) In considering an appeal, the Board of Trustees shall determine whether the storm water utility charge is fair and reasonable and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of the refund. The Board of Trustees shall consider the appeal in the same manner as a new resolution, pursuant to its rules for procedure in existence at the time of consideration. The Village Clerk shall provide written notice to the address listed within the appeal of the time and place of the Council's consideration of the appeal at least five (5) business days prior to such consideration. The Board of Trustees shall base its decision upon the information presented at its meeting. The Village Clerk shall notify the appellant in writing of the Board of Trustees' determination by first class mail addressed to the individual and at the address listed within the appeal. Service is conclusive upon mailing.

(g) The decision of the Board of Trustees is final except if the property owner appeals the decision to a court of competent jurisdiction. Such appeal shall be filed no later than thirty (30) calendar days after the date of mailing the decision of the Board of Trustees. Such appeal shall be by writ of certiorari and the reviewing court shall be limited to the record created before the Board of Trustees. Costs, but not attorney fees, shall be awarded to the prevailing party, at the sole discretion of the court.

(h) If the result of any appeal is that a refund is due the appellant, the refund will be applied as a credit on the appellant's next storm water bill.

**(8) BUDGET EXCESS REVENUES.** The storm water utility finances shall be accounted for in a separate Storm Water Utility Fund by the Village. The Public Works Director or designee shall prepare an annual budget, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the storm water utility. The budget is subject to approval by the Board of Trustees. Any excess of utility revenues collected over expenditures in a year will be retained by the Fund for subsequent years' needs.

**(9) PENALTY.** A person violating any provision of this Section shall, upon conviction, pay a forfeiture not to exceed \$75.00 for each offense, in addition to the costs of prosecution which are allowed by law. Each day during which a violation exists shall constitute a separate offense.

**(10) ALTERNATIVE METHOD TO COLLECT STORM WATER CHARGES.** In addition to any other method for collection of the charges established under this Section or subsequent resolution, the Village may levy and impose charges for storm water management on property as a special charge pursuant to Sec. 66.0627, Wis. Stats. The mailing of the bill for storm water utility charges to a property owner shall serve as notice to the property owner that failure to pay the charges when due may result in the charges being imposed pursuant to the authority of Sec. 66.0627, Wis. Stats. The procedures contained in Sec. 66.0627, Wis. Stats., shall govern such notice and further collection procedures.

#### **19.18 STORM WATER UTILITY CREDIT POLICY.**

**(1) PURPOSE AND SCOPE.** The Purpose of this Storm Water Utility Credit Policy is to encourage actions by property owners within the utility district that 1) reduce storm water flows and volumes, 2) reduce storm water pollution, and 3) reduce the utility district's costs in providing proper management of storm water runoff. 19.18(3)(c) (Riparian Properties) applies to any property that meets the definition of "riparian". All other credit conditions defined in this policy apply only to parcels within the village. Credits to user fees will only be allowed when it can be demonstrated by the customer that a condition or activity on the property results in a direct reduction in costs for Storm Water Utility services. Those conditions and activities are specified in this policy document.

**(2) CREDIT STRUCTURE.** For the purposes of generating applicable credit rates, the municipal storm water management services, which are funded through the user fee, are divided into three categories.

Storm Water Base Fee: 30%

Storm Water Flow Fee: 35%

Storm Water Quality Fee: 35%

(a) Fees to support the Storm Water Base programs are applied throughout the utility customer base, and credits are not allowed for these components. The Storm Water Base costs are required to conduct the storm water management program throughout the village.

(b) Only the costs associated with the Storm Water Flow and Storm Water Quality Fees are eligible for a credit. These costs are associated with the utility's efforts to maintain the capacity of the storm water conveyance system, reduce flooding, and reduce pollution to meet regulations. Properties that demonstrate they are reducing the impacts on the storm water flow and/or storm water quality components may be eligible for a portion or all of these credits.

(c) The tasks included under each category, and the percent credit for each category under this policy, may be reviewed and modified on an as-needed basis. Modifications must be approved by Village Board resolution.

**(3) CREDIT CRITERIA.**

(a) **PROPERTIES THAT EXCEED VILLAGE STORM WATER MANAGEMENT ORDINANCE FLOW CONTROL REQUIREMENTS.** This credit applies to all properties that provide privately constructed and maintained runoff flow control measures. Properties that implement flow control management practices so as to exceed Village of North Fond du Lac’s storm water management standards, may be eligible for a credit. The utility customer must submit documentation demonstrating that a management practice on their property exceeds the peak flow reduction criteria to the Department of Public Works (DPW). The amount of credit will be based on the prorated amount that the property is exceeding the requirements. The acceptable methodologies for computing the peak flow are described in 19.07(3)(b). See 19.18(4) for submittal requirements.

The amount of Storm Water Flow Fee credit will be based on the following criteria:

1. Post-development flow from all three design storms (as defined in 19.07(3)(b)) meet the minimum requirements.
2. Property must reduce the peak flow requirement of the 10-year design storm below the required rate as defined by the village storm water management ordinance. All calculations shall use the 10-year, 24-hour, SCS Type II distribution rainstorm of 3.9 inches in 24 hours.

The credit amount will be based on the percentage the property exceeds the minimum flow control requirements. An example of credit calculations is provided in the following table:

Example Storm Water Flow Fee Credit Calculations						
Reduce flow below the requirement by:	0%	20%	40%	60%	80%	100%
Multiply by 35% (maximum eligible credit)	35%	35%	35%	35%	35%	35%
The utility fee credit will be:	0%	7%	14%	21%	28%	35%

(b) **PROPERTIES THAT IMPLEMENT STORM WATER QUALITY PRACTICES.** This credit applies to all properties that provide privately constructed and maintained runoff pollution control measures. Properties that implement pollution control management practices so as to reduce storm water sediment (total suspended solids) below the requirements of the village’s Storm Water Management Ordinance may be eligible for a credit. The utility customer must submit documentation demonstrating the sediment control effectiveness of the management practice on their property to the Department of Public Works (DPW). The amount of credit will be based on the prorated amount as described below. See 19.18(4) for submittal requirements.

The amount of Storm Water Quality Fee credit will be based on the following criteria:

1. For new development and redevelopment properties as defined in the village’s storm water management ordinance:
  - a. All requirements of the village’s storm water management ordinance must be met.

b. If the storm water sediment control practices exceed the minimum requirements, then a credit shall be applied pro-rated to the level of sediment control achieved. An example of credit calculations is provided in the following table.

Example Storm Water Quality Fee Credit Calculations for a New Development Parcel Required to Reduce Sediment by 80%				
Parcel reduces sediment pollution by:	80%**	85%	90%	95%
Multiply 35% (maximum eligible credit) by:*	0%	5%	10%	15%
The utility fee credit will be:	0%	9%	18%	27%

\* credit pro-rated based on the percent sediment control remaining after the minimum requirement is met.

\*\* column does not exceed minimum requirement of village ordinance, thus no storm water utility credit is applied.

2. For existing developed properties with no pollution control requirements, the credit will be based directly on the percent sediment control achieved compared to the property under the pre-management condition. In no case will the credit exceed 35%.

For example: If an existing developed property installs a storm water pollution management measure that reduces sediment pollution from the property by 20%, the property shall be eligible for a 20% credit.

(c) RIPARIAN PROPERTIES. Properties that discharge storm water from all or a portion of their property directly into Lake Winnebago, without entering a Village of North Fond du Lac municipally owned storm water conveyance system, may be eligible for a credit. The credit amount will be pro-rated based on the percent impervious area of the property that drains directly to Lake Winnebago or DNR mapped wetlands contiguous with Lake Winnebago. Properties located on other creeks, streams and/or ditches, are not eligible for this credit. For example if a property has 50% of its impervious area draining directly to Lake Winnebago without entering the village's storm water conveyance system, the eligible credit will be calculated as follows:

Storm Water Base Fee Portion = 30% (no credit applied)

Storm Water Flow Fee Portion = 35% x 50% = 17.5%

Storm Water Quality Fee Portion = 35% x 50% = 17.5%

See 19.18(4) for submittal requirements.

(4) CREDIT REQUEST SUBMITTAL REQUIREMENTS. The Director of Public Works shall review credit request submittal for compliance with this policy.

(a) REVIEW FEE. Prior to review by the Director, the property owner requesting the review shall pay a one-time review fee of \$500.00 per credit application for properties seeking a credit under Section 19.18(3)(a) or 19.18(3)(b) of this policy. There shall be no application fee for properties seeking a credit under 19.18(3)(c) (Riparian Properties).

(b) REQUIRED DOCUMENTATION

1. Application. The application request letter shall contain the following information:

- a. Tax Parcel Number
- b. Parcel Address
- c. Owner Name
- d. Owner Address
- e. Amount and Type of Credit Requested

2. Owner Certification. The applicant shall provide written certification that the peak flow management practice(s) that are the subject of the credit have been constructed and are functioning in the manner indicated on the credit request calculations; and/or

The applicant shall provide written certification that the percentage of parcels draining to riparian waters are correct and that drainage patterns have not been altered.

3. Operations and Maintenance Manual. The applicant shall provide for DPW review and approval a manual for the operation, inspection, and maintenance of all management practices, to ensure that the practices will continue to function as designed.

4. Supporting Plans and Calculations. The applicant shall provide for DPW review and approval, any hydrologic/hydraulic studies, plans, and other supporting documentation required to demonstrate, to the satisfaction of the Director, that the measures taken meet the requirements for the credits requested. A Registered Engineer or Hydrologist, licensed in the State of Wisconsin, must certify supporting Plan and Calculations.

(a) APPROVAL PROCESS

- 1. Director's (or Designee's) Review

The Director shall have thirty (30) calendar days to review credit applications, whereupon the Director may approve or deny the application as submitted, or provide comments for resubmittal. In the event of a resubmittal request, the thirty-day period referred to above shall begin again pending the receipt of all information requested.

- 2. Appeals. See Section 19.14 of the ordinance.

3. Annual Reevaluation. All Credits shall be subject to an annual review for compliance with the current year's credit policy. Credits may vary or be eliminated over time subject to the terms of the current year's credit policy. It is the responsibility of the billed customer to provide the Director with any and all changes to the conditions of the onsite management practices and conditions that may affect the credit rate for the site. Violations of the terms and/or conditions of the credit request may be subject to collection of utility fees retroactive to the date of the violation.

4. Retroactivity. Pending approval of the credit request, any and all credits will be granted retroactive to the date of the initial, complete credit request submittal. The Director shall determine whether a submittal is complete using the current credit request submittal requirements.

- 5. This Storm Water Utility Credit Policy shall take effect upon adoption of this ordinance.

**19.19 ILLICIT DISCHARGE AND CONNECTION TO THE STORM WATER SYSTEM.**

(1) PURPOSE/INTENT. The Purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Village of North Fond du Lac through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes

methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

(a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user.

(b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.

(c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

**(2) DEFINITIONS.** In addition to those defined in 19.05, for the purposes of 19.19, the following shall mean:

(a) Authorized Enforcement Agency: employees or designees of the director of the municipal agency designated to enforce this ordinance.

(b) Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(c) Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

(d) Construction Activity: Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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

(f) Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in 19.19(7) of this ordinance.

(g) Illicit Connections: An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(h) Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

(i) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: Means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC §1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(j) Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

(k) Person: Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

(l) Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

(m) Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(n) Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

(o) Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(p) Storm Water Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

(q) Wastewater: Means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**(3) APPLICABILITY.** This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**(4) RESPONSIBILITY FOR ADMINISTRATION.** The Village of North Fond du Lac shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

**(5) SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or

circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

(6) **ULTIMATE RESPONSIBILITY.** The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend no imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(7) **DISCHARGE PROHIBITIONS.**

(a) **PROHIBITION OF ILLEGAL DISCHARGES.** No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

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

2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(b) **PROHIBITION OF ILLICIT CONNECTIONS.**

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

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(8) **SUSPENSION OF MS4 ACCESS.**

(a) **SUSPENSION DUE TO ILLICIT DISCHARGES IN EMERGENCY SITUATIONS.** The Village of North Fond du Lac may, without prior notice, suspend MS4 discharge access to a person when such suspension is

necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

(b) **SUSPENSION DUE TO THE DETECTION OF ILLICIT DISCHARGE.** Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

**(9) INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

(a) **APPLICABILITY.** This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(b) **ACCESS TO FACILITIES.**

1. The Village of North Fond du Lac shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Facility operators shall allow the Village of North Fond du Lac ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

3. The Village of North Fond du Lac shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

4. The Village of North Fond du Lac has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Village of North Fond du Lac and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the Village of North Fond du Lac access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the

authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

7. If the Village of North Fond du Lac has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

**(10) REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.** The Village of North Fond du Lac will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

**(11) WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**(12) NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Village of North Fond du Lac within three business days of the phone

notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**(13) ENFORCEMENT.**

(a) **NOTICE OF VIOLATION.** Whenever the Village of North Fond du Lac finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

**(14) APPEAL OF NOTICE OF VIOLATION.** Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

**(15) ENFORCEMENT MEASURES AFTER APPEAL.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 10 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**(16) COST OF ABATEMENT OF THE VIOLATION.** Within 45 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objection to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessments against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the village by reason of such violation. The liability shall be paid in not more than 12 equal

payments. Interest at the rate of 12 percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

**(17) INJUNCTIVE RELIEF.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of the ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**(18) COMPENSATORY ACTION.** In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**(19) VIOLATIONS DEEMED A PUBLIC NUISANCE.** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**(20) CRIMINAL PROSECUTION.** Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$5 to \$500 dollars per violation per day. The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**(21) REMEDIES NOT EXCLUSIVE.** The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**(22) ADOPTION OF ORDINANCE.** This ordinance shall be in full force and effect 1 day after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.