

**TOWN OF CEDARBURG  
ORDINANCE NO. 2008-16**

**An Ordinance to Amend Subsection 184-13 E. and Create Chapter 185,  
Post Construction Stormwater Management and revising Chapter 184,  
Land Division.**

**WHEREAS,** the Town of Cedarburg publicly noticed and held a public hearing relating to this ordinance, compliant with Wisconsin State Statutes,

**BE IT ORDAINED** by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, that the following portions of Subsection 184-13 E. Stormwater drainage system., of the Town of Cedarburg Code of Ordinances is hereby amended and Chapter 185 POST-CONSTRUCTION STORMWATER MANAGEMENT is created to read as follows:

**(Sections below with a strikethrough are deleted and sections with an underline are added).**

**§ 184-13. Requirements and design standards for public improvements.**

**E. Stormwater drainage system.**

(1) A drainage system shall be designed and constructed in accordance with ~~this section and~~ Chapter 110, Construction Site Erosion Control, and Chapter 185, Post Construction Stormwater Management Plans by the subdivider to provide for the proper drainage of the surface water of the subdivision and the drainage area of which it is a part. All such facilities are to be of adequate size and grade to hydraulically accommodate the one-hundred-year storm. ~~Storm drainage facilities shall be so designed as to present no hazard to life or property, and the size, type and installation of all stormwater drains and sewers proposed to be constructed shall be in accordance with the plans and specifications approved by the Town Administrator. The subdivider shall pay all costs of all storm sewer work, except that the subdivider shall not be required to pay for any storm sewers that are required to bring the storm sewers to the subdivision. A preliminary plat shall not be approved until the subdivider shall submit plans, profiles and specifications, as specified in this section, which have been prepared by a registered professional engineer and approved by the Town Administrator.~~

~~(2) Stormwater management plans.~~

~~(a) The subdivider shall submit to the Town Administrator and Plan Commission a report on the ability of existing watercourse channels, storm sewers, culverts and other improvements pertaining to drainage or flood control within the subdivision to handle the additional runoff which would be generated by the development of the land~~

~~within the subdivision. Additional information shall be submitted to adequately indicate that provision has been made for disposal of surface water without any damage to the developed or undeveloped land downstream or below the proposed subdivision. The report shall also include:~~

~~[1] Estimates of the quantity of stormwater entering the subdivision naturally from areas outside the subdivision.~~

~~[2] Quantities of flow at each inlet or culvert.~~

~~[3] Location, sizes and grades of required culverts, storm drainage sewers and other required appurtenances.~~

~~(b) A grading plan for the streets, blocks and lots shall be submitted by the subdivider for the area within the subdivision.~~

~~(c) The design criteria for storm drainage systems shall be based upon information provided by the Town Administrator.~~

~~(d) Material and construction specifications for all drainage projects (i.e., pipe, culverts, seed, sod, etc.) shall be in compliance with specifications provided by the Town Board or Town Administrator.~~

**(32) Grading.** The subdivider shall grade each subdivision in order to establish street, block and lot grades in proper relation to each other and to topography as follows:

(a) The subdivider shall grade the full width of the right-of-way of all proposed streets in accordance with the approved plans.

(b) Block grading shall be completed by one or more of the following methods:

[1] A ridge may be constructed along the rear lot lines which provides for drainage onto the streets.

[2] Parts of all lots may be graded to provide for drainage to the street or to a ditch along the rear lot line.

[3] Draining across rear or side lot lines may be permitted provided that drainage onto adjoining properties is properly controlled.

**(43) Drainage system requirement.** The subdivider shall install all the storm drainage facilities indicated on the plans required in Subsection E(1) of this section.

(a) **Street drainage.** All streets shall be provided with an adequate storm drainage system. The street storm system shall serve as the primary drainage system and shall be designed to carry street, adjacent land and building stormwater drainage. No stormwater shall be permitted to be run into the sanitary sewer system within the proposed subdivision. The street drainage system shall not be utilized as a conveyance

of stormwater between stormwater ponds.

- (b) Off-street drainage. The design of the off-street drainage system shall include the watershed affecting the subdivision and shall be extended to a watercourse or ditch adequate to receive the storm drainage. When the drainage system is outside of the street right-of-way, the subdivider shall make provisions for dedicating an easement to the Town to provide for the future maintenance of said system. Easements shall be a minimum of 30 feet, but the Town may require larger easements if more area is needed due to topography, size of watercourse, etc.
- (54) Protection of drainage systems. The subdivider shall adequately protect all ditches to the satisfaction of the Town Board and Town Administrator. Ditches and open channels shall be seeded or sodded or utilize an erosion control method appropriate for the grades and soil types. (Generally ditches or channels with grades up to 1% shall be seeded, those with grades up to 4% shall be sodded and those with grades over 4% shall use erosion control methods for heavy flows.) No other plantings or obstructions shall be placed within drainage easements except erosion control devices and ground cover if approved by the Town Director of Public Works or Town Board.

**Chapter 185 shall be created to read as follows:**

**CHAPTER 185  
POST CONSTRUCTION STORMWATER MANAGEMENT**

<b>§ 185-01 Authority</b>	<b>§ 185-08 Storm Water Management</b>
<b>§ 185-02 Findings of Fact</b>	<b>§ 185-09 Maintenance Agreement</b>
<b>§ 185-03 Purpose and Intent</b>	<b>§ 185-10 Financial Guarantee</b>
<b>§ 185-04 Applicability and Jurisdiction</b>	<b>§ 185-11 Fee Schedule</b>
<b>§ 185-05 Technical Standards</b>	<b>§ 185-12 Enforcement</b>
<b>§ 185-06 Performance Standards</b>	<b>§ 185-13 Appeals</b>
<b>§ 185-07 Permitting Requirements, Procedures and Fees</b>	<b>§ 185-14 Severability</b>
	<b>§ 185-15 Definitions</b>
	<b>§ 185-16 Effective Date</b>

### **§ 185-01 AUTHORITY.**

- (1) This chapter is adopted by the Town Board under the authority granted by §60.627 Wis. Stats. This chapter supersedes all provisions of a chapter previously enacted under §.60.62, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in §60.627, Wis. Stats., or §.60.62, Wis. Stats., applies to this chapter and to any amendments to this chapter.
- (2) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Town Board hereby designates the Director of Public Works to administer and enforce the provisions of this chapter.
- (4) The requirements of this chapter 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.

### **§ 185-02 FINDINGS OF FACT.**

The Town Board 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.

### **§ 185-03 PURPOSE AND INTENT.**

- (1) **PURPOSE.** The general purpose of this chapter 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 exceeding 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 Town Board that this chapter regulates post-construction storm water discharges to waters of the State. This chapter may be applied on a site-by-site basis. The Town Board recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this chapter 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 Town Board, it is the intent of this chapter that the approved plan be used to identify post-construction management measures acceptable for the community.

**§ 185-04 APPLICABILITY AND JURISDICTION.**

- (1) **APPLICABILITY.**
- (a) Where not otherwise limited by law, this chapter applies after final stabilization to a site of land disturbing construction activity that results in one or more acres of land disturbing construction activities.
  - (b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this chapter.
    1. A redevelopment post-construction site with no increase in exposed parking lots or roads.
    2. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
    3. Nonpoint discharges from agricultural facilities and practices.
    4. Nonpoint discharges from silviculture activities.
    5. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
    6. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
  - (c) Notwithstanding the applicability requirements in paragraph (a), this chapter applies to post-construction sites of any size that, in the opinion of the Director of Public Works, 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 chapter applies to post construction sites within the boundaries and jurisdiction of the Town of Cedarburg.

(3) EXCLUSIONS.

This chapter 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.

**§ 185-05 TECHNICAL STANDARDS. AND DESIGN METHODS**

DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS. All drainage facilities and practices required to comply with this chapter shall incorporate technical standards and design methods specified in the document Town of Cedarburg Erosion Control and Stormwater Management Requirements, maintained and periodically updated by the Director of Public Works. Where not superseded by stricter requirements in Town of Cedarburg Erosion Control and Stormwater Management Requirements, the following standards are also incorporated for reference:

- (1) Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November 1993 Revision.
- (2) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (3) OTHER STANDARDS. Other technical standards not identified or developed in sub. (1), may be used provided that the methods have been approved by the Director of Public Works

**§ 185-06 PERFORMANCE STANDARDS.**

- (1) RESPONSIBLE PARTY. The entity holding fee title to the property shall be responsible for either developing and implementing a stormwater management plan, or causing such plan to be developed and implemented through contract or other agreement. This plan shall be developed in accordance with § 185.09, which incorporates the requirements of this section.
- (2) PLAN. A written storm water management plan in accordance with § 185.08 shall be developed and implemented for each post-construction site.
- (3) STORMWATER MANAGEMENT PERFORMANCE STANDARDS All drainage facilities and practices required to comply with this chapter shall meet performance standards specified in the document Town of Cedarburg Erosion Control and Stormwater Management Requirements, maintained and periodically updated by the Director of Public Works.
- (4) LOCATION AND REGIONAL TREATMENT OPTION.
  - (a) Stormwater Management Facilities required to meet this chapter may be located on-site or off-site as part of a regional stormwater device, practice or system.

- (b) The Director of Public Works may approve off-site management measures provided that all of the following conditions are met:
    - 1. The Director of Public Works determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the Town of Cedarburg and that contains management requirements consistent with the purpose and intent of this chapter.
    - 2. The off-site facility meets all of the following conditions:
      - a. The facility will be in place before the need for the facility arises as a result of on-site construction activities.
      - b. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this chapter.
      - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
      - d. Where a regional treatment option exists such that the Director of Public Works may exempt the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Director of Public Works. In determining the fee for post-construction runoff, the Director of Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (5) **ALTERNATE REQUIREMENTS.** The Director of Public Works may establish stormwater management requirements more stringent than those set forth in Town of Cedarburg Erosion Control and Stormwater Management Requirements, if the Director of Public Works determines that an added level of protection is needed for to address downstream stormwater management issues.

**§ 185-07 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 Director of Public Works prior to commencing the proposed activity.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this chapter, any responsible party desiring a permit shall submit to the Director of Public Works a permit application made on a form provided by the Director of Public Works for that purpose.
  - (a) Unless otherwise excepted by this chapter, a permit application must be accompanied by a storm water management plan, a maintenance agreement (where required) and, where not otherwise covered by a developer's agreement, a non-refundable permit administration fee. The permit administration fee, where applicable, shall be consistent with a fee schedule maintained by the Town of Cedarburg and available at Town Hall.

(b) The storm water management plan shall be prepared to meet the requirements of §§185.06 and 185.08, the maintenance agreement shall be prepared to meet the requirements of §185.09, the financial guarantee shall meet the requirements of §185.10, and fees shall be those established by the Town Board as set forth in § 185.11.

(3) REVIEW AND APPROVAL OF PERMIT APPLICATION.

The Director of Public Works 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) The Director of Public Works may request additional information if required for a complete application within 15 business days of receipt of any permit application. Within 30 business days of the receipt of a complete permit application, including all items as required by sub. (2), the Director of Public Works shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this chapter.

(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 Director of Public Works shall issue the permit.

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

(d) The Director of Public Works may request additional information from the applicant. If additional information is submitted, the Director of Public Works shall have 30 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(e) Prior to commencing the land development activity, the project may be subject to additional approvals as required by the Town's municipal code.

(4) PERMIT REQUIREMENTS.

All permits issued under this chapter shall be subject to the following conditions, and holders of permits issued under this chapter shall be deemed to have accepted these conditions. The Director of Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Director of Public Works to suspend or revoke this permit may be appealed in accordance with § 185.13.

(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 Director of Public Works at least 2 business days before commencing any work in conjunction with the storm water management plan, and within 3 business days 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 Director of Public Works so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this chapter shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the Director of Public Works or its designee to determine if they are in accordance with the approved storm water management plan and chapter. The Director of Public Works 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 Director of Public Works of any significant modifications it intends to make to an approved storm water management plan. The Director of Public Works 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 Town Board, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the Director of Public Works 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 § 185.10.
- (h) If so directed by the Director of Public Works, 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 Director of Public Works 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 Director of Public Works 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 § 185.12, if the responsible party fails to comply with the terms of this permit.

(5) PERMIT CONDITIONS.

Permits issued under this subsection may include conditions established by Director of Public Works in addition to the requirements needed to meet the performance standards in §185.06 or a financial guarantee as provided for in § 185.10.

(6) PERMIT DURATION.

Permits issued under this section shall be valid from the date of issuance through the date the Director of Public Works notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d). The permit shall be invalid if work is not commenced within 1 year of permit issuance.

**§ 185-08 STORM WATER MANAGEMENT PLAN.**

(1) PLAN REQUIREMENTS.

A Stormwater Management Plan shall be prepared and submitted to the Director of Public Works. The Stormwater Management Plan shall include, at a minimum, information required in the Town of Cedarburg Erosion Control and Stormwater Management Requirements, maintained and periodically updated by the Director of Public Works. The Director of Public Works may waive certain submittal requirements if determined by the Director of Public Works to be unnecessary to demonstrate compliance with chapter standards.

(2) ALTERNATE REQUIREMENTS.

The Director of Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under § 185.06 (5).

**§ 185-09 MAINTENANCE AGREEMENT.**

(1) MAINTENANCE AGREEMENT REQUIRED.

The maintenance agreement required under § 185.07(2) for storm water management practices shall be an agreement between the Director of Public Works 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 § 185.07(2).

(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 §185.06(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 § 185.06(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 Director of Public Works, his agent ,or assignee, 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 Director of Public Works 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 Director of Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Director of Public Works.
- (h) Authorization of the Director of Public Works 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 Director of Public Works 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.

**§ 185-10 FINANCIAL GUARANTEE.**

(1) ESTABLISHMENT OF THE GUARANTEE.

The Director of Public Works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Director of Public Works. The financial guarantee shall be in an amount determined by the Director of Public Works 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 Director of Public Works 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 Director of Public Works that the requirements of this chapter have not been met.

(2) **CONDITIONS FOR RELEASE.**

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

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

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

**§ 185-11 FEE SCHEDULE.**

The fees referred to in other sections of this chapter shall be established by the Town Board and may from time to time be modified by resolution. A schedule of the fees established by the Director of Public Works shall be available for review in the Town Hall.

**§ 185-12 ENFORCEMENT.**

- (1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this chapter by any person, firm, association, or corporation subject to the chapter provisions shall be deemed a violation unless conducted in accordance with the requirements of this chapter.
- (2) The Director of Public Works 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 Director of Public Works 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 Director of Public Works in the notice.
- (4) If the violations to a permit issued pursuant to this chapter are likely to result in damage to properties, public facilities, or waters of the state, the Director of Public Works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Director of Public Works plus interest and legal costs shall be billed to the responsible party.
- (5) The Director of Public Works is authorized to post a stop work order on all land disturbing construction activity that is in violation of this chapter, or to request the Town Attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The Director of Public Works may revoke a permit issued under this chapter for non-compliance with chapter provisions.

- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Director of Public Works or by a court with jurisdiction.
- (8) The Director of Public Works is authorized to refer any violation of this chapter, or of a stop work order or cease and desist order issued pursuant to this chapter, to the Town 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 chapter shall be subject to forfeiture per the Town Schedule of Deposits. Each day that the violation exists shall constitute a separate offense.
- (10) Compliance with the provisions of this chapter 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 injunction proceedings.
- (11) When the Director of Public Works determines that the holder of a permit issued pursuant to this chapter 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 Director of Public Works or a party designated by the Director of Public Works 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 Director of Public Works 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 § 185.10 . Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

#### **§ 185-13 APPEALS.**

(1) BOARD OF ZONING APPEALS.

The Board of Zoning Appeals, created pursuant to section 16.2 of the Town of Cedarburg chapters pursuant to § 60.65 Wis. Stats, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director of Public Works in administering this chapter. 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 chapter that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the chapter will result in unnecessary hardship.

(2) WHO MAY APPEAL

Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Town of Cedarburg affected by any decision of the Director of Public Works.

## **§ 185-14 SEVERABILITY.**

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

## **§ 185-15 DEFINITIONS.**

- (1) "Administering authority" means a governmental employee, or a regional planning commission empowered under s. 60.627 Wis. Stats., that is designated by the Town Board to administer this chapter.
- (2) "Agricultural facilities and practices" has the meaning given in s. 281.16, Wis. Stats.
- (3) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical.
- (4) "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.
- (5) "Business day" means a day the office of the Director of Public Works is routinely and customarily open for business.
- (6) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
- (7) "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
- (8) "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.
- (9) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (10) "Development" means residential, commercial, industrial or institutional land uses and associated roads.
- (11) "Division of land" means the creation from one parcel of 2 or more parcels or building sites of 5 or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5 year period.
- (12) "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.
- (13) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (14) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
- (15) "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.

- (16) "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.
- (17) "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Director of Public Works by the responsible party to assure that requirements of the chapter are carried out in compliance with the storm water management plan.
- (18) "Governing body" means town board of supervisors, county board of supervisors, city council, Town Board of trustees or village council.
- (19) "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.
- (20) "In-fill area" means an undeveloped area of land located within existing development.
- (21) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (22) "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.
- (23) "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.
- (24) "Land Development Activity" means any construction related activity that results in the addition or replacement of impervious surfaces such as rooftops, roads, parking lots, and other structures. Measurement of areas impacted by land development activity includes areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.
- (25) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (26) "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management practices.
- (26) "MEP" or "maximum extent practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

- (27) "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (28) "Off-site" means located outside the property boundary described in the permit application.
- (29) "On-site" means located within the property boundary described in the permit application.
- (30) "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.
- (31) "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.
- (32) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.
- (33) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (34) "Permit" means a written authorization made by the Director of Public Works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (35) "Permit administration fee" means a sum of money paid to the Director of Public Works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (36) "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.
- (37) "Pollutant" has the meaning given in §. 283.01(13), Wis. Stats.
- (38) "Pollution" has the meaning given in §. 281.01(10), Wis. Stats.
- (39) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (40) "Pre-development condition" means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (41) "Preventive action limit" has the meaning given in s. NR 140.05(17), Wis. Adm. Code.
- (42) "Redevelopment " means areas where development is replacing older development.



- (43) "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 BMP's.
- (44) "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.
- (44) "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.
- (46) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
- (47) "Stop work order" means an order issued by the Director of Public Works which requires that all construction activity on the site be stopped.
- (48) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has under gone final stabilization following completion of the construction activity.
- (49) "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.
- (50) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (51) "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.
- (52) "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.
- (53) "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.
- (54) "Waters of the state" has the meaning given in §. 281.01 (18), Wis. Stats.

**§ 185-16 EFFECTIVE DATE.**


The above and foregoing ordinance was duly adopted by the Town Board of Town of Cedarburg on the 1st day of October, 2008.

This ordinance shall be in full force and effect upon its passage and posting as provided by law.

**PASSED AND ADOPTED** by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 1<sup>st</sup> day of October, 2008.



Dawn Priddy  
Town Clerk



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David M. Valentine  
Town Chairman