

**TOWN OF CEDARBURG  
ORDINANCE NO. 2008-17**

**AN ORDINANCE REPEALING CHAPTER 123, CONSTRUCTION SITE EROSION CONTROL  
AND CREATING CHAPTER 110 CONSTRUCTION SITE EROSION CONTROL**

**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Wisconsin, that **Chapter 123 CONSTRUCTION SITE EROSION CONTROL of the Town of Cedarburg Code of Ordinances is hereby repealed** and Chapter 110 CONSTRUCTION SITE EROSION CONTROL is created to read as follows:

**Chapter 110  
CONSTRUCTION SITE EROSION CONTROL**

**GENERAL REFERENCES**

Building construction — See Ch. 108.

Land division — See Ch. 184

<b>§ 110-01 Authority</b>	<b>§ 110-08 Erosion and Sediment Control</b>
<b>§ 110-02 Findings of Fact</b>	<b>Plan, Statement and</b>
<b>§ 110-03 Purpose</b>	<b>Amendments</b>
<b>§ 110-04 Applicability and</b>	<b>§ 110-09 Fee Schedule</b>
<b>Jurisdiction</b>	<b>§ 110-10 Inspection</b>
<b>§ 110-05 Technical Standards</b>	<b>§ 110-11 Enforcement</b>
<b>§ 110-06 Performance Standards</b>	<b>§ 110-12 Appeals</b>
<b>§ 110-07 Permitting Requirements,</b>	<b>§ 110-13 Severability</b>
<b>Procedures and Fees</b>	<b>§ 110-14 Definitions</b>
	<b>§ 110-15 Effective Date</b>

**§ 110-01 AUTHORITY.**

- A. This chapter is adopted 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 construction site erosion control. Except as otherwise specified in § 60.627, Wis. Stats. § 60.62, Wis. Stats., applies to this chapter and to any amendments to this chapter.

- B. The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- C. The Town Board hereby designates the Director of Public Works to administer and enforce the provisions of this chapter.
- D. The requirements of this chapter do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
  - (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under §§ 281.16 and 283.33, Wis. Stats.
  - (2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.

#### **§ 110-02 FINDINGS OF FACT.**

The finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the Town of Cedarburg.

#### **§ 110-03 PURPOSE.**

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

#### **§ 110-04 APPLICABILITY AND JURISDICTION.**

##### **A. APPLICABILITY.**

- (1) This chapter applies to construction sites that have one or more acres of land disturbing construction activity except as provided under sub. (2)
- (2) This chapter does not apply to the following:
  - (a) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.

- (b) Nonpoint discharges from agricultural facilities and practices.
  - (c) Nonpoint discharges from silviculture activities.
  - (d) 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.
- (3) Notwithstanding the applicability requirements in paragraph (1), this section applies to the following sites of land development or land disturbing activities:
- (a) Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved certified surveys.
  - (b) Those requiring a certified survey approval or the construction of houses of commercial, industrial or institutional buildings on lots of approved certified surveys.
  - (c) Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affecting a surface area of 4,000 square feet or more.
  - (d) Those involving excavation or filling or a combination of excavation and filling affecting 400 cubic yards or more of dirt, sand or other excavation or fill material.
  - (e) Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.
  - (f) Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more. [Note: The above applicability criteria are specifically stated in 1983 Wisconsin Act 416 for inclusion in this chapter. Utility companies responsible for energy repair work should enter into a memorandum of agreement with the Town Director of Public Works clearly stating their responsibilities if their activities may be included under any of the above applicability criteria.]

**B. JURISDICTION.**

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

**C. EXCLUSIONS.**

This chapter is not applicable to activities conducted by a state agency, as defined under § 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 § 281.33 (2), Wis. Stats.

**§ 110-05 TECHNICAL STANDARDS.**

- A. 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 by reference:

(1) 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.

B. OTHER STANDARDS. Other technical standards not identified or developed in sub. A may be used provided that the methods have been approved by the Director of Public Works.

**§ 110-06 PERFORMANCE STANDARDS.**

A. RESPONSIBLE PARTY. The responsible party shall implement an erosion and sediment control plan, developed in accordance with § 123.08, that incorporates the requirements of this section.

B. PLAN. A written plan shall be developed in accordance with § 123.08 and implemented for each construction site.

C. EROSION AND SEDIMENT CONTROL 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.

D. ALTERNATE REQUIREMENTS. The Director of Public Works may establish erosion and sediment control 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 to address downstream stormwater management issues.

**§ 110-07 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.**

A. PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Director of Public Works.

B. PERMIT APPLICATION AND FEES. At least one responsible party desiring to undertake a land disturbing construction activity subject to this chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of § 123.09 and shall pay an application fee consistent with the fee schedule maintained by the Town of Cedarburg. By submitting an application, the applicant is authorizing the Director of Public Works to enter the site to obtain

information required for the review of the erosion and sediment control plan and conformance to the associated permit.

- C. REVIEW AND APPROVAL OF PERMIT APPLICATION. The Director of Public Works shall review any permit application that is submitted with the erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
- (1) 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, as required by sub. B, the Director of Public Works shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this chapter.
  - (2) If the permit application and plan are approved, the Director of Public Works shall issue the permit.
  - (3) If the permit application or plan is denied, the Director of Public Works shall state in writing the reasons for denial.
  - (4) The Director of Public Works may request additional information from the applicant. If additional information is submitted, the Director of Public Works shall have 10 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
- D. FINANCIAL GUARANTEE. As a condition of approval and issuance of the permit, the Director of Public Works may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- E. PERMIT REQUIREMENTS. All permits shall require the responsible party to:
- (1) Notify the Director of Public Works 2 full business days prior to commencing any land disturbing construction activity.
  - (2) Notify the Director of Public Works of completion of any best management practices (BMP's) within 3 full business days after their installation.
  - (3) Obtain permission in writing from the Director of Public Works prior to any modification pursuant to § 123.08C of the erosion and sediment control plan.
  - (4) Install all BMP's as identified in the approved erosion and sediment control plan.
  - (5) Maintain all road drainage systems, stormwater drainage systems, BMP's and other facilities identified in the erosion and sediment control plan.
  - (6) Provide the Director of Public Works with a 24-hour contact name and telephone number.

- (7) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log. Remove accumulated sediment from downstream culverts, storm sewers, and other drainage facilities.
- (8) Inspect the BMP's within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
- (9) Allow the Director of Public Works, his agent, or assignee to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.

F. PERMIT CONDITIONS. Permits issued under this section may include conditions established by Director of Public Works in addition to the requirements set forth in sub. E, where needed to assure compliance with the performance standards in § 123.06.

G. PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Director of Public Works may extend the period one or more times for up to an additional 180 days. The Director of Public Works may require additional BMP's as a condition of the extension if they are necessary to meet the requirements of this chapter.

H. MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMP's necessary to meet the requirements of this chapter until the site has undergone final stabilization.

**§ 110-08 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS.**

A. PLAN REQUIREMENTS. An Erosion and Sediment Control Plan shall be prepared and submitted to the Director of Public Works. The Erosion and Sediment Control 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.

B. AMENDMENTS The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.

- (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (3) The Director of Public Works notifies the applicant of changes needed in the plan.

#### **§ 110-09 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 Town Board shall be available for review at the Town Hall.

#### **§ 110-10 INSPECTION.**

If land disturbing construction activities are being carried out without a permit required by this chapter, the Director of Public Works, his agent, or assignee, may enter the land pursuant to the provisions of §§66.0119(1), (2), and (3), Wis. Stats.

#### **§ 110-11 ENFORCEMENT.**

- A. The Director of Public Works may post a stop-work order if any of the following occurs:
  - (1) Any land disturbing construction activity regulated under this chapter is being undertaken without a permit.
  - (2) The erosion and sediment control plan is not being implemented in a good faith manner.
  - (3) The conditions of the permit are not being met.
- B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Director of Public Works may revoke the permit.
- C. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Director of Public Works, or if a responsible party violates a stop-work order posted under sub. A, the Director of Public Works may request the Town Attorney to obtain a cease and desist order in any court with jurisdiction.
- D. The Director of Public Works may retract the stop-work order issued under sub. A or the permit revocation under sub. B.
- E. After posting a stop-work order under sub. A, the Director of Public Works may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this chapter. The

Director of Public Works may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the Director of Public Works, plus interest at the rate authorized by Director of Public Works shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subchapter. VII of chapter 66, Wis. Stats.

- F. Any person violating any of the provisions of this chapter shall be subject to forfeiture per Town Schedule of Deposits. Each day a violation exists shall constitute a separate offense.
- G. 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.

#### **§ 110-12 APPEALS.**

- A. **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.:
  - (1) 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 except for cease and desist orders obtained under § 110.11 C.
  - (2) Upon appeal, may authorize variances from the provisions of this chapter which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
  - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- B. **WHO MAY APPEAL** Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the Town of Cedarburg affected by any decision of the Director of Public Works.

#### **§ 110-13 SEVERABILITY.**

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



## **§ 110-14 DEFINITIONS.**

**ADMINISTERING AUTHORITY** means a governmental employee, or a regional planning commission empowered under § 60.627 Wis. Stats., that is designated by the Town Board to administer this chapter.

**AGRICULTURAL FACILITIES AND PRACTICES** has the meaning in § 281.16(1), Wis. Stats.

**AVERAGE ANNUAL RAINFALL** means a calendar year of precipitation, excluding snow, which is considered typical.

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

**BUSINESS DAY** means a day the office of the Director of Public Works is routinely and customarily open for business.

**CEASE AND DESIST ORDER** means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

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

**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.

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

**EROSION AND SEDIMENT CONTROL PLAN** means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

**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.

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

**GOVERNING BODY** means town board of supervisors, county board of supervisors, city council, village board of trustees, or village council.

**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.

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.

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

PERMIT means a written authorization made by the Director of Public Works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

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

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

RESPONSIBLE PARTY means any entity holding fee title to the property or performing services to meet the performance standards of this chapter through a contract or other agreement.

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.

SEDIMENT means settle able solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

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.

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

STOP WORK ORDER means an order issued by the Director of Public Works which requires that all construction activity on the site be stopped.

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

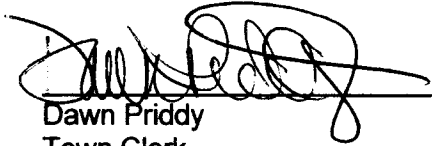
WATERS OF THE STATE has the meaning given in § 281.01 (18), Wis. Stats.

#### **§ 110-15 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