CHAPTER 17

CONSTRUCTION AND POST-CONSTRUCTION EROSION CONTROL

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SUBCHAPTER I
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17.01 CONSTRUCTION SITE MAINTENANCE AND EROSION CONTROL.

The intent of these sections is to require erosion control practices that will reduce the amount of sediment and other pollutants leaving construction sites during land development or land disturbance activities.

17.02 AUTHORITY.

This Code is adopted under the authority of a Town exercising village powers pursuant to §60.10(2)(c) and §60.22(3), Wis. Stats. and §281.33, Wis. Stats.

17.03 FINDINGS AND PURPOSE.

(A) **Findings**. The Town Board of the Town of Somers finds run-off from construction sites carries a significant amount of sediment and other pollutants to the waters of the State and this Town.

(B) **Purpose**. It is the purpose of this Code to preserve the natural resources, to protect the quality of the waters of the state and the Town and to protect and promote the health, safety and welfare of the people, to the extent practicable, by minimizing the amount of sediment and other pollutants carried by run-off or discharged from construction sites to ditches, swales, lake streams and wetlands.

17.04 APPLICABILITY OF CODE.

This Code applies to all land disturbing and land developing activities on lands within the boundaries and jurisdiction of the Town, except State funded or conducted construction, including all activities regulated by Chapter 18 of this Code, PLATTING AND SUBDIVISION.

17.05 DEFINITIONS.

(A) **Agricultural Land Use**. Shall mean use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.

(B) **Commercial Land Use**. Shall mean use of land for the retail or wholesale sale of goods or services.

(C) **Construction Site Control Measure**. Shall mean a control measure used to meet the requirements of §17.06.

(D) **Control Measure**. Shall mean a practice or combination of practices to control

erosion and attendant pollution.

(E) **Control Plan**. Shall mean a written description of the number, location, sizes, and other pertinent information of control measures designed to meet the requirements of this Code, submitted by the applicant for review and approval by the Inspector.

(F) **Erosion**. Shall mean the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

(G) **Land Developing Activity**. Shall mean the construction of buildings, roads, parking lots, paved storage areas and similar facilities.

(H) **Land Disturbing Construction Activity**. Shall mean any man-made change of the land surface, including removing vegetative cover, excavating, filling and grading, but not including agricultural land uses, such as planting, growing, cultivating and harvesting of crops; growing and tending of gardens: harvesting of trees; and landscaping modifications.

(I) **Landowner**. Shall mean any person holding title to or having an interest in land.

(J) **Land User**. Shall mean any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.

(K) **Run-Off**. Shall mean the rainfall, snowmelt, or irrigation water flowing over the ground surface.

(L) **Set of 1 Year Design Storms**. Shall mean the following rain intensities and rain volumes or corresponding values specific to the community for the storm durations of 0.5, 1, 2, 3, 6, 12 and 24 hours, that occur approximately once per year. (Note: The following are typical characteristics of these one year storms for most of Wisconsin:)

Storm Rain (hours)	Average Rain Intensity (inches/hour)	Total Rain (inches)
0.5	1.8	0.9
1	1.1	1.1
2	0.7	1.3
3	0.5	1.5
6	0.3	1.7
12	0.2	2.0
24	0.1	2.31

(M) **Site**. Shall mean the entire area included in the legal description of the land on which the land disturbing or land development activity is proposed in the permit application.

(N) **Town**. Shall mean the Town of Somers.

17.06 DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS FOR CONTROL MEASURES.

(A) **Technical Standards**. All control measures required to comply with this Code shall meet the design criteria, standards and specifications for the control measures based on accepted design criteria, standards and specifications identified by the Erosion and Sediment Control Technical Standards by the Wisconsin Department of Natural Resources, as may be amended from time to time.

(B) **Performance Standards**.

(1) **Responsible Party**. The responsible party shall implement an erosion and sediment control plan that incorporates the requirements of this section.

(2) **Plan**. A written plan shall be developed and implemented for each construction site.

Note to Users: The written plan may be that specified within Section NR 216.46, the erosion control portion of a construction plan or other plan.

(3) **Erosion and Other Pollutant Control Requirements**. The plan required under subparagraph (2) shall include the following:

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

Note to Users: Soil loss prediction tools that estimate the sediment load leaving the construction site under varying land and management conditions, or methodology identified in Subchapter V. of Chapter NR 151, Wis. Adm. Code, may be used to calculate sediment reduction.

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

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

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

(ii) Prevent the discharge of sediment as part of site de–watering.

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

(d) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

(4) **Location**. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

Note to Users: While regional treatment facilities are appropriate for control of post–construction pollutants, they should not be used for construction site sediment removal.

(5) **Alternate Requirements**. The Town of Somers may establish storm water management requirements more stringent than those set forth in this section if the Town of Somers determines that an added level of protection is needed for sensitive resources.

17.07 MAINTENANCE OF CONTROL MEASURES.

All sedimentation basins and other control measures necessary to meet the requirements of this Code shall be maintained by the applicant or subsequent landowner during the period of land disturbance and land development of the site in a satisfactory manner to ensure adequate performance and to prevent nuisance conditions.

17.08 CONTROL OF EROSION AND POLLUTANTS DURING LAND DISTURBANCE AND DEVELOPMENT.

(A) **Applicability**. This section applies to the following sites of land development or land disturbing activities:

(1) Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved subdivision plats.

(2) Those requiring a certified survey approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved certified surveys.

(3) Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affecting a surface area of four thousand (4,000) square feet or more.

(4) Those involving excavation or filling or a combination of excavation and filling, affecting four hundred (400) cubic yards or more of dirt, sand or other excavation or fill material.

(5) Those involving street, highway, road, or bridge construction, enlargement, relocation or reconstruction.

(6) Those involving the laying, repairing, replacing or enlarging of an underpipe or facility for a distance of three hundred (300) feet or more.

(B) **Erosion and Other Pollutant Control Requirements**. The following requirements shall be met on all sites described in subparagraph (1) above.

(1) **Site dewatering**. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators, or other appropriate controls designed and used to remove particles of one hundred (100) microns or greater from the highest dewatering pumping rate. If the water is demonstrated to have no particles greater than one hundred (100) microns during dewatering operations, then no control is needed before discharge, except as determined by the Inspector. Water may not be discharged in a manner that causes erosion of the site or receiving channels.

(2) **Waste and material disposal**. All waste and unused building material, (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed and not allowed to be carried by run-off, wind or weather related conditions, into a receiving channel or storm sewer system.

(3) **Tracking**. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday.

(4) **Drain inlet protection**. All storm drain inlets shall be protected with a straw bale, filter fabric, or equivalent barrier, meeting accepted design criteria, standards and specifications.

(5) **Site erosion control**. The following criteria (1) through (4) apply only to land development or land disturbing activities that result in run-off leaving the site.

(a) Channelized run-off from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described. Sheetflow run-off from adjacent

areas greater than ten thousand (10,000) square feet in area shall also be diverted around disturbed areas, unless shown to have resultant run-off velocities of less than one-half (0.5) ft/sec across the disturbed area for the set of one (1) year design storms. Diverted run-off shall be conveyed in a manner that will not erode the conveyance and receiving channels.

(b) All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.

(c) Run-off from the entire disturbed area on the site shall be controlled by meeting either subparagraph (a) and (b), or (a) and (c).

(i) All disturbed ground left inactive for seven (7) days shall be stabilized by seeding or sodding (only available prior to September 15) or by mulching or covering, or other equivalent control measure.

(ii) For sites with more than ten (10) acres disturbed at one time, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least one (1%) percent of the area draining to the basin and at least three (3) feet of depth, and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three (3) feet. The basin shall be designed to trap sediment greater than fifteen (15) microns in size, based on the set of one (1) year design storms, having durations from one-half (0.5) to twenty-four (24) hours. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.

(iii) For sites with less than ten (10) acres disturbed at one time, filter fences, straw bales or equivalent control measures shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated run-off passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.

(d) Any soil or dirt storage piles containing more than ten (10) cubic yards of material shall not be located with a downslope drainage length of less than twenty-five (25) feet to a roadway or drainage channel. If remaining for more than seven (7) days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than seven (7) days shall be controlled by placing straw bales or filter fence barriers around the pile. In-street utility repair or construction soil or dirt storage piles located closer than twenty-five (25) feet of a roadway or drainage channel must be covered with tarps or suitable alternative control, if exposed for more than seven

(7) days, and the stormdrain inlets must be protected with straw bale or other appropriate filtering barriers.

17.09 PERMIT APPLICATION, CONTROL PLAN AND PERMIT ISSUANCE.

(A) **Permit Required Before Construction**. No landowner or land user may commence a land disturbance or land development activity subject to this Code without receiving prior approval of a control plan for the site and a permit from the Inspector. At least one (1) landowner or land user controlling or using the site and desiring to undertake a land disturbing or land developing activity subject to this Code shall submit an application for a permit and a control plan, and pay an application fee to the Inspector. By submitting an application, the applicant is authorizing the Inspector to enter the site to obtain information required for the review of the control plan.

(B) **Content Of The Control Plan For Land Disturbing Activities Covering More Than One Acre**.

(1) **Existing site map**. A map of existing site conditions on a scale of at least one (1) inch equals one hundred (100) feet, showing the site and immediately adjacent areas:

(a) Site boundaries and adjacent lands which accurately identify site location.

(b) Lakes, streams, wetlands, channels, ditches and other water courses on and immediately adjacent to the site.

(c) One hundred (100) year floodplains, flood fringes and floodways.

(d) Location of the predominant soil types.

(e) Vegetative cover.

(f) Location and dimensions of stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site.

(g) Locations and dimensions of utilities, structures, roads, highways and paving.

(h) Site topography at a contour interval not to exceed five (5) feet.

(C) **Plan Of Final Site Conditions**. A plan of final site conditions on the same scale as the existing site map showing the site changes.

(D) **Site Construction Plan**. A site construction plan including:

(1) Locations and dimensions of all proposed land disturbing activities.

(2) Locations and dimensions of all temporary soil or dirt stockpiles.

(3) Locations and dimensions of all construction site management control measures necessary to meet the requirements of this Code.

(4) Schedule of anticipated starting and completion date of each land disturbing or land developing activity, including the installation of construction site control measures needed to meet the requirements of this Code.

(5) Provisions for maintenance of the construction site control measures during construction.

17.10 CONTENT OF CONTROL PLAN STATEMENT FOR LAND DISTURBING ACTIVITIES COVERING LESS THAN ONE ACRE.

An erosion control plan statement (with simple map) shall be submitted to briefly describe the site and erosion controls (including the site development schedule) that will be used to meet the requirements of the Code.

17.11 REVIEW OF CONTROL PLAN.

Within ten (10) working days of receipt of the application, control plan (or control plan statement) and fee, the Inspector shall review the application and control plan to determine if the requirements of this Code are met. The Inspector may request comments from other departments or agencies. If the requirements of this Code are met, the Inspector shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the Inspector shall inform the applicant in writing and may either require needed information or disapprove the plan. Within ten (10) working days of receipt of needed information, the Inspector shall again determine if the plan meets the requirements of this Code. If the plan is disapproved, the Inspector shall inform the applicant in writing of the reasons for the disapproval.

17.12 PERMITS.

(A) **Duration**. Permits shall be valid for a period of one hundred eighty (180) days, or the length of the building permit or other construction authorizations, whichever is longer, calculated from the date of issuance. The Inspector may extend the period one (1)or more times for up to an additional one hundred eighty (180) days. The Inspector may require additional control measures, if they are necessary, as a condition of the extension.

(B) **Surety Bond**. As a condition of approval and issuance of the permit, the Inspector may require the applicant to deposit a surety bond or irrevocable Letter of Credit to guarantee a good faith execution of the approved control plan and any permit conditions.

(C) **Permit Conditions**. All permits shall require the permittee to:

(1) Notify the Inspector in person by telephone or by written or electronic communication confirmed by Inspector at least forty-eight (48) hours prior to commencing any land disturbing activity.

(2) Notify the Inspector of completion of any control measures within fourteen (14) days after their installation.

(3) Obtain permission in writing from the Inspector prior to modifying the control plan.

(4) Install all control measures as identified in the approved control plan.

(5) Maintain all road drainage systems, storm-water drainage systems, control measures and other facilities identified in the control plan.

(6) Repair any siltation or erosion damage to adjoining surfaces and drainageways resulting from land developing or disturbing activities.

(7) Inspect the construction control measures during the construction period after each rain of one-half (0.5) inch or more and at least once each week to insure continued conformity to standards.

(8) Allow the Inspector to enter the site for the purpose of inspecting compliance with the control plan or for ordering any work necessary to bring the site into compliance with the control plan.

(9) Keep a copy of the control plan on the site.

17.13 INSPECTION.

(A) The Inspector shall inspect construction sites at least once a month during the period starting March 1 and ending October 31, and at least twice during the period starting November 1 and ending February 28, to ensure compliance with the control plan.

(B) If land disturbing or land development activities are being carried out without a permit, the Inspector shall enter the land pursuant to the provisions of §66.0119(1) and (2) and §66.0119(3), Wis. Stats.

17.14 ENFORCEMENT.

(A) The Inspector may post a stop-work order if:

(1) Any land disturbing or land developing activity regulated under this Code is being undertaken without a permit.

(2) The control plan is not being implemented in a good faith manner, or

(3) The conditions of the permit are not being met.

(B) If the permittee does not cease the activity or comply with the control plan or permit conditions within seventy-two (72) hours, the Inspector may revoke the permit.

(C) If the landowner or land user, where no permit has been issued, does not cease the activity within seventy-two (72) hours, the Inspector may request the Town Attorney to obtain a cease and desist order.

(D) The Inspector may, seventy-two (72) hours after posting a stop-work order, issue a notice of intent to the permittee, landowner or land user of the Inspector's intent to order work necessary to comply with this Code. The Inspector may go on the land and commence the work after ten (10) calendar days from issuing the notice of intent. The work may be done by Town employees or by public contract. The costs of the work performed by the Town, plus interest at the rate authorized by the Town Board, shall be billed to the permittee or the landowner. In the event a permittee or landowner 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 §66.0627, Wis. Stats.

17.15 APPEALS.

(A) Any applicant, permittee, landowner, or land user may appeal any order, decision or determination made by the Inspector in administering this Code. Appeal provisions of §14.22 shall apply, except that the Board may, for good cause, authorize variances from the provisions of this Code which are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the Code will result in unnecessary hardship.

17.16 INSPECTION FEES.

Permit and inspection fees for this chapter are as set forth in §14.24.

17.17 SEVERABILITY.

If any section, clause or any part of this Code, including those matters adopted from the Wisconsin Administrative Code, or any other state law, rules or regulations, shall be judged unconstitutional, or invalid by any court of law, the remaining provision of this Code shall remain in full force and effect.

17.18 PENALTIES.

(A) Any person, either as owner, agent, occupant, contractor or employee, who shall be convicted of violating this Code, or of any permit issued hereunder, shall upon conviction, forfeit not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars for the first violation, and not less than Two Hundred ($200.00) Dollars nor more than Five Hundred ($500.00) Dollars for the

second violation under the same permit, together with the costs of prosecution.

(B) Each day of continued violation shall be a separate and specific violation of this Chapter.

(C) In default of any judgment rendered herein, the defendant may be confined in the County Jail of Kenosha County for a period of not less than ten (10) days nor more than thirty (30) days for each violation.

(D) Bond - Citations issued for any violation of this Code shall carry a bond of One Hundred Fifty ($150.00) Dollars, plus court costs, penalty and assessment fees.

SUBCHAPTER II
POST-CONSTRUCTION STORM WATER MANAGEMENT.

17.19 POST-CONSTRUCTION STORM WATER MANAGEMENT.

(A) **Authority**.

(1) This ordinance is adopted by the Town of Somers under the authority granted by §61.354, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under §60.62 and 61.35, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in § 60.627 and 61.354, Wis. Stats., §60.62 and 61.35, Wis. Stats., apply 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 Town of Somers hereby designates the Town Administrator or his designee 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 §281.16 and §283.33, Wis. Stats.

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

(B) **Findings of Fact**. The Town of Somers Board of Supervisors 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.

(C) **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/or 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 Town of Somers Board of Supervisors that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Town of Somers

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

(D) **Applicability and Jurisdiction**.

(1) **Applicability**.

(a) Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this paragraph, unless the site is otherwise exempt under subsection (D)(1)(b) below.

(i) A post construction site that had 5 or more acres of land disturbing construction activity.

(ii) A post-development construction site that had one or more acres of land disturbing construction activity after March 10, 2003.

Note to Users: The 5- and 1-acre land disturbance thresholds are consistent with state and federal laws regarding applicability of construction site erosion control permits.

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

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

(ii) 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.

(iii) Nonpoint discharges from agricultural facilities and practices.

(iv) Nonpoint discharges from silviculture activities.

(v) 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.

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

(c) Notwithstanding the applicability requirements in section (D)(1)(a) above, this ordinance applies to post-construction sites of any size that, in the opinion of the Town Administrator, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) **Jurisdiction**. This ordinance applies to post construction sites within the boundaries and jurisdiction of the Town of Somers.

Note to Users: These options differ in the amount of land area covered by this ordinance and may have ramifications for enforcement authority. For counties, the first option will be the only option since counties do not have extraterritorial authority. Under §59.693(10), Wis. Stats., if a county storm water management ordinance exists at the time of annexation, then the municipal ordinance must be at least as restrictive as the county ordinance.

(3) **Exclusions**. This ordinance 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.

Note to Users: The Wisconsin Department of Transportation (WisDOT) has entered into a memorandum of understanding with the Wisconsin Department of Natural Resources that satisfies §281.33(2), Wis. Stats., such that activities directed and supervised by WisDOT are exempt from this model ordinance.

(E) **Definitions**.

(1) "Administering authority" means a governmental employee, or a regional planning commission empowered under §60.627 and 61.354, Wis. Stats., that is designated by the Town of Somers Board of Supervisors to administer this ordinance.

(2) "Agricultural facilities and practices" has the meaning given in §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 Town of Somers 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 to four (4) or more parcels or building sites of five (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 Section 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 Town Administrator by the responsible party to assure that requirements of the ordinance 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, village 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 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.

(25) "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 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.

(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 Section NR 115.03(6), Wis. Adm. Code.

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

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

Note to Users: Percent fines can be determined using the "American Society for Testing and Materials", volume 04.02, "Test Method C117-95 Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Material Aggregates by Washing". Copies can be obtained by contacting the American society for testing and materials, 100 Barr Harbor Drive, Conshohocken, PA 19428-2959, or phone 610-832-9585, or on line at: "http://www.astm.org/".

(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 Town Administrator or Building Inspector 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 Town 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 Section 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 BMPs.

(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.

(45) “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 Town Administrator 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 highwater 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 highwater 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.

(F) **Technical Standards**. The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of storm water practices needed to meet the 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) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Town.

(3) In this ordinance, the following year(s) and location(s) have been selected as average annual rainfall(s): Page 12 of 32 Milwaukee, 1969 (Mar. 28-Dec. 6); Minneapolis.

(G) **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 section (9) shall be developed and implemented for each post-construction site.

(3) **Requirements**. The plan required under section (G)(2) above shall

include the following:

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

(i) For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subdivision.

(ii) For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subdivision.

(iii) For in-fill development under 5 acres that occurs within 10 years after the effective date of this rule, October 1, 2008, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subdivision.

(iv) For in-fill development that occurs 10 or more years after the effective date of this rule, October 1, 2008, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subdivision.

(v) Notwithstanding Sections (G)(3)(a)(i) through (iv) above, 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 attainable and the total suspended solids load shall be reduced to the maximum extent practicable.

Note to Users: Pollutant loading models such as SLAMM, P8 or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids.

(b) **Peak Discharge**.

(i) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to predevelopment conditions for the 2-year, 24-hour design storm applicable to the post-construction site. Pre-development conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Table 1 - Maximum Pre-Development Runoff Curve Numbers for Cropland Area				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

Note to Users: The curve numbers in Table 1 represent mid-range values for soils under a good hydrologic condition where conservation practices are used and are selected to be protective of the resource waters.

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

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

Note to Users: Hydraulic models such as HEC-RAS or another methodology may be used to determine the change in surface water elevations.

(b) A redevelopment post-construction site.

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

Note to Users: The intent of the peak discharge standard is to minimize streambank erosion, under bank-full conditions. For water quantity concerns, the post-development peak flow rate for the 10, 25, 50 and 100 year – 24 hour storm events should also be controlled either at or below pre-development discharge rates. This has not been addressed in this model ordinance but may need to be included in the local ordinance to address flood control issues.

(c) **Infiltration**. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in sections (G)(3)(c)(v) through (viii).

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

(a) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

(b) Infiltrate 25% of the post-development runoff from the 2 year -24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

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

(a) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(b) Infiltrate 10% of the runoff from the 2 year - 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(iii) Pre-development condition shall be the same as in section (G)(3)(c)(ii)(b).

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

(iv) 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 section (G)(3)(c)(viii). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

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

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

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

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

(c) Fueling and vehicle maintenance areas.

(d) Areas within 1000 feet 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 section (G)(3)(c)(v)(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 Section NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in Section 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 Section 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 section (G)(3)(c)(v)(i) does not prohibit infiltration of roof runoff.

Note to Users: The areas listed in section (G)(3)(c)(v) are prohibited from infiltrating runoff due to the potential for groundwater contamination.

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

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

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

(c) Redevelopment post-construction sites.

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

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

(f) Roads in commercial, industrial and institutional

land uses, and arterial residential roads.

(vii) 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.

(viii) 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 Chapter 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. The foregoing notwithstanding, the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) **Protective areas**.

(i) "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 Section NR 103.04, 75 feet.

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

(c) For lakes, 50 feet.

(d) For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet

meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Section NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

(e) For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

(f) In section (G)(3)(d)(i)(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 Section NR 103.03.

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

(ii) This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to section (G)(3)(d)(iv).

(iii) 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 selfsustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock

riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

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

(c) Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

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

(iv) This paragraph does not apply to:

(a) Redevelopment post-construction sites.

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

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

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

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

Note to Users: A vegetated protective area to filter runoff pollutants from post-construction sites described in section (G)(3)(d)(iv)(e) is not necessary since runoff is not entering the surface water at that location. Other practices, necessary to meet the requirements of this section, such as a swale or basin, will need to be designed and implemented to reduce runoff pollutants before the runoff enters a surface water of the state.

(e) **Fueling and vehicle maintenance areas**. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

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

(f) **Swale treatment for transportation facilities**.

(i) **Applicability**. Except as provided in section (G)(3)(f)(ii) below, transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

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

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

(b) Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

Note to Users: Check dams may be included in the swale design to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this paragraph. However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

(ii) **Exemptions**. The Town Administrator 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 Section 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 Section NR 151.004, Wis. Adm. Code, to meet water quality standards.

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

(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 section (G)(5)(d) below, 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:

(i) The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under Chapter 30, Stats., or the BMP did not require a Chapter 30, Wis. Stats., permit; and

(ii) 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 postconstruction performance standards in accordance with this paragraph.

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

(ii) 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 Chapter NR 103, Wis. Adm. Code and Chapter 30, Wis. Stats.

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

(f) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.

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

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

(i) The Town Administrator determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Town of Somers and that contains management requirements consistent with the purpose

and intent of this ordinance.

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

(a) The facility is in place.

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

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

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

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

(H) **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 Town Administrator 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 Town Administrator a permit application made on a form provided by the Town Administrator 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 nonrefundable permit administration fee.

(b) The storm water management plan shall be prepared to meet the requirements of section (G), the maintenance agreement shall be prepared to meet the requirements of section (J), the financial guarantee shall meet the requirements of section (K), and fees shall be those established by the Town of Somers Board of Supervisors as set forth in

section (L).

(3) **Review and Approval of Permit Application**. The Town Administrator 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 thirty (30) business days of the receipt of a complete permit application, including all items as required by section (H)(2) above, the Town Administrator shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

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

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

(d) The Town Administrator may request additional information from the applicant. If additional information is submitted, the Town Administrator shall have twenty (20) business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(e) Failure by the Town Administrator to inform the permit applicant of a decision within ten (10) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

(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 Town Administrator may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Town Administrator to suspend or revoke this permit may be appealed in accordance with section (N).

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

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

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

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

(e) The responsible party shall notify the Town Administrator of any significant modifications it intends to make to an approved storm water management plan. The Town Administrator 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 or are transferred to subsequent private owners as specified in the approved maintenance agreement.

(g) The responsible party authorizes the Town Administrator 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 Subchapter VII of Chapter 66, Wis. Stats., or to charging such costs against the financial guarantee posted under section (K).

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

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

permit.

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

(k) The responsible party is subject to the enforcement actions and penalties detailed in section (M), 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 Town Administrator in addition to the requirements needed to meet the performance standards in section (G) or a financial guarantee as provided for in section (K).

(6) **Permit Duration**. Permits issued under this section shall be valid from the date of issuance through the date the Town Administrator notifies the responsible party that all storm water management practices have passed the final inspection required under section (H)(4)(d), above.

(I) **Storm Water Management Plan**.

(1) **Plan Requirements**. The storm water management plan required under section (8)(b) shall contain at a minimum the following information:

(a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.

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

(c) Pre-development site conditions, including:

(i) One or more site maps at a scale of not less than 1 inch equals one hundred (100) feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two (2) feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may

affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Section NR 811.16, Wis. Adm. Code.

(ii) Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(d) Post-development site conditions, including:

(i) Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.

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

(iii) One or more site maps at a scale of not less than 1 inch equals one hundred (100) feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two (2) feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and offsite tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.

(iv) Hydrology and pollutant loading computations as needed to show compliance with performance standards. The

computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

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

(e) A description and installation schedule for the storm water management practices needed to meet the performance standards in section (7).

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

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

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

(i) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this ordinance.

(2) **Alternate Requirements**. The Town Administrator may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under section (G)(5).

(J) **Maintenance Agreement**.

(1) **Maintenance Agreement Required**. The maintenance agreement required under section (H)(2) for storm water management practices shall be an agreement between the Town Administrator 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 section (I)(1)(g):

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

(b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under section (H)(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 section (H)(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 section (J)(2)(b).

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

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

(g) Agreement that the party designated under section (J)(2)(c), as responsible for long term maintenance of the storm water management practices, shall be notified by the Town Administrator of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Town Administrator.

(h) Authorization of the Town Administrator to perform the corrected actions identified in the inspection report if the responsible party designated under section (J)(2)(c) does not make the required corrections in the specified time period. The Town Administrator shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subchapter VII of Chapter 66, Wis. Stats.

(K) **Financial Guarantee**.

(1) **Establishment of the Guarantee**. The Town Administrator may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Town Administrator. The financial guarantee shall be in an amount determined by the Town Administrator to be the estimated cost of

construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Town Administrator the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Town Administrator 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 Town Administrator shall release the portion of the financial guarantee established under this section, less any costs incurred by the Town Administrator to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Town Administrator may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

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

(L) **Fee Schedule**. The fees referred to in other sections of this ordinance shall be established by the Town Administrator and may from time to time be modified by resolution. A schedule of the fees established by the Town Administrator shall be available for review in the Town Hall.

(M) **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 Town Administrator shall notify the responsible party by certified mail of any noncomplying 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 Town Administrator under section (M)(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 Town Administrator 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 Town Administrator may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Town Administrator plus interest and legal costs shall be billed to the responsible party.

(5) The Town Administrator 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 municipal attorney to obtain a cease and desist order in any court with jurisdiction.

(6) The Town Administrator may revoke a permit issued under this ordinance for noncompliance with ordinance provisions.

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

(8) The Town Administrator 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 municipal 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 One Hundred ($100.00) Dollars or more than One Thousand ($1,000.00) 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 injunctional proceedings.

Note to Users: Injunctional orders are authorized pursuant to §59.69(11), §61.35, or §62.23(8), Wis. Stats., for counties, villages and towns with village powers, and cities respectively.

(11) When the Town Administrator determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the Town Administrator or a party designated by the Town Administrator may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The Town Administrator shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to section (J) of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall

be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

(N) **Appeals**.

(1) **Board of Appeals**. The board of appeals created pursuant the Town of Somers Code of Ordinances pursuant to §60.65 and 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 Town Administrator 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 Town of Somers affected by any decision of the Town Administrator.

(O) **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.

SUBCHAPTER III
ILLICIT DISCHARGES AND CONNECTIONS.

17.20 ILLICIT DISCHARGES AND CONNECTIONS.

(A) **Definitions**. The following definitions shall be applicable in this Section:

(1) **Illicit Connection**. 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 allowed, permitted, or approved by a government agency, prior to the adoption of this ordinance.

(2) **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.

(3) **Storm Drain System**. Publicly-owner 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.

(B) **Discharges Prohibited**. No person shall discharge, spill or dump substances or materials which are not entirely composed of storm water into receiving bodies of water or onto driveways, sidewalks, parking lots or other areas that drain into the storm drainage system.

(C) **Connections Prohibited**. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to the adoption of this ordinance, regardless of whether the connections was permissible under law or practice applicable or prevailing at the time of connection.

(D) **Exemptions**. The following activities are exempt from the provisions of this section unless found to have an adverse impact on the storm water:

(1) Discharges authorized by a permit issued by the Wisconsin Department of Natural Resources.

(2) Discharges resulting from fire fighting activities.

(3) Discharges from uncontaminated ground water, potable water source, roof drains, foundation drain and sump pump, air conditioning condensation, springs, lawn watering, individual residential car washing, water main and hydrant flushing and swimming pools if the water has been dechlorinated.

(E) **Enforcement**. Whenever the Town of Somers finds a person has violated a prohibition or failed to meet a requirement of this section, the Town of Somers may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

(1) The elimination of illicit connections or discharges;

(2) That violating discharges, practices, or operations shall cease and desist;

(3) The abatement or remediation of storm water pollution or contaminated hazards and the restoration of any affected property;

(4) In the event the person fails to eliminate the illicit connects or discharge, fails to cease and desist in discharge, practices or operations in violation of this Section or fails to abate or remediate the storm water pollution or contamination hazards, that person may be subject to a forfeiture of not less than $50.00 nor more than $500.00 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.