



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By Public Services & Safety
Committee
Re: Repealing and recreating Art. IV of NMC Ch.
22, Erosion Control & Stormwater Management

ORDINANCE NO. 2017-08
Introduced: April 5, 2017
Committee/Commission Action:
RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Article IV of Ch. 22 of the Code of Ordinances of the City of Neenah is repealed and recreated to read as follows:

ARTICLE IV. - CONSTRUCTION SITE EROSION CONTROL AND POST-CONSTRUCTION STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 22-254. Permit; intergovernmental agreements.

- (a) Where a permit may be required under either Division 2 or Division 3 of this article, or both, the administering authority shall determine whether a separate or combined permit shall be required.
- (b) Any permit required by this section shall be issued prior to the issuance of any other zoning permit, building permit, or sanitary permit.
- (c) Intergovernmental agreements pursuant to State Statutes regarding the administration of this article may be approved by the Common Council provided:
 - (1) That the prospective administering body has an ordinance at least as restrictive as this article as determined by City; and/or
 - (2) That the prospective administering body provides satisfactory evidence to the City, as determined by the City, of an ability to administer this article, or an equally restrictive ordinance. Evidence of an ability to administer may include contractual arrangements, and shall also provide that a contractual or employment arrangement prohibits a contractor or employee from reviewing their own work.

Sec. 22-255. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adequate sod or self-sustaining vegetative cover means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

Administering authority means a governmental employee empowered under Wis. Stats. § 62.234, that is designated by the City Council to administer this article.

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

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

ATLAS 14 means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

Average annual rainfall means a typical calendar year of precipitation as determined by the Wisconsin DNR for users of models such as SLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a Wisconsin DNR publication for the location closest to the municipality.

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

Business day means a day the City of Neenah is routinely and customarily open for business.

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

Combined sewer system means a system for conveying both sanitary sewage and stormwater runoff.

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

Connected imperviousness means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.

Construction site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development.

Design storm means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The TP-40, Type II, 24-hour design storms for the City of Neenah are: one-year, 2.3 inches; two-year, 2.6 inches; five-year, 3.4 inches; ten-year, 3.9 inches; twenty-five-year, 4.5 inches; fifty-year, 5.0 inches; and one-hundred-year, 5.5 inches. The Atlas 14, MSE4, 24-hour design storms for the City of Neenah are: one-year, 2.19 inches; two-year, 2.51 inches; five-year, 3.09 inches; ten-year, 3.62 inches; twenty-five-year, 4.42 inches; fifty-year, 5.10 inches; and one-hundred-year, 5.83 inches.

Development means residential, commercial, industrial, institutional, or other land uses and associated roads.

Direct conduits to groundwater means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, nonmetallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

Division of land means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a five-year period.

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.

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

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

Exceptional resource waters mean waters listed in Wis. Admin. Code § NR 102.11.

Existing development means development in existence on October 1, 2004 or development for which a storm water permit in accordance with subch. III of Ch. NR 216, Wis. Adm. Code, was received on or before October 1, 2004.

Extraterritorial means the unincorporated area within three 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.

Filtering layer means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the administering authority for the site.

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

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

Governing body means the Common Council of the City of Neenah.

Groundwater means waters of the state, as defined in § 281.01 (18), Wis. Stats., occurring in a saturated subsurface geological formation of rock or soil.

High groundwater level or subsurface saturation means the higher of either the elevation to which the soil is saturated as observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile, as defined in Technical Standard 1002, Site Evaluation for Stormwater Infiltration.

Highway has the meaning given in Wis. Stats. § 340.01(22).

Highway reconditioning has the meaning given in Wis. Stats. § 84.013 (1)(b).

Highway reconstruction has the meaning given in Wis. Stats. § 84.013(1)(c).

Highway resurfacing has the meaning given in Wis. Stats. § 84.013(1)(d).

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 surfaces that typically are impervious. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

In-fill means an undeveloped area of land or new development area located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur. In-fill does not include any undeveloped area that was part of a larger new development for which a storm water permit in accordance with subch. III of ch. NR 216, Wis. Adm. Code, was required to be submitted after October 1, 2004 to the Wisconsin Department of Natural Resources or Wisconsin Department of Safety and Professional Services (formerly Department of Commerce).

Infiltration means the entry and movement of precipitation or runoff into or through the soil.

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.

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

Maintenance agreement means a legal document that provides for long-term maintenance of stormwater management and best management practices.

MEP or maximum extent practicable means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. Maximum extent practicable applies when the permit applicant demonstrates to the administering authority's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Minor reconstruction of a highway means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening, and that does not include replacement of a vegetated drainage system with a non-vegetated drainage system except where necessary to convey runoff under a highway or private road or driveway.

MSE4 distribution means a specific precipitation distribution developed by the USDA, NRCS, using precipitation data from Atlas 14.

Navigable waters and navigable waterway has the meaning given in § 30.01(4m), Wis. Stats.

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

Nonpoint source means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source as defined under Wis. Stat. § [283.01 \(12\)](#).

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

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

Ordinary high-water mark has the meaning given in Wis. Admin. Code § NR 115.03(6).

Outstanding resource waters means waters listed in Wis. Admin. Code § NR 102.10.

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

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

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

Permit administration fee means a sum of money paid to the City of Neenah by the permit applicant for the purpose of recouping the expenses incurred by the administering authority in administering the permit.

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.

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

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

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

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

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

Preventive action limit has the meaning given in Wis. Admin. Code § NR 140.05(17).

Protective area has the meaning given in subsection [22-323\(c\)\(4\)](#) of this Code.

Redevelopment means that portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For purposes of this article, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

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

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

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

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

Separate storm sewer means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

- (1) Is designed or used for collecting water or conveying runoff.
- (2) Is not part of a combined sewer system.
- (3) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- (4) Discharges directly or indirectly to waters of the state.

Silviculture activities means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

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

Stop work order means an order issued by the administering authority which requires that all construction activity on the site be stopped.

Stormwater management plan means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.

Stormwater 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.

Targeted performance standard means a performance standard that will apply in a specific area, where additional practices beyond those contained in this ordinance, are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.

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

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

Total maximum daily load (TMDL) means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

TP-40 means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.

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, which is incorporated by reference for this ordinance.

Transportation facility means a public street, a public road, a public highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stats. § 85.095(1)(b). Transportation facility does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to § 281.33, Wis. Stats.

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.

Waters of the state has the meaning given in Wis. Stats. § 283.01(20).

Sec. 22-256. Authority.

- (a) The ordinance from which this article is derived is adopted by the Common Council under the authority granted by Wis. Stats. §§ 62.234, 101.65(1)(a) and 101.653. Except as specifically provided for in Wis. Stats. § 62.234, Wis. Stats. § 62.23 applies to this article and to any amendments to this article. The provisions of this article are deemed not to limit any other lawful regulatory powers of the Common Council.
- (b) The Common Council hereby designates the Community Development Department to administer the provisions of Division 1 and Division 2 of this article, and the Public Works Department to administer Division 3. The Public Works Department will enforce Divisions 1, 2, and 3.
- (c) The requirements of this article do not pre-empt more stringent stormwater management requirements that may be imposed by any of the following:
 - (1) Department of Natural Resources administrative rules, permits or approvals including, but not limited to, those authorized under Wis. Stats. § 283.33 and 281.16.
 - (2) Targeted performance standards promulgated in rules by the Department of Natural Resources under Wis. Admin. Code § NR 151.004.

Sec. 22-257. Findings.

The Common Council finds that runoff:

- (a) From land-disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the State and City; and
- (b) From land development and land redevelopment activity 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 stormwater runoff can: degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature;
- (c) Diminishes the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing loadings of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants;
- (d) Alters wetland communities by changing wetland hydrology and by increasing pollutant loads;
- (e) Reduces the quality of groundwater by increasing pollutant loading;
- (g) Threatens public health, safety, property, and general welfare by overtaxing storm sewers, watercourses, and other minor drainage facilities;
- (h) Threatens public health, safety, property, and general welfare by increasing major flood peaks and volumes; and
- (i) Undermines floodplain management efforts by increasing the incidence and levels of flooding.

Sec. 22-258. Purpose.

- (a) Following is the purpose of Division 2 and Division 3 of this article:
 - (1) It is the purpose of Division 2 of this article to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning

grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Neenah.

- (2) It is the purpose of Division 3 of this article to set forth longterm, post-construction stormwater requirements and criteria which will diminish the threats to public health, safety, welfare, and the aquatic environment due to runoff of stormwater from land development and land redevelopment activity. The specific purposes of this section are to:
 - a. Further the maintenance of safe and healthful conditions of the land and water resources of the County;
 - b. Prevent and control the adverse effects of stormwater, prevent and control soil erosion, prevent and control water pollution, and protect spawning grounds, fish, and aquatic life;
 - 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; prevent conditions that endanger downstream property;
 - d. Control building sites, placement of structures, and land uses, and promote sound economic growth.

Sec. 22-259. Intent.

It is the intent of the City Council that Division 3 of this article regulates post-construction stormwater discharges to waters of the state. This article may be applied on a site-by-site basis. The City Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this article is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater 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 Wis. Stats. § 281.16, for regional stormwater management measures and have been approved by the City Council, it is the intent of this article that the approved plan be used to identify post-construction management measures acceptable for the community.

Sec. 22-260. Applicability and jurisdiction.

(a) Applicability—Division 2.

- (1) Where not otherwise limited by law, this Division applies to all construction sites, unless the site is otherwise exempt under subsections 22-260(a)(1) or (2):
 - a. A permit is required for a construction site with 4,000 square feet or greater of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including the subsection 22-292(b) performance standards, section 22-293 permit requirements, and section 22-294 plan requirements.
 - b. A permit is not required for a construction site with less than 4,000 square feet of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a non-permitted site, including the subsection 22-292(a) performance standards.
 - c. Notwithstanding the applicability requirements in 22-260(a)(1)a. and b., a permit is required for a construction site with less than 4,000 square feet of land disturbing construction activity if

the administering authority determines that permit coverage is needed in order to improve ordinance compliance, meet targeted performance standards, or protect waters of the state. If a permit is required, the responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including the subsection 22-292(b) performance standards, section 22-293 permit requirements, and section 22-294 plan requirements.

- (2) The ordinance from which this article derives does not apply to the following:
- a. Land disturbing construction activity that includes the construction of one- and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under Wis. Admin. Code § SPS 321.125.
 - b. Nonpoint source discharges from agricultural activity areas.
 - c. Nonpoint source discharges from silviculture activities.
- (3) A construction site exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity, shall comply with 22-292(a) performance standards if less than 1 acre of land disturbing construction activity. The 22-292(b) performance standards, section 22-293 permit requirements, and section 22-294 plan requirements are not applicable.
- (b) *Jurisdiction—Division 2.* The ordinance from which this article derives applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Neenah.
- (c) *Exclusions—Division 2.* The ordinance from which this article derives is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01 (1), but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stats. § 281.33 (2).
- (d) *Applicability—Division 3.*
- (1) Where not otherwise limited by law, the ordinance from which this article derives applies to all post-construction sites, unless the site is otherwise exempt under subsection 22-260(d)(2).
 - (2) A post-construction site that meets any of the following criteria is exempt from the requirements of the ordinance from which this article derives.
 - a. One- and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance.
 - b. Non-point discharges from agricultural activity areas.
 - c. Non-point discharges from silviculture activities.
 - d. Mill and crush operations.
 - (3) Notwithstanding the applicability requirements in subsection 22-260(d)(1), this article applies to post-construction sites of any size that, in the opinion of the administering authority, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (e) *Jurisdiction—Division 3.* This article applies to post construction sites within the boundaries and jurisdiction of the City of Neenah.
- (f) *Exclusions—Division 3.* This article is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01 (1), but also including the office of district attorney, which is subject

to the state plan promulgated or a memorandum of understanding entered into under Wis. Stats. § 281.33 (2).

Sec. 22-261. Fee schedule/financial guarantee.

- (a) The fees referred to in other sections of this article shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established by the City Council shall be available for review in City Hall.
- (b) All after the fact fees shall be doubled.
- (c) Where more than one permit is required, the permittee shall be required to pay the amount required for each permit.
- (d) The financial guarantees referred to in other sections of this article are in addition to permit fees and required escrow amounts and shall be as determined within the applicable section. If a financial guarantee is required in more than one section, the administering authority shall determine the total amount of the required guarantee, whether as a single or combined amount.

Sec. 22-262. Reserved.

Sec. 22-263. Appeals.

- (a) An appeal to the provisions of this article shall be done in accordance with the provisions of [Chapter 26](#), Zoning. The Neenah Zoning Board of Appeals shall have jurisdiction over appeals under this article.
 - (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the administering authority in administering this article except for cease and desist orders.
 - (2) Upon appeal, may authorize variances from the provisions of this article which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the article will result in unnecessary hardship; and
 - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) Who may appeal:
 - (1) Appeals to the Board of Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Neenah affected by any decision of the administering authority.

Sec. 22-264. Severability.

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

Secs. 22-265—22-289. Reserved.

DIVISION 2. CONSTRUCTION SITE EROSION CONTROL

Sec. 22-290. Technical standards.

- (a) *Design criteria, standards and specifications.* All BMPs required to comply with this division shall meet the design criteria, standards and specifications based on any of the following:
 - (1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Admin. Code.
 - (2) Technical standards and other guidance identified within the City of Neenah Storm Water Reference Guide.
 - (3) Soil loss prediction tools such as the Revised Universal Soil Loss Equation 2 (RUSLE2) that estimate the sediment load leaving the site under varying land and management conditions may be used to show compliance with the sediment performance standards contained in subsection 22-292(b).
 - (4) For this division, soil loss is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a Type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- (b) *Other standards.* Other technical standards not identified in section 22-290, may be used provided that the methods have been approved by the administering authority.

Sec. 22-291. Reserved.

Sec. 22-292. Performance standards.

- (a) *Non-Permitted Sites.*
 - (1) *Responsible party.* The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs is a responsible party and shall comply with this ordinance.
 - (2) *Requirements.* At each site where land disturbing construction activity is to occur, BMPs shall be used to prevent or reduce all of the following:
 - a. The deposition of soil from being tracked onto streets by vehicles.
 - b. The discharge of sediment from disturbed areas into storm water inlets.
 - c. The discharge of sediment from disturbed areas into adjacent waters of the state.
 - d. The discharge of sediment from drainage ways that flow off the site.
 - e. The discharge of sediment by dewatering activities.
 - f. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 - g. The discharge of onsite chemicals, cement and other building compounds and materials into waters of the state or offsite separate storm sewers during the construction period. 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 ordinance.

- (3) *Location.* BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.
 - (4) *Implementation.* The BMPs used to comply with this section shall be implemented as follows:
 - a. Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - b. Erosion and sediment control practices shall be maintained until final stabilization.
 - c. Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - d. Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - e. BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (b) *Permitted sites.*
- (1) *Responsible party.* The landowner or other person performing services to meet the performance standards of this ordinance, through a contract or other agreement with the landowner, is a responsible party and shall comply with this ordinance.
 - (2) *Plan.* A written erosion and sediment control plan shall be developed and implemented by the responsible party in accordance with section 22-294. The erosion and sediment control plan shall meet all of the applicable requirements contained in this ordinance.
 - (3) *Requirements.* The erosion and sediment control plan shall meet all of the following:
 - a. The plan shall use BMPs to prevent or reduce all of the following:
 1. The deposition of soil from being tracked onto streets by vehicles.
 2. The discharge of sediment from disturbed areas into storm water inlets.
 3. The discharge of sediment from disturbed areas into adjacent waters of the state.
 4. The discharge of sediment from drainage ways that flow off the site.
 5. The discharge of sediment by dewatering activities.
 6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 7. The discharge of sediment from erosive flows at outlets and in downstream channels.
 8. The discharge of onsite chemicals, cement and other building compounds and materials into waters of the state or offsite separate storm sewers during the construction period. 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 ordinance.
 9. The discharge of untreated wash water from vehicle and wheel washing into waters of the state or offsite separate storm sewers.
 - b. For sites with 1 acre or more of land disturbing construction activity, the plan shall meet the following sediment performance standards:

1. BMP's that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
 2. Except as provided in subsection 22-292(b)(6), the administering authority may not require any person to employ more BMPs than are needed to meet the 5 tons per acre per year sediment performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the sediment performance standard. The administering authority may give credit toward meeting the sediment performance standard for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
 3. Notwithstanding subsections 22-292(b)(3)b.1. and 2., if BMPs cannot be designed and implemented to meet the 5 tons per acre per year sediment performance standard, the plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.
- c. The plan shall incorporate all of the following preventative measures:
1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
 2. Minimization of soil compaction and preservation of topsoil.
 - c. Minimization of land disturbing construction activity on slopes of 20% or more.
 3. Development of spill prevention and response procedures.
- (4) *Location.* BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.
- (5) *Implementation.* The BMPs used to comply with this ordinance shall be implemented as follows:
- a. In accordance with the plan developed pursuant to section 22-294, the erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - b. Erosion and sediment control practices shall be maintained until final stabilization.
 - c. Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - d. Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - e. BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (6) *Targeted performance standards.* The administering authority may establish numeric water quality requirements that are more stringent than those set forth in subsection 22-292 in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.

Sec. 22-293. Permitting requirements, procedures and fees.

- (a) *Permit required.* When a permit is required, no responsible party may commence a land disturbing construction activity subject to this division without receiving prior approval of an erosion and sediment control plan for the site and a permit from the administering authority.
- (b) *Permit application and fees.* When a permit is required, at least one responsible party desiring to undertake a land disturbing construction activity subject to this division shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of [section 22-294](#) and shall pay fees identified in [section 22-295](#) to the City of Neenah. By submitting an application, the applicant is authorizing the administering authority to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (c) *Review and approval of permit application.* The administering authority shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
 - (1) Within 20 business days of the receipt of a complete permit application, as required by subsection 22-293(b), the administering authority shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this division.
 - (2) If the permit application and plan are approved, the administering authority shall issue the permit.
 - (3) If the permit application or plan is disapproved, the administering authority shall state in writing the reasons for disapproval.
 - (4) The administering authority may request additional information from the applicant. If additional information is submitted, the administering authority shall have 20 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
 - (5) Failure by the administering authority to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (d) *Financial guarantee.* As a condition of approval and issuance of the permit, the administering authority may require the applicant to deposit a surety bond, cash escrow, or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (e) *Permit requirements.* All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The administering authority may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the administering authority to suspend or revoke this permit may be appealed in accordance with [section 22-263](#).
 - (1) Notify the administering authority within 48 hours of commencing any land disturbing construction activity.
 - (2) Notify the administering authority of completion of any BMPs within ten business days after their installation.
 - (3) Obtain permission in writing from the administering authority prior to any modification pursuant to subsection [22-294\(b\)](#) of the erosion and sediment control plan.
 - (4) Install all BMPs as identified in the approved erosion and sediment control plan.
 - (5) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

- (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in weekly inspection reports.
 - (7) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inches or greater. Repair or replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or notification that repair or replacement is needed. Maintain, at the construction site, weekly written reports of all inspections. Weekly inspection reports shall include all of the following: date, time and location of the construction site inspection; the name of individual who performed the inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site.
 - (8) Allow the administering authority to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan, stormwater management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.
 - (9) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.
- (f) *Permit conditions.* Permits issued under this section may include conditions established by administering authority in addition to the requirements set forth in subsection 22-293(e), where needed to assure compliance with the performance standards in [section 22-292](#).
 - (g) *Permit duration.* Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The administering authority may extend the period one or more times for up to an additional 180 days. The administering authority may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this division.
 - (h) *Maintenance.* The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

Sec. 22-294. Erosion and sediment control plan.

- (a) *Plan requirements.* The erosion and sediment control plan required under subsection [22-292\(b\)](#) shall comply with the City of Neenah Storm Water Reference Guide and contain at a minimum the following information:
 - (1) Name, address, and telephone number of the landowner and responsible parties.
 - (2) A legal description of the property proposed to be developed.
 - (3) A site map with property lines, disturbed limits, and drainage patterns.
 - (4) Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.
 - (5) Performance standards applicable to site.
 - (6) Proposed best management practices.
 - (7) Erosion and sediment control plan narrative.
 - (8) Construction sequence and construction schedule.
- (b) *Amendments.* The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation, maintenance or schedule at the site which has the reasonable potential for the discharge of pollutants to waters of the state or separate storm sewers, and which has not otherwise been addressed in the plan.
- (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (3) The administering authority notifies the applicant of changes needed in the plan.

Sec. 22-295. Fee schedule.

The fees referred to in other sections of this article shall be established by the City Council and may from time to time be modified by resolution. A schedule of the fees established by the City Council shall be available for review in City Hall.

Sec. 22-296. Inspection.

- (a) The administering authority shall inspect any construction site that holds a permit under [section 22-293](#) 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 approved sediment and erosion control plan.
- (b) Whenever land-disturbing construction activities are being carried out, the administering authority may enter the land pursuant to the provisions of Wis. Stats. § 66.0119 (1)—(3).

Sec. 22-297. Enforcement—Division 2.

- (a) The administering authority may post a stop-work order if any of the following occurs:
 - (1) Any land disturbing construction activity from which this article is derived is being undertaken without a permit and, pursuant to subsection 22-260(a) of this ordinance, a permit is required for the construction site.
 - (2) The erosion and sediment control plan is not being implemented in a good faith manner.
 - (3) The conditions of the permit are not being met.
 - (4) Any land disturbing construction activity is in violation of this Article.
- (b) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the administering authority may revoke the permit.
- (c) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the administering authority, or if a responsible party violates a stop-work order posted under subsection 22-297(a), the administering authority may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (d) The administering authority or the Board of Appeals may retract the stop-work order issued under subsection 22-297(a) or the permit revocation under subsection 22-297(b).
- (e) After posting a stop-work order under subsection 22-297(a), the administering authority may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The administering authority may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this ordinance by the administering authority,

plus interest at the rate authorized by the City Council, shall be billed to the responsible party or recovered from the surety bond, cash escrow, or irrevocable letter of credit. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.

- (f) Any person violating any of the provisions of the ordinance from which this article is derived shall be subject to a forfeiture of not less than \$25.00 nor more than \$500.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (g) Compliance with the provisions of this ordinance from which this article is derived may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

Sec. 22-298—22-321. Reserved.

DIVISION 3. POST-CONSTRUCTION STORMWATER MANAGEMENT

Sec. 22-322. Technical standards.

(a) The following methods shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, fueling/vehicle maintenance, and swale treatment components of stormwater practices needed to meet the water quality standards of the ordinance from which this article is derived:

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Admin. Code.
- (2) Technical standards and guidance identified within the City of Neenah Storm Water Reference Guide.
- (3) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the administering authority.
- (4) In this article, the following year and location has been selected as average annual rainfall: Green Bay, 1969 (March 29—November 25).

Sec. 22-323. Stormwater performance standards.

- (a) *Responsible party.* The responsible party shall develop and implement a post-construction stormwater management plan that incorporates the requirements of this section.
- (b) *Plan.* A written stormwater management plan shall be developed and implemented by the responsible party in accordance with section 22-325. The storm water management plan shall meet all of the applicable requirements contained in this ordinance.
- (c) *Requirements.* The stormwater management plan shall meet the following minimum requirements to the maximum extent practicable:
 - (1) *Water Quality.* BMPs shall be designed, installed and maintained to control pollutants carried in runoff from the post-construction site. The design shall be based on the average annual rainfall, as compared to no runoff management controls.

a. The following is required for post-construction sites with one or more of the following: 20,000 square feet or more of impervious surface disturbance, or one acre or more of land disturbance.

1. Except as provided in subsection 22-323(c)(1)a.2., a pollutant reduction is required as follows:

Watershed	Total Suspended Solids (TSS) & Total Phosphorus (TP) Reduction					
	New Development		Redevelopment		Routine Maintenance	
	TSS	TP	TSS	TP	TSS	TP
Fox River	80%	41%	72%	41%	72%	41%
L. Winnebago	80%	-	40%	-	40%	-
Neenah Slough	80%	41%	52%	41%	52%	41%

2. A pollutant reduction is not required for routine maintenance areas that are part of a post-construction site with less than 5 acres of disturbance.

b. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce the pollutant load using BMPs from the City of Neenah Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.

c. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 3, 2008 are required to satisfy the performance standards within subsections 22-323(c)(1)a.1. and 2.

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

e. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the treatment efficiency of the practice. Any impact on the BMP efficiency shall be compensated for by increasing the size of the BMP accordingly. The pollutant load reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite pollutant load reduction, unless otherwise approved by the administering authority in accordance with subsection 22-323(e).

f. If the design cannot meet the water quality performance standards of subsections 22-323(c)(1)a. through e., the storm water management plan shall include a written, site specific explanation of why the water quality performance standard cannot be met and why the pollutant load will be reduced only to the maximum extent practicable. Except as provided in subsection 22-323(f), the administering authority may not require any person to exceed the applicable water quality performance standard to meet the requirements of maximum extent practicable.

(2) *Peak discharge.* BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site.

a. The following is required for post-construction sites with one or more of the following: 20,000 square feet or more of impervious surface disturbance, or one acre or more of land disturbance.

1. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the one-year, two-year, ten-year, and 100-year, 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.

2. Peak discharge calculations shall use TR-55 methodology. Atlas 14 rainfall depths and the MSE4 rainfall distribution shall be used unless the site is to be served by a previously constructed peak discharge facility. At the permittee's discretion, the TP-40 rainfall depths and the Type II rainfall distribution can be used for sites that are to be served by a previously constructed peak discharge facility. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Unless the site is currently woodland, peak pre-development discharge rates shall be determined using the following runoff curve numbers for a "meadow" vegetative cover:

Maximum Pre-Development Runoff Curve Numbers				
Vegetative Cover	Hydrologic Soil Group			
	A	B	C	D
Meadow	30	58	71	78
Woodland	30	55	70	77

b. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the City of Neenah Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.

c. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 3, 2008 are required to satisfy the performance standards within subsections 22-323(c)(2)a.1. and 2.

d. The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

e. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The peak discharge reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite peak discharge reduction, unless otherwise approved by the administering authority in accordance with subsection 22-323(e).

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

g. *Exemptions.* The peak discharge performance standards do not apply to the following:

1. A transportation facility where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.
2. Except as provided under subsections 22-323(c)(2)d.—f., a highway reconstruction site.
3. Except as provided under subsections 22-323(c)(2)d.—f., a transportation facility that is part of a redevelopment project.

(3) *Infiltration.* BMPs shall be designed, installed, and maintained to infiltrate runoff from the post-construction site, except as provided in subsections 22-323(c)(3)h.—l.

a. For post-construction sites with 1 acre or more of land disturbance, the following is required:

1. *Low Imperviousness.* For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent 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 one percent of the post-construction site is required as an effective infiltration area.

2. *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent 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 percent of the post-construction site is required as an effective infiltration area.

3. *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent 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 percent of the post-construction site is required as an effective infiltration area.

b. Pre-development condition shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. The actual pre-development vegetative cover and the following pre-development runoff curve numbers shall be used:

Maximum Pre-Development Runoff Curve Numbers				
Vegetative Cover	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

c. For post-construction sites with less than one acre of land disturbance, infiltrate runoff volume using BMPs from the City of Neenah Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.

d. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after September 3, 2008 are required to satisfy the performance standards within subsections [22-323\(c\)\(3\)a.—b.](#)

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

f. When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The runoff volume reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite

runoff volume reduction, unless otherwise approved by the administering authority in accordance with subsection 22-323(e).

g. *Pretreatment.* Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subsection 22-323(c)(3)n. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

h. *Source area prohibitions.* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of subsection 22-323(c)(3) unless demonstrated to meet the conditions of subsection 22-323(c)(3)n.

1. Areas associated with a tier 1 industrial facility identified in § NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the administering authority.

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

3. Fueling and vehicle maintenance areas. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the administering authority.

i. *Source area exemptions.* Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these sources is optional:

1. Parking areas and access roads less than 5,000 square feet for commercial development.

2. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under subsection 22-323(c)(3)h.

3. Except as provided under subsection 22-323(c)(3)e., redevelopment and routine maintenance areas.

4. In-fill development areas less than 5 acres.

5. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

6. Except as provided under subsection 22-323(c)(3)e., transportation facility highway reconstruction and new highways.

j. *Prohibitions.* Infiltration practices may not be located in the following areas:

1. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.

2. Areas within 400 feet of a community water system well as specified in § NR 811.16(4), Wis. Adm. Code, or within the separation distances listed in § NR 812.08, Wis. Adm. Code, for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.

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

k. *Separation distances.* Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with the following:

Separation Distances and Soil Characteristics		
Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	
All Other Impervious Source Areas	3 feet or more	Filtering Layer

Notwithstanding subsection 22-323(c)(3)k., applicable requirements for injection wells classified under § NR 815, Wis. Adm. Code, shall be followed.

l. *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirement under the following conditions, but the decision to infiltrate under these conditions is optional:

1. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.

2. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

m. *Alternate uses.* Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by subsection 22-323(c)(3).

n. *Groundwater standards.*

1. Infiltration systems designed in accordance with this subsection 22-323(c)(3) 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 § NR 140, Wis. Admin. 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.

2. Notwithstanding subsection 22-323(c)(3)n.1., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

o. Where the conditions of subsections 22-323(c)(3)h.—l. limit or restrict the use of infiltration practices, the performance standard of subsection 22-323(c)(3) shall be met to the maximum extent practicable.

(4) *Protective areas.*

a. "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 subsection 22-323(c)(4), "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.

1. For outstanding resource waters and exceptional resource waters, 75 feet.
 2. 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.
 3. For lakes, 50 feet.
 4. For wetlands not subject to subsections 22-323(c)(4)a.5. or 6., 50 feet.
 5. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 6. For less susceptible wetlands, ten percent of the average wetland width, but no less than ten feet nor more than 30 feet. Less susceptible wetlands include: degraded wetlands dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.
 7. In subsections 22-323(c)(4)a.4.—6., 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 § NR 103.03, Wis. Adm. Code.
 8. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m), Wis. Adm. Code. Subsection 22-323(c)(4) does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 9. For concentrated flow channels with drainage areas greater than 130 acres, ten feet.
 10. Notwithstanding subsections 22-323(c)(4)a.1.—9., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- b. Subsection 22-323(c)(4) applies to all post-construction sites located within a protective area, except those areas exempted pursuant to subsection 22-323(c)(4)e.
- c. The following requirements shall be met:
1. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.
 2. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. 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.

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

d. A protective area established or created after September 3, 2008 shall not be eliminated or reduced, except as allowed in subsections 22-323(c)(4)e.2., 3., or 4.

e. *Exemptions.* The following areas are not required to meet the protective area requirements of subsection 22-323(c)(4):

1. Redevelopment and routine maintenance areas provided the minimum requirements within subsection 22-323(c)(4)d. are satisfied.

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

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

4. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of subsection 22-323(c)(1) and (2), except to the extent that vegetative ground cover is necessary to maintain bank stability.

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

(6) *Swale treatment for transportation facilities.* This subsection 22-323(c)(6) is not applicable to transportation facilities that are part of a larger common plan of development or sale.

a. *Requirement.* Except as provided in subsection 22-323(c)(6)b., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of subsection 22-323(c)(1), (2), and (3), if the swales are designed to do all of the following or to the maximum extent practicable:

1. Swales shall 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.

2. Swales shall comply with the Wisconsin Department of Natural Resources Technical Standard 1005, "Vegetated Infiltration Swale", except as otherwise authorized in writing by the Wisconsin Department of Natural Resources.

b. *Other Requirements.* Notwithstanding subsection 22-323(c)(6)a., the administering authority may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

1. An outstanding resource water.

2. An exceptional resource water.

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

4. Waters where targeted performance standards are developed pursuant to § NR 151.004, Wis. Admin. Code.

(7) *Exemptions.* The following areas are not required to meet the performance standards within subsection 22-323(c):

- a. Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.
- b. Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
- c. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.
 - 1. A transportation facility post-construction site with less than 10 percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. Notwithstanding this exemption, the protective area requirements of subsection 22-323(c)(4) still apply.
 - 2. Reconditioning or resurfacing of a highway.
 - 3. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements of subsection 22-323(c)(4) apply to minor reconstruction of a highway.
 - 4. Routine maintenance for transportation facilities that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - 5. Routine maintenance if performed for storm water conveyance system cleaning.

(d) *General considerations for on-site and off-site storm water management measures.* The following considerations shall be observed in managing runoff:

- (1) 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.
- (2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(e) *BMP location and credit.*

(1) *General.* To comply with subsection 22-323(c) performance standards, the BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system.

(2) *Offsite or regional BMP.*

- a. The amount of credit that the administering authority may give an offsite or regional BMP for purposes of determining compliance with the performance standards of subsection 22-323(c) is limited to the treatment capability or performance of the BMP.
- b. The administering authority may authorize credit for an off-site or regional BMP provided all of the following conditions are satisfied:
 - 1. The BMP received all applicable permits.
 - 2. The BMP shall be installed and operational before the construction site has undergone final stabilization.
 - 3. The BMP shall be 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 BMPs meeting the subsection 22-323(c) performance standards.
 - 4. The owner of the BMP has entered into a section 22-326 maintenance agreement with the City of Neenah, or another municipal entity, such that the BMP has a legally

obligated entity responsible for its long-term operation and maintenance. Legal authority exists if a municipality owns, operates and maintains the BMP.

5. The owner of the BMP has provided written authorization which indicates the permit applicant may use the BMP for subsection 22-323(c) performance standard compliance.

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

(3) *BMP in non-navigable waters.* For purposes of determining compliance with the performance standards of subsection 22-323(c), the administering authority may give credit for BMPs that function to provide treatment for runoff from existing development and post-construction runoff from new development, redevelopment, and routine maintenance areas and that are located within non-navigable waters.

(4) *BMP in navigable waters.*

a. *New development runoff.* Except as allowed under subsection 22-323(e)(4)b., BMPs designed to treat post-construction runoff from new development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of subsection 22-323(c), the administering authority may not give credit for such BMPs.

b. *New development runoff exemption.* BMPs to treat post-construction runoff from new development areas may be located within navigable waters and may be creditable by the administering authority under subsection 22-323(c), if all the following are met:

1. The BMP was constructed prior to October 1, 2002 and received all applicable permits.
2. The BMP functions or will function to provide runoff treatment for the new development area.

c. *Existing development & post-construction runoff from redevelopment, routine maintenance, & infill development areas.* Except as provided in subsection 22-323(e)(4)d., BMPs designed to treat post-construction runoff for existing development and post-construction runoff from redevelopment, routine maintenance and infill development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of subsection 22-323(c), the administering authority may not give credit for such BMPs.

d. *Existing development & post-construction runoff from redevelopment, routine Maintenance, & infill development areas exemption.* BMPs that function to provide treatment of runoff from existing development and post-construction runoff from redevelopment, routine maintenance and infill development areas may be located within navigable waters and, for purposes of determining compliance with the performance standards of subsection 22-323(c), the administering authority may give credit for such BMPs, if any of the following are met:

1. The BMP was constructed, contracts were signed or bids advertised and all applicable permits were received prior to January 1, 2011.
2. The BMP is on an intermittent waterway and all applicable permits are received.

(5) *Water quality trading.* To comply with subsection 22-323(c)(1) performance standards, the administering authority may authorize credit for water quality trading provided all of the following conditions are satisfied:

- a. The treatment practices associated with a water quality trade shall be in place, effective and operational before credit can be authorized.
 - b. The water quality trade shall comply with applicable trading ratios established by the Wisconsin Department of Natural Resources or the City of Neenah.
 - c. The water quality trade shall comply with applicable regulations, standards, and guidance developed by the Wisconsin Department of Natural Resources or the City of Neenah.
 - d. The responsible party shall furnish a copy of executed water quality trading agreements or other related information deemed necessary by the administering authority in order to authorize credit.
- (f) *Targeted performance standards.* The administering authority may establish numeric water quality requirements that are more stringent than those set forth in subsection 22-323(c) in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.
 - (g) *Alternate requirements.* The administering authority may establish stormwater management requirements more stringent than those set forth in this section if the administering authority determines that an added level of protection is needed to protect sensitive resources. Also, the administering authority may establish stormwater management requirements less stringent than those set forth in this section if the administering authority determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under Wis. Admin. Code § NR 151.

Sec. 22-324. Permitting requirements, procedures and fees.

- (a) *Permit required.* No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the administering authority prior to commencing the proposed activity.
- (b) *Permit application and fees.* Unless specifically excluded by this article, any responsible party desiring a permit shall submit to the administering authority a permit application made on a form provided by the administering authority for that purpose.
 - (1) Unless otherwise excepted by this article, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a non-refundable permit administration fee.
 - (2) The stormwater management plan shall be prepared to meet the requirements of sections [22-323](#) and [22-325](#), the maintenance agreement shall be prepared to meet the requirements of [section 22-326](#), the financial guarantee shall meet the requirements of [section 22-327](#), and fees shall be those established by the City Council as set forth in [section 22-328](#).
- (c) *Review and approval of permit application.* The administering authority shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
 - (1) Within 20 business days of the receipt of a complete permit application, including all items as required by subsection 22-324(b), the administering authority shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this article.

- (2) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made pursuant to subsection 22-323(e), the administering authority shall issue the permit.
 - (3) If the stormwater permit application, plan or maintenance agreement is disapproved, the administering authority shall detail in writing the reasons for disapproval.
 - (4) The administering authority may request additional information from the applicant. If additional information is submitted, the administering authority shall have 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.
 - (5) Failure by the administering authority to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (d) *Permit requirements.* All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The administering authority may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the administering authority to suspend or revoke this permit may be appealed in accordance with [section 22-263](#).
- (1) 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.
 - (2) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
 - (3) The responsible party shall notify the administering authority at least ten business days before commencing any work in conjunction with the stormwater management plan, and within ten business days upon completion of the stormwater management practices. If required as a special condition under subsection 22-324(e), the responsible party shall make additional notification according to a schedule set forth by the administering authority so that practice installations can be inspected during construction.
 - (4) Practice installations required as part of this article shall be certified "as built" by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the administering authority or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The administering authority or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
 - (5) The responsible party shall notify the administering authority of any significant modifications it intends to make to an approved stormwater management plan. The administering authority may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
 - (6) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (7) The responsible party authorizes the administering authority to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under [section 22-327](#).

- (8) If so directed by the administering authority, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
- (9) The responsible party shall permit property access to the administering authority or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
- (10) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the administering authority may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
- (11) The responsible party is subject to the enforcement actions and penalties detailed in [section 22-329](#), if the responsible party fails to comply with the terms of this permit.
- (12) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.
- (e) *Permit conditions.* Permits issued under this subsection may include conditions established by administering authority in addition to the requirements needed to meet the performance standards in [section 22-323](#) or a financial guarantee as provided for in [section 22-327](#).
- (f) *Permit duration.* Permits issued under this section shall be valid from the date of issuance through the date the administering authority notifies the responsible party that all stormwater management practices have passed the final inspection required under subsection 22-324(d)(4).
- (g) *Alternate requirements.* The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection [22-323\(e\)](#) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 22-325. Stormwater management plan.

- (a) *Plan requirements.* The stormwater management plan required under subsections 22-323(b) and 22-324(b) shall comply with the City of Neenah Storm Water Reference Guide and contain at a minimum the following information:
 - (1) Name, address, and telephone number of the landowner and responsible parties.
 - (2) A legal description of the property proposed to be developed.
 - (3) Pre-development site map with property lines, disturbed limits, and drainage patterns.
 - (4) Post-development site map with property lines, disturbed limits, and drainage patterns.
 - a. Total area of disturbed impervious surfaces within the site.
 - b. Total area of new impervious surfaces within the site.
 - c. Performance standards applicable to site.
 - d. Proposed best management practices.
 - e. Groundwater, bedrock, and soil limitations.
 - f. Separation distances. Stormwater management practices shall be adequately separated from wells to prevent contamination of drinking water.

- (b) *Alternate requirements.* The administering authority may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection [22-323\(e\)](#) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 22-326. Maintenance agreement.

- (a) *Maintenance agreement required.* The maintenance agreement required under subsection [22-324\(b\)](#) for stormwater management practices shall be an agreement between the City of Neenah and the responsible party to provide for maintenance of stormwater 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 stormwater management practices.
- (b) *Agreement provisions.* The maintenance agreement shall contain the following information and provisions:
 - (1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under subsection [22-324\(b\)](#).
 - (3) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the stormwater management practices identified in the stormwater management plan required under subsection [22-324\(b\)](#).
 - (4) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in subsection [22-324\(b\)\(2\)](#).
 - (5) Authorization for the administering authority to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (6) A requirement on the administering authority to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
 - (7) Agreement that the party designated under subsection [22-326\(b\)\(3\)](#), as responsible for long term maintenance of the stormwater management practices, shall be notified by the administering authority of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the administering authority.
 - (8) Authorization of the administering authority to perform the corrected actions identified in the inspection report if the responsible party designated under subsection [22-326\(b\)\(3\)](#) does not make the required corrections in the specified time period. The City of Neenah shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of § 66, Wis. Stats.
- (c) *Alternate requirements.* The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection [22-323\(e\)](#) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 22-327. Financial guarantee.

- (a) *Establishment of the guarantee.* The administering authority may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the administering authority. The financial guarantee shall be in an amount determined by the administering authority to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the City of Neenah the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the administering authority that the requirements of this article have not been met.
- (b) *Conditions for release.* Conditions for the release of the financial guarantee are as follows:
 - (1) The administering authority shall release the portion of the financial guarantee established under this section, less any costs incurred by the City of Neenah to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The administering authority may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (2) The administering authority shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the City of Neenah, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.
- (c) *Alternate requirements.* The administering authority may prescribe alternative requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection [22-323\(e\)](#) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

Sec. 22-328. Reserved.

Sec. 22-329. Enforcement—Division 3.

- (a) Any land disturbing construction activity or post-construction runoff initiated after the effective date of the ordinance from which this article is derived 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 article.
- (b) The administering authority shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (c) Upon receipt of written notification from the administering authority under subsection [22-329\(b\)](#), the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the administering authority in the notice.
- (d) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the administering authority may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Neenah plus interest and legal costs shall be billed to the responsible party.
- (e) The administering authority is authorized to post a stop work order on all land disturbing construction activity that is in violation of this article ordinance, or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (f) The administering authority may revoke a permit issued under this article for non-compliance with article provisions.

- (g) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the administering authority or by a court with jurisdiction.
- (h) The administering authority is authorized to refer any violation of this article, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (i) 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 \$25.00 dollars or more than \$500.00 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (j) Compliance with the provisions of this article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (k) When the administering authority determines that the holder of a permit issued pursuant to this article has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the administering authority or a party designated by the administering authority may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The administering authority shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to [section 22-327](#). 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.

Sec. 22-330—22-350. Reserved.

Section 2. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 3. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Bates/Lendrum
 Adopted: April 5, 2017
 Approved: 8-0 April 5, 2017
 Published: April 10, 2017

Approved:



Dean R. Kaufert, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
 City Attorney James G. Godlewski
 211 Walnut Street
 Neenah WI 54956
 State Bar No. 1005210

