Secs. 10-325—10-360. Reserved.

Article IX. Erosion Control

Cross reference— Environment, ch. 22

Sec. 10-361. Authority.

This article is adopted pursuant to the authority granted by Wis. Stats. § 60.627.
(Code 1982, § 12.23(1))

Sec. 10-362. Findings and purpose.

(a) *Findings.* The town board finds that runoff from potential and current land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state and the town, and to adjacent properties.

(b) *Purpose.* It is the purpose of this article to preserve the natural resources, to protect the quality of the waters of the state and town, and to protect and promote the health, safety and welfare of the people, to the extent practicable, by minimizing the amount of sediment and other pollutants carried by runoff or discharge from land disturbing construction activity to waters of the state, and to adjacent properties.

(Code 1982, § 12.23(2))

Sec. 10-363. Applicability and jurisdiction.

This article applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the town where the construction activities do not include the construction of a building, as well as to the division of land within the boundaries of the town.
(Code 1982, § 12.23(3))

Sec. 10-364. Exemptions.

This article does not apply to the following:

(1) Land disturbing construction activity otherwise regulated by the state department of commerce under Wis. Admin. Code § Comm 21.125 and Wis. Admin. Code § Comm 50.115.

(2) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity.

(3) Land disturbing construction activity affecting a surface area of 8,000 square feet or less or involves the excavation or filling, or a combination of excavation and filling, affecting less than 300 cubic yards or more of dirt, sand, or other excavation or fill material.

(Code 1982, § 12.23(4))

Sec. 10-365. 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:

Agricultural land use means the use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock, including sod farms and tree nurseries, but does not include the construction of buildings or facilities used for agriculture.

Best management practice (BMP) means a structural or nonstructural practice, technique or measure, facility, system of practices or device that reduces soil, sediment or pollutants carried in runoff to waters of the state to a level compatible with the pollution control requirements of this article.

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

Erosion means the detachment and movement of soil, sediment particles or rock fragments by water, wind, ice or gravity.

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

Final stabilization means all land disturbing construction activities at the construction site have been completed and 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 employment of equivalent permanent stabilization measures.

Land disturbing construction activity means any manmade alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural land uses, silviculture activities or routine maintenance for project sites that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

Landowner means any person holding fee title, an easement or other interest in property, which allows a person to undertake land disturbing construction activity on the property.

Maximum extent practicable (MEP) means a level of implementing best management practices in order to achieve a performance standard specified in this article which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. The term "maximum extent practicable" allows flexibility in how performance standards are met and may vary based on the performance standard and site conditions.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water (Wis. Stats. § 283.01(13)).

Pollution means contaminating or rendering unclean or impure the waters of the state, or making the waters injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life (Wis. Stats. § 281.01(10)).

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

Sediment means settleable soil, rock fragments and other solids carried in runoff.

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 draining to a stormwater treatment device or system; and

(4) Discharges directly or indirectly to waters of the state.

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

Technical standard means an established criterion for planning, performance, design, operation or maintenance for a best management practice.

Waters of the state means those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction (Wis. Stats. § 281.01(18)).

(Code 1982, § 12.23(5))
Cross reference— Definitions generally, § 1-2.

Sec. 10-366. Design criteria, standards, and specifications.

All best management practices required to comply with this article shall meet the design criteria, standards and specifications based on any of the following unless otherwise approved by the town engineer:

(1) Accepted design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November 1993 Revision.

(2) Other design guidance and technical standards identified, developed or disseminated by the state department of natural resources under subchapter V of Wis. Admin. Code ch. NR 151.

(Code 1982, § 12.23(6))

Sec. 10-367. Maintenance.

The landowner throughout the duration of the construction activities shall maintain all best management practices necessary to meet the requirements of this article.
(Code 1982, § 12.23(7))

Sec. 10-368. Control of erosion and pollutants during land disturbing construction activity.

(a) *Responsible party.* The landowner shall be responsible for complying with this section.

(b) *Erosion and other pollutant control requirements.* A written plan to reduce sediment and the pollutants identified in subsection (c) of this section from entering waters of the state, or separate storm sewers connecting to waters of the state, shall be developed in accordance with section 10-370 and implemented at each construction site.

(1) The plan shall utilize best management practices that are designed, installed or applied and maintained throughout the duration of land disturbing construction activities until the construction site has undergone final stabilization.

(2) Best management practices, by design, shall reduce sediment carried in runoff that enters waters of the state or enters a separate storm sewer connecting to waters of the state to the maximum extent practicable.

a. The goal is to develop and implement best management practices that, by design reduce the average annual sediment load carried in runoff by 80 percent, as compared to no sediment or erosion controls throughout the duration of the construction project. Erosion and sediment control best management practices may be used alone or in combination to meet this requirement. Credit toward meeting the sediment reduction goals may be given for limiting the duration or area, or both, of land disturbing construction activity.

b. If best management practices cannot be designed to reduce the average annual sediment load by 80 percent, the plan shall include a written and site-specific explanation as to why the 80 percent reduction goal is not attained.

c. Where appropriate, sediment controls shall be implemented to do all of the following to the maximum extent practicable:

1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.

2. Prevent the discharge of sediment as part of site dewatering.

3. Prevent sediment from entering a separate storm sewer.

(3) Where appropriate, the use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed to prevent their entrance into waters of the state or into a separate storm sewer connecting to waters of the state. However, this subsection does not prohibit projects that require the placement of these materials in waters of the state, such as constructing bridge footings.

(c) *Location.* The best management practices required to comply with this article may be located on or off the construction site but shall be installed before runoff enters waters of the state or a separate storm sewer connecting to waters of the state.

(d) *Regional treatment exclusion.* Runoff within a nonnavigable drainage-way that flows into a best management practice is not required to meet the performance standards of this article. The discharge of runoff from such a best management practice or after a series of such best management practices is subject to this article.

(Code 1982, § 12.23(8))

Sec. 10-369. Permit application, control plan, and permit issuance.

(a) *Application and fees.* No landowner may commence a land disturbing construction activity subject to this article without receiving prior approval of an erosion and sediment control plan for the site and a permit from the town board. At least one landowner controlling or using the site and desiring to undertake a land disturbing construction activity subject to this article shall submit an application for a permit and an erosion and sediment control plan and pay an application fee as set forth in the schedule of fees on file in the town clerk's office, which may be revised by town board resolution. By submitting an application, the applicant is authorizing the town engineer or his designee to enter the site to obtain information required for the review of the erosion and sediment control plan. The town reserves the right to require an additional fee to reimburse the town for engineering-related costs, including costs of inspection, not covered by the application fee.

(b) *Permit duration.* Permits issued under this article 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 town board may extend the period one or more times for up to an additional 180 days. The town engineer may require additional best management practices as a condition of the extension if they are necessary to meet the requirements of this article.

(c) *Surety bond.* As a condition of approval and issuance of the permit, the town board may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

(d) *Permit conditions.* All permits shall require the landowner to:

(1) Notify the clerk-treasurer within 48 hours of commencing any land disturbing construction activity.

(2) Notify the clerk-treasurer of completion of any best management practices within 14 days after their installation.

(3) Obtain permission in writing from the town engineer prior to modifying the erosion and sediment control plan.

(4) Install all best management practices as identified in the approved erosion and sediment control plan.

(5) Maintain all road drainage systems, stormwater drainage systems, best management practices 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 a site erosion control log.

(7) Inspect the best management practices after each rain of 0.5 inches or more and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection and the name of the person conducting the inspection.

(8) Allow the town engineer, or his designee, 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.

(9) Keep a copy of the erosion and sediment control plan at the construction site.

(Code 1982, § 12.23(8); Ord. No. 2008-01, § 20, 12-22-2008)

Sec. 10-370. Erosion and sediment control plan, statement and review.

(a) *Erosion and sediment control plan.*

(1) An erosion and sediment control plan shall be prepared and submitted to the clerk-treasurer.

(2) The erosion and sediment control plan shall be designed to meet the performance standards, technical standards and other requirements of this article.

(3) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:

a. Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.

b. Description of the intended sequence of major activities which disturb soils for major portions of the site, such as grubbing, excavation or grading.

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.

d. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.

e. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.

f. Existing data describing the surface soil as well as subsoils.

g. Depth to groundwater, as indicated by natural resources conservation service soil information where available, except when permanent infiltration systems are used, the depth to groundwater shall be as outlined in subsection (a)(4) of this section.

h. Name of the immediate receiving water named on the appropriate United States Geological Service 7.5 minute series topographic map.

(4) If permanent infiltration systems are used, the erosion and sediment control plan shall require appropriate on-site testing to be conducted to determine if seasonal high water is within five feet of the bottom of the proposed practice. If permanent infiltration structures are used and there is a municipal well within 400 feet, or a nonpublic well within 100 feet, the groundwater flow shall be identified in accordance with the provisions specified in either Wis. Admin. Code chs. NR 110 or 214.

(5) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.

a. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year floodplains, flood fringes and floodways shall also be shown.

b. Boundaries of the construction site.

c. Drainage patterns and approximate slopes anticipated after major grading activities.

d. Areas of soil disturbance.

e. Location of major structural and nonstructural controls identified in the plan.

f. Location of areas where stabilization practices will be employed.

g. Areas which will be vegetated following construction.

h. Wetlands, area extent of wetland acreage on the site and locations where stormwater is discharged to a surface water or wetland.

i. Locations of all surface waters and wetlands within one mile of the construction site.

j. Alphanumeric or equivalent grid overlying the entire construction site map.

(6) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall be at the same scale as the site map under subsection (a)(5) of this section and shall clearly show the site changes. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

a. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the town engineer, structural measures shall be installed on upland soils.

c. Management of overland flow at all sites, unless otherwise controlled by outfall controls.

d. Trapping of sediment in channelized flow.

e. Staging construction to limit bare areas subject to erosion.

f. Protection of down slope drainage inlets where they occur.

g. Minimization of tracking at all sites.

h. Clean up of off-site sediment deposits.

i. Proper disposal of building and waste materials at all sites.

j. Stabilization of drainageways.

k. Control of soil erosion from dirt stockpiles.

l. Installation of permanent stabilization practices as soon as possible after final grading.

m. Minimization of dust to the maximum extent practicable.

(7) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a nonerosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.

(8) If best management practices cannot be designed to reduce the average annual sediment load by 80 percent, the plan shall include a written and site-specific explanation as to why the 80 percent reduction goal is not attained. Note: The plan requirements of this subsection will meet the plan requirements of Wis. Admin. Code § NR 216.46, when prepared in accordance with good engineering practices and the design criteria, 33 standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook (WDNR Pub. WR-222 November 1993 Revision).

(b) *Erosion and sediment control plan statement.* An erosion and sediment control plan statement shall be prepared for each construction site unless exempted under section 10-364. This statement shall be submitted to the clerk-treasurer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the section, including the site development schedule.

(c) *Review of the erosion and sediment control plan.* Within 45 days of receipt of the permit application, erosion and sediment control plan or plan statement and application fee, the town board, with the assistance of the town engineer, shall review the application and the control plan or plan statement to determine if the requirements of this article are met. The town board may request comments from other departments or agencies. If the requirements of this article are met, the town board shall approve the plan or plan statement, inform the applicant and issue a permit. If the conditions are not met, the town board shall inform the applicant in writing and may either require needed

information or disapprove the plan or plan statement. Within 30 days of receipt of needed information, the town board shall again determine if the plan or plan statement meets the requirements of this article. If the plan or plan statement is disapproved, the town board shall inform the applicant in writing of the reasons for the disapproval.

(Code 1982, § 12.23(9))

Sec. 10-371. Inspection.

(a) The town engineer, or his designee shall inspect any construction site that holds a permit under this chapter at least once a month during the period starting March 1 and ending October 31 and at least two times during the period starting November 1 and ending February 28 to ensure compliance with the approved sediment and erosion control plan.

(b) If land disturbing construction activities are being carried out without a permit required by this article, the town personnel may enter the land pursuant to the provisions of Wis. Stats. §§ 66.122 and 66.123.

(Code 1982, § 12.23(10))

Sec. 10-372. Enforcement.

(a) The town engineer, or his designee, may post a stop work order if any of the following occurs:

(1) Any land disturbing construction activity regulated under this article is being undertaken without a permit.

(2) The erosion and sediment control plan is not being implemented in a good faith manner.

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

(b) If the landowner does not cease activity as required in a stop work order posted under this article or fails to comply with the erosion and sediment control plan or permit conditions within ten days of being notified by the town engineer, or his designee, the town board may revoke the permit.

(c) If the landowner where no permit has been issued does not cease the activity within ten days of being notified by the town engineer, or his designee, or if a landowner violates a stop work order posted under subsection (a) of this section, the town board may request the town attorney to obtain a cease and desist order in any court with jurisdiction.

(d) The town board or town engineer may retract the stop work order issued under subsection (a) of this section or the permit revocation under subsection (b) of this section.

(e) Ten days after posting a stop work order under subsection (a) of this section, the town board may issue a notice of intent to the landowner of its intent to perform work necessary to comply with this article. The town may go on the land and commence the work after 14 days from issuing the notice of intent. The costs of the work performed by the town, plus interest at the rate authorized by the town shall be billed to the landowner. If a landowner fails to pay the amount due, the clerk-treasurer shall enter the amount due on the tax rolls and collect as a special charge against the property pursuant to Wis. Stats. § 66.0627.

(f) Any person violating any of the provisions of this article 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 article may also be enforced by injunction in any court with jurisdiction.

(Code 1982, § 12.23(11))

Sec. 10-373. Appeals.

Any aggrieved person may seek review of a determination made by the town engineer, under this article, in accordance with chapter 2, article VII.
(Code 1982, § 12.23(12))