

**ORDINANCE NO. 2008-31**

**AN ORDINANCE REPEALING SECTION 13.21 STORMWATER MANAGEMENT OF CHAPTER 13, MUNICIPAL UTILITIES, AND CHAPTER 22, EROSION CONTROL, AND RECREATING AND CREATING CHAPTER 22, EROSION CONTROL, STORMWATER MANAGEMENT AND ILLICIT DISCHARGES AND CONNECTIONS OF THE VILLAGE OF HOWARD MUNICIPAL CODE, BROWN COUNTY, WISCONSIN**

THE VILLAGE BOARD OF THE VILLAGE OF HOWARD DOES HEREBY ORDAIN THAT SECTION 13.21 STORMWATER MANAGEMENT OF CHAPTER 13, MUNICIPAL UTILITIES, AND CHAPTER 22, EROSION CONTROL BE REPEALED AND CHAPTER 22, EROSION CONTROL, STORMWATER MANAGEMENT AND ILLICIT DISCHARGES AND CONNECTIONS BE RECREATED AND CREATED TO READ AS FOLLOWS:

**SECTION 1.** That CHAPTER 22 “EROSION CONTROL, STORMWATER MANAGEMENT AND ILLICIT DISCHARGES AND CONNECTIONS” is hereby created to read as follows:

**SECTION 2. Sec. 22-22 CONSTRUCTION SITE EROSION CONTROL.**

**Sec. 22-22.01 AUTHORITY.**

- (1) This ordinance is adopted under the authority granted by S. 61.354, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 61.35, Wis. Stats., that relates to construction site erosion control. Except as otherwise specified in s. 61.354 Wis. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Village Board hereby designates the Director of Code Administration to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
  - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.

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

**Sec. 22-22.02 FINDINGS OF FACT.**

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

**Sec. 22-22.03 PURPOSE.**

It is the purpose of this ordinance 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 Village of Howard.

**Sec. 22-22.04 APPLICABILITY AND JURISDICTION.**

(1) APPLICABILITY.

- (a) This ordinance applies to the following land disturbing construction activities except as provided under sub. (b):
  - 1. A construction site, which has 4,000 square feet or greater of land disturbing construction activity.
  - 2. A construction site, which has 100 cubic yards or greater of excavation volume, filling volume, or some combination of excavation and filling volume.
  - 3. A construction site, which has 100 linear feet or greater of land disturbance to a highway, street, driveway, swale, ditch, or other non-agricultural drainage facility which conveys concentrated flow.
- (b) This ordinance does not apply to the following:
  - 1. Nonpoint discharges from agricultural activity areas.
  - 2. Nonpoint discharges from silviculture activities.
  - 3. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
  - 4. This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district

attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

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

(2) JURISDICTION.

This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the Village of Howard.

(3) EXEMPTIONS.

(a) The following activities are exempt from Sec. 22-22.06, Sec. 22-22.07, Sec. 22-22.08 except sub. (1) & sub. (2), Sec. 22-22.09, Sec. 22-22.10, Sec. 22-22.11 & Sec. 22-22.12:

- 1. Land disturbing construction activity that includes the construction of 1- and 2-family dwellings or multi-family dwellings or public buildings & places of employment that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance, except where the Wisconsin Department of Commerce has granted authority to the Village of Howard to regulate erosion control at these sites. These construction sites are regulated by the Wisconsin Department of Commerce under s. COMM 21.125 and COMM 61.115 Wis. Adm. Code.

**Sec. 22-22.05 DEFINITIONS.**

- (1) "Administering authority" means a governmental employee or their designee empowered under s. 61.354, Wis. Stats., that is designated by the Village Board to administer this ordinance.
- (2) "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.
- (3) "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.
- (4) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical. For purposes of this ordinance, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.
  - (5) "BMP's" or "Best management practice" 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.
  - (6) "Business day" means a day the office of the Administering Authority is routinely and customarily open for business.
  - (7) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
  - (8) "Director of Code Administration" see "Administering Authority".
  - (9) "Combined Sewer System" means system for conveying both sanitary sewage and storm water runoff.
  - (10) "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. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.
  - (11) "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.
  - (12) "Development" means residential, commercial, industrial, institutional, or other land uses and associated roads.
  - (13) "Disturbance" see "land disturbing construction activity".
  - (14) "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 5 year period.
  - (15) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
  - (16) "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.
  - (17) "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
  - (18) "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.

- (19) "Governing body" means the Village Board of Trustees.
- (20) "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 sediment into waters of the state. Land disturbing construction activity includes, but is not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
- (21) "MEP" or "maximum extent practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
- (22) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (23) "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.
- (24) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (25) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (26) "Protective area" has the meaning given in 23.07(3)(d) of the Village of Howard Post-Construction Storm Water Management Ordinance.
- (27) "Responsible party" means any entity holding fee title to the property.
- (28) "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.
- (29) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (30) "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 or pipes, which meets all of the following criteria:
  - (a) Is designed or used for collecting water or conveying runoff.

- (b) Is not part of a combined sewer system.
  - (c) Is not draining to an erosion control treatment device or system.
  - (d) Discharges directly or indirectly to waters of the state.
- (31) "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.
  - (32) "Stop work order" means an order issued by the Administering Authority which requires that all construction activity on the site be stopped.
  - (33) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method. Also see (BMP's).
  - (34) "Waters of the state" has the meaning given in s. 281.01 (18), Wis. Stats.

**Sec. 22-22.06 TECHNICAL STANDARDS.**

- (1) DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS. All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:
  - (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
  - (b) For this ordinance, average annual basis 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.

**Sec. 22-22.07 PERFORMANCE STANDARDS.**

- (1) RESPONSIBLE PARTY. The responsible party shall implement an erosion and sediment control plan, developed in accordance with Sec. 22-22.09 that incorporates the requirements of this section.
- (2) PLAN. A written erosion and sediment control plan shall be developed in accordance with Sec. 22-22.09 and implemented for each construction site.
- (3) REQUIREMENTS. The erosion and sediment control plan shall meet the following minimum requirements:

- (a) BMPs shall be designed, installed and maintained to control the total suspended solids carried in runoff from the construction site, to the maximum extent practicable, as follows.
    - 1. Construction sites with 1 acre or greater of land disturbing construction activity, shall reduce the total suspended solids load by 80%, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
    - 2. Construction sites with less than 1 acre of land disturbing construction activity are not required to satisfy a numeric performance standard.
  - (b) Notwithstanding par. (a), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
  - (c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
    - 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 de-watering.
    - 3. Protect the separate storm sewer from receiving sediment.
  - (d) The use, storage and disposal of building materials, chemicals, cement, concrete truck washout, litter, sanitary waste, and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into separate storm sewers, waters of the state and from leaving the site (by water, wind, etc.) except using legal waste disposal means and methods. However, projects that require the placement of these materials, and are authorized by permit to be located in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.
- (4) LOCATION. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.
- (5) ALTERNATE REQUIREMENTS. The Administering Authority may establish requirements more stringent than those set forth in this section if the Administering Authority determines that an added level of protection is needed for sensitive resources.

**Sec. 22-22.08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.**

- (1) PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving a construction site erosion control permit from the Administering Authority.
  
- (2) PERMIT APPLICATION AND FEES. The responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec/ 22-22.09 and shall pay a non refundable application fee to the Administering Authority.
  - (a) The permit fee for all activities shall be \$350 each permit plus \$30 per "disturbance" acre except that the permit fee for construction of each 1-2 family dwellings shall be \$100.00. The fees may from time to time be modified by resolution. A schedule of the fees established by the Administering Authority shall be available for review in the office of the Administering Authority.
  - (b) By submitting an application, the applicant is authorizing the Administering Authority to enter the site to obtain information required for the review of the permit application and erosion and sediment control plan.
  
- (3) 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:
  - (a) Within 20 business days of the receipt of a complete permit application, as required by sub. (2), the Administering Authority shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
  - (b) If the permit application and plan are approved, the Administering Authority shall issue the permit.
  - (c) If the permit application or plan is disapproved, the Administering Authority shall state in writing the reasons for disapproval.
  - (d) 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.
  - (e) 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.

(4) 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 maintenance of the Erosion and Sediment Control Plan during the proposed construction period. The financial guarantee shall give the Administering Authority the authorization to use the funds to complete and maintain the erosion & sediment control plan and other requirements of the ordinance, if the responsible party defaults or does not properly implement the approved plan, upon written notice to the responsible party, by the Administering Authority that the requirements of this ordinance 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 Director of Code Administration to complete installation and maintenance of BMP's, upon final stabilization .
  - 2. The Administering Authority may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

(5) PERMIT CONDITIONS. All permits shall require the responsible party to:

- (a) Obtain permission in writing from the Administering Authority prior to any modifications of the erosion and sediment control plan.
- (b) Install all BMPs as identified in the approved erosion and sediment control plan.
- (c) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
- (d) 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.
- (e) 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.

- (f) 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, storm water management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.
- (g) PERMIT CONDITIONS. Permits issued under this section may include additional conditions or BMP's established by Administering Authority in addition to the requirements set forth in above, where needed to assure compliance with the performance standards in Sec.22-22.07.

(6) PERMIT DURATION. Permits issued under this section shall be valid for the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance.

(7) 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. 22-22.09 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS.**

(1) PLAN REQUIREMENTS. For each construction site identified under Sec. 22-22.04(1)(a) & (c), an erosion & sediment control plan shall be prepared and submitted to the Administering Authority. The plan shall contain at a minimum the following information:

- (a) Name, address, and telephone number of the responsible party.
- (b) A site map with property lines, disturbed limits, and drainage patterns.
- (c) Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.
- (d) Proposed best management practices.
- (e) For construction sites with 1 acre or greater of land disturbing activity the plan shall also include the following:
  - 1. The plan shall be designed & stamped by a professional engineer registered in the State of Wisconsin.
  - 2. The site map shall be at a scale not greater than 100 feet per inch and contours at an interval not to exceed two feet. (Pre & post development)

3. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters, lakes, streams, wetlands, channels, ditches and other watercourses on and within 500 feet of the construction site. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
4. Boundaries of the construction site.
5. Drainage patterns and approximate slopes anticipated after major grading activities.
6. Areas of soil disturbance.
7. Location of structural and non-structural controls identified in the plan.
8. Areas which will be vegetated following construction.
9. Locations where storm water is discharged to a surface water or wetland.

(2) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. For each construction site identified under Sec. 22-22.04 (1)(a) & (c), an erosion and sediment control plan statement shall be prepared and submitted to the Administering Authority. The control plan statement shall briefly describe the site, the nature of the construction activity and include a legal description of the property to be developed. Further, it shall also include a list of the technical & performance standards applicable to the site as required by this ordinance, a description of the best management practices that will be used to meet the requirements of the ordinance, and a site development schedule.

- (a) For construction sites with 1 acre or greater of land disturbing activity, the plan statement shall also include the following:
1. The plan statement shall be prepared by a professional engineer registered in the State of Wisconsin.
  2. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
  3. Existing data describing the surface soil as well as subsoils.
  4. Interim and permanent stabilization practices.
  5. Practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site.
  6. Trapping of sediment in channelized flow.
  7. Staging construction to limit bare areas subject to erosion.
  8. Protection of downslope separate storm sewers.
  9. Minimization of tracking.
  10. Clean up of off-site sediment deposits.
  11. Proper disposal of building and waste materials.
  12. Stabilization of drainage ways.

13. Control of soil erosion from dirt stockpiles.
14. Installation of permanent stabilization practices as soon as possible after final grading.
15. Minimization of dust to the maximum extent practicable.
16. Velocity dissipation devices are placed at discharge locations as necessary to provide a non-erosive flow from conveyance structures to a water course.

- (3) **AMENDMENTS.** The applicant shall amend the plan if any of the following occur:
- (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.
  - (b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
  - (c) The Administering Authority notifies the applicant of changes needed in the plan.
  - (d) Each amendment shall include a fee at ½ of the original fee.

**Sec. 22-22.10 INSPECTION.**

- (1) The Administering Authority may inspect any construction site that holds a permit under this chapter to ensure compliance with the approved sediment and erosion control plan as frequently as needed. Said inspections shall document in writing the conditions of site, compliance with permitting and note all items in need of corrective action in order to maintain compliance with this ordinance.
- (2) If land disturbing construction activities are being carried out without a permit required by this ordinance, the Administering Authority may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats. for inspection of site conditions, and to take enforcement actions.

**Sec. 22-22.11 ENFORCEMENT.**

- (1) Any responsible party violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$200 nor more than \$500 dollars per offence, together with the costs of prosecution. Each day a violation exists shall constitute a separate offense.

- (2) Any land disturbing construction activity or post-construction runoff initiated by any person, firm, association, or corporation subject to the provisions of this ordinance shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (3) The Administering Authority shall post a stop-work order if any of the following occurs:
  - (a) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
  - (b) The erosion and sediment control plan is not being implemented in a good faith manner.
  - (c) The conditions of the permit are not being met.
- (4) The Administering Authority shall notify the responsible party, by mail, e-mail, fax or in person, of any non-complying land disturbing construction activity. The notice shall describe the nature of the violation, remedial actions needed, and a schedule for remedial action.
- (5) Upon receipt of written notification from the Administering Authority under sub. (4), the responsible party shall correct work that does not comply with the erosion & sediment control plan, permit, or other provisions of this ordinance. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Administering Authority in the notice.
- (6) 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.
- (7) 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 sub. (3), the Administering Authority shall request that the Village Attorney obtain a cease and desist order in any court with jurisdiction.
- (8) 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.
- (9) The Administering Authority is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the Village Attorney for the commencement of further legal proceedings in any court with jurisdiction.

- (10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (11) After posting a stop-work order under sub. (3), and providing a schedule of remedial action under sub(4), and where the responsible party has not made the required corrections under sub (5), Administering Authority may issue a notice of intent to the responsible party of the Village's intent to perform work necessary to comply with the approved plan & permit and or this ordinance. The Administering Authority may enter upon the land and perform the work after issuing the notice of intent. The Administering Authority shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses plus interest and legal fees shall be billed to the responsible party or recovered from any financial security posted pursuant to this ordinance. In the event the responsible party fails to pay the amount due, or where financial security has not been established, or where the financial security is insufficient to cover these costs, the clerk shall enter the amount due on the tax roll as a special charge against the property to be collected with any other taxes levied thereon.
- (12) If violations to this ordinance are likely to result in damage to persons, property, public facilities, or waters of the state, the Administering Authority may enter the land and take emergency actions necessary to prevent such damage without notice to the responsible party. The costs incurred by the Administering Authority plus interest and legal costs shall be billed to the responsible party in the manner specified under sub. (11).

**Sec. 22-22.12 APPEALS.**

- (1) **BOARD OF ZONING APPEALS.** The Board of Zoning Appeals created pursuant to section 1.03(1) of the Village of Howard's ordinance pursuant to s.61.354(4)(b), Wis. Stats.:
  - (a) The Board 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 ordinance except for cease and desist orders.
  - (b) The Board upon appeal, may authorize variances to any order, decision or determination made by the Administering Authority, which is not contrary to the public interest where a literal enforcement will result in unnecessary hardship; and
  - (c) The Board shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals.

- (2) **WHO MAY APPEAL.** Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the Village of Howard affected by any decision of the Administering Authority.

**Sec. 22-22.13 SEVERABILITY.**

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

**SECTION 3. Sec. 22-23 POST CONSTRUCTION STORMWATER MANAGEMENT**

**Sec. 22-23.01 AUTHORITY.**

- (1) This ordinance is adopted by the Village Board under the authority granted by s. 61.354 Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 61.35, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 61.354, Wis. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Village of Howard hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:
- (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
  - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

**Sec. 22-23.02 FINDINGS OF FACT.**

The Village of Howard finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

**Sec. 22-23.03 PURPOSE AND INTENT.**

- (1) **PURPOSE.** The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
  - (a) Further the maintenance of safe and healthful conditions.
  - (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
  - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and

transportation of particulate matter; and prevent conditions that endanger downstream property.

- (2) INTENT. It is the intent of the Village Board that this ordinance regulate post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Village Board recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state.

#### **Sec. 22-23.04 APPLICABILITY AND JURISDICTION.**

(1) APPLICABILITY.

- (a) Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this paragraph unless the site is otherwise exempt under paragraph (b).
1. 1 acre of land disturbing construction activity occurring after March 10, 2003, including land disturbing construction activity that is smaller than the minimum applicability criteria if such activities are part of a larger common plan of development or sale.
  2. Post Construction sites with a cumulative addition of 20,000 square feet or more of impervious surfaces constructed after the Village of Howard's original stormwater management ordinance 2004-29 adopted on October 13, 2004.
- (b) A post-construction site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.
1. Land disturbing construction activity that includes the construction of 1 and 2 family or multi-family dwellings or public buildings & places of employment that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance, except where the Wisconsin Department of Commerce has granted the authority to the Village of Howard to regulate storm water management on these sites. These construction sites are regulated by the Wisconsin Department of Commerce under s. Comm 21.125 & Comm 61.115 Wisconsin Administrative Code.

2. Agricultural production areas with a cumulative addition of less than 1 acre of impervious surfaces constructed after the Village of Howard's original stormwater management ordinance 2004-29 adoption date of October 13, 2004.
3. Non-point discharges from agricultural activity areas.
4. Non-point discharges from silviculture activities.
5. A redevelopment post-construction site with a total parcel area under five acres and no increase in exposed parking lots or roads.
6. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
7. Routine maintenance for project sites with less than 5 acres of land disturbance is performed to maintain the original line and grade, hydraulic capacity and original purpose of the facility.
8. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
9. Transportation facility construction projects that are exempted by federal statutes or regulations from the requirements to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity.
10. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.
  - a. Reconditioning or resurfacing of a highway.
  - b. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements with NR 151.24(6) Wisconsin Administrative Code apply to minor reconstruction of a highway.
  - c. A redevelopment transportation facility with no increase in exposed parking lots or roads.
  - d. A transportation facility with less than 10% connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.  
Projects that consist of only the construction of bicycle paths or pedestrian trails generally meet this exception as these facilities have minimal connected imperviousness.
  - e. Routine maintenance for transportation facilities if performed to maintain the original line and grade, hydraulic capacity and original purpose of the facility.
11. This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district

attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

(c) Notwithstanding the applicability requirements in paragraph (a), this ordinance 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.

(2) JURISDICTION.

This ordinance applies to post construction sites within the boundaries and jurisdiction of the Village of Howard.

**Sec. 22-23.05 DEFINITIONS.**

- (1) "Administering authority" means a governmental employee, or their designee empowered under s.61.354, Wis. Stats., that is designated by the Village Board to administer this ordinance.
- (2) "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.
- (3) "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.
- (4) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical. For purposes of this ordinance, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.
- (5) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
- (6) "Business day" means a day the office of the Administering Authority is routinely and customarily open for business.
- (7) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

- (8) "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
- (9) "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. A common plan of development or sale includes, but is not limited to, division of land, subdivision plats, certified survey maps, and other developments.
- (10) "Connected imperviousness" means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.
- (11) "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.
- (12) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The TR-55, Type II, 24-hour design storms for the Village of Howard are: 1-year, 2.2 inches; 2-year, 2.5 inches; 5-year, 3.3 inches; 10-year, 3.7 inches; 25-year, 4.3 inches; 50-year, 4.8 inches; and 100-year, 5.0 inches.
- (13) "Development" means residential, commercial, industrial, institutional, or other land uses and associated roads.
- (14) "Disturbance" see "Land Disturbing Construction Activity".
- (15) "Director of Public Works" see "Administering Authority".
- (16) "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 5 year period.
- (17) "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.
- (18) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (19) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
- (20) "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
- (21) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.
- (22) "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 ordinance are carried out in compliance with the storm water management plan.

- (23) "Governing body" means the Village Board of Trustees.
- (24) "Highway" has the meaning given in s. 340.01 (22), Wis. Stats.
- (25) "Highway reconditioning" has the meaning given in s. 84.013 (1) (b), Wis. Stats.
- (26) "Highway reconstruction" has the meaning given in s. 84.013(1) (c), Wis. Stats.
- (27) "Highway resurfacing" has the meaning given in s. 84.013(1) (d), Wis. Stats.
- (28) "Impervious surface" means an area with a surface that has been compacted or covered with a material such that it reduces natural infiltration into the soil and all or a large portion of the precipitation that falls on it is released as runoff, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious. Gravel surfaces are also considered impervious.
- (29) "In-fill area" means a new development with an onsite area less than 5 acres in size that is located within existing urban sewer service areas, surrounded by already existing development or existing development and natural or man-made features where development cannot occur.
- (30) "Infiltration" means precipitation including rain, snow or ice melt or similar water that enters or flows into or through the soil.
- (31) "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.
- (32) "Karst feature" means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
- (33) "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 sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
- (34) "Maintenance agreement" means a legal document that is recorded by the responsible party at the County Register of Deeds as a property deed restriction and provides for long-term maintenance of storm water management and best management practices.
- (35) "MEP" or "maximum extent practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

- (36) "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.
- (37) "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 or where undeveloped pervious land is converted to impervious surfaces is classified as new development. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
- (38) "Off-site" means located outside the property boundary described in the permit application.
- (39) "On-site" means located within the property boundary described in the permit application.
- (40) "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.
- (41) "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.
- (42) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve. Percent fines can be determined using the "American Society for Testing and Materials", volume 04.02, "Test Method C117-95 Standard Test Method for Materials Finer than 75- $\mu$ m (No. 200) Sieve in Mineral Aggregates by Washing".
- (43) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (44) "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.
- (45) "Permit administration fee" means a sum of money paid to the Village of Howard by the responsible party for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (46) "Pervious surface" means an area of natural or undisturbed or agricultural land that maintains natural infiltration into the soil such that a small portion of the precipitation that falls on it is released as runoff. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.
- (47) "Pollutant" has the meaning given in s. 283.01(13), Wis. Stats.
- (48) "Pollution" has the meaning given in s. 281.01(10), Wis. Stats.
- (49) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (50) "Post-development" means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.

- (51) "Pre-development" means the extent and distribution of land cover types present in its natural state before all development activity.
- (52) "Preventive action limit" has the meaning given in s. NR 140.05(17), Wis. Adm. Code.
- (53) "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 ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
- (54) "Responsible party" means any entity holding fee title to the property obligated to implement and maintain post-construction storm water BMPs.
- (55) "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, and purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower ½ of the impervious surface's granular base is not disturbed. The disturbance shall be classified as redevelopment if the lower ½ 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 ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
- (56) "Runoff" means precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (57) "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 pipe, which meets all of the following criteria:
- (a) Is designed or used for collecting water or conveying runoff.
  - (b) Is not part of a combined sewer system.
  - (c) Is not draining to a storm water treatment device or system.
  - (d) Discharges directly or indirectly to waters of the state.
- (58) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
- (59) "Stop work order" means an order issued by the Administering Authority which requires that all construction activity on the site be stopped.
- (60) "Storm water 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.

- (61) "Storm water management system plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (62) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (63) "Top of the channel" means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (64) "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.
- (65) "Transportation facility" means a public street, a public road, a public highway, a public mass transit facility, a public-use airport, a public trail or sidewalk, a public driveway, or any other public work for transportation purposes such as harbor improvements under s. 85.095(1) (b), Stats.
- (66) "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.
- (67) "Waters of the state" has the meaning given in s. 281.01 (18), Wis. Stats.

**Sec. 22-23.06 TECHNICAL STANDARDS.**

The following methods shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, and fueling / vehicle maintenance components of storm water practices needed to meet the water quality standards of this ordinance:

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Administering Authority.

**Sec. 22-23.07 PERFORMANCE STANDARDS.**

- (1) **RESPONSIBLE PARTY.** The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.

(2) PLAN. A written storm water management plan in accordance with Sec. 22-23.09 shall be developed and implemented for each post-construction site.

(3) REQUIREMENTS. The storm water management plan shall meet the following minimum requirements to the maximum extent practicable:

(a) TOTAL SUSPENDED SOLIDS. The total suspended solids reduction shall be based on the average annual rainfall, as compared to no runoff management controls. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

1. For post-construction sites the following is required:

- a. Reduce the total suspended solids load by 80% for new development.
- b. Reduce the total suspended solids load by 40% for redevelopment and routine maintenance areas.

2. The amount of total suspended solids control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

3. Notwithstanding subds. 1 to 2, if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction cannot be attained and the total suspended solids load shall be reduced to the maximum extent practicable.

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

(b) PEAK DISCHARGE. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site as follows:

1. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the 2-year, and 10-year, 24-hour design storms. The post development peak discharge rate for the 100- yr, 24 hour design storm shall be safely routed through and away from the project site. The post development peak discharge rate for 100-year 24 hour design storm shall safely be routed through and away from the project site. 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. TR-55 methodology shall be used for peak discharge calculations, unless the administering authority approves an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Peak pre-development discharge rates shall be determined using the following "pasture, grassland" runoff curve numbers under "good hydrologic conditions".

<b>Maximum Pre-Development Runoff Curve Numbers – Pasture, Grassland</b>				
<b>Hydrologic Soil Group</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Runoff Curve Number</b>	<b>39</b>	<b>61</b>	<b>74</b>	<b>80</b>

3. The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
4. 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.
5. All stormwater conveyance systems shall be designed at a minimum to completely contain peak stormwater runoff as follows:
  - a. Publicly owned open channels, storm sewers, culverts, or other conveyance systems shall be designed to contain the peak flow from the 10-year storm within the banks or pipe with no surcharging or pressurized flow.
  - b. Privately owned open channels, storm sewers, culverts or other conveyance systems shall be designed to contain the peak flow from the 5-year storm within the banks or pipe with no surcharging or pressurized flow.
  - c. The site shall be designed so that onsite areas can safely pass runoff from on site and off site tributary areas with a recurrence interval of 100 years without damage to people or property. In addition the site shall not block or impede the flow of stormwater to or from offsite areas.
6. All discharges will be restricted to public drainage systems (including storm sewers and ditches) or to waters of the state, otherwise it shall be the responsibility of the applicant to obtain from downstream property owners all easements or other necessary property interests concerning the runoff of

stormwater from the proposed development onto and through private property where tributary runoff had not done so prior to the development.

(c) INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following, except as provided in subds. 7. through 10.

1. For residential developments with 1 acre or more of land disturbance, one of the following shall be met:
  - a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
  - b. Infiltrate 25% of the post-development runoff from the 2-year 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
2. For non-residential developments with 1 acre or more of land disturbance, including commercial, industrial and institutional development, one of the following shall be met:
  - a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
  - b. Infiltrate 10% of the post-development runoff from the 2-year 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

3. 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. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the following runoff curve numbers shall be used:

<b>Maximum Pre-Development Runoff Curve Numbers – Cropland</b>				
<b>Hydrologic Soil Group</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Runoff Curve Number</b>	<b>56</b>	<b>70</b>	<b>79</b>	<b>83</b>

4. A model that calculates runoff volume, such as SLAMM, P8, or an equivalent methodology may be used.
5. The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.
6. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 10. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips. To achieve the infiltration requirement for the parking lots or roads, maximum extent practicable should not be interpreted to require significant topography changes that create an excessive financial burden. To minimize potential groundwater impacts, it is desirable to infiltrate the cleanest runoff. To achieve this, a design may propose greater infiltration of runoff from low pollutant sources such as roofs, and less from higher pollutant source areas such as parking lots.
7. Exclusions. Infiltration of runoff from the following areas is prohibited from meeting the infiltration requirements of this paragraph (c) due to the potential for ground water contamination:
  - a. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.

- b. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2) (b), Wis. Adm. Code. Runoff from tier 2 parking and rooftop areas may be infiltrated but may require pretreatment.
  - c. Fueling and vehicle maintenance areas.
  - d. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.
  - e. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this does not prohibit infiltration of roof runoff.
  - f. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
  - g. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in s. NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
  - h. Areas where contaminants of concern, as defined in s. NR 720.03(2), Wis. Adm. Code are present in the soil through which infiltration will occur.
  - i. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This does not prohibit infiltration of roof runoff.
8. Exemptions. Infiltration of runoff from the following areas is not required to meet the infiltration requirements of this paragraph (c):
- a. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
  - b. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

- c. Redevelopment and routine maintenance areas.
  - d. In-fill areas less than 5 acres.
  - e. Infiltration areas during periods when the soil on the site is frozen.
  - f. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
9. Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph.
- a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
  - b. Notwithstanding subd. par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) PROTECTIVE AREAS.

1. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location. Protective areas are as follows:
- a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in s. NR 103.04, 75 feet.
  - b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
  - c. For lakes, 50 feet.

- d. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins.
  - e. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.
  - f. In sub. 1.a., 1.d. and 1.e., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.
  - g. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
2. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m). This paragraph (d) does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.
3. This paragraph (d) applies to post-construction sites located within a protective area, except those areas exempted pursuant to sub. 6 below.
4. The following requirements shall be met:
- a. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
  - b. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be

employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur. It is recommended that seeding of non-aggressive native vegetative cover be used in the protective areas. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system that is preferable.

- c. Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources, may be located in the protective area.
5. A protective area established or created after the adoption date of this ordinance shall not be eliminated or reduced, except as allowed in subd. 6.b, c, or d below.
  6. Exemptions. The following areas are not required to meet the protective area requirements of this paragraph (d):
    - a. Redevelopment and routine maintenance areas provided the minimum requirements within in subd. 5 above are satisfied.
    - b. Structures that cross or access surface waters such as boat landings, bridges and culverts.
    - c. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.
    - d. Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability. A vegetated protective area to filter runoff pollutants from post-construction sites described in subd. 6.d is not necessary since runoff is not entering the surface water at that location. Other practices, necessary to meet the requirements of this section, such as a swale or basin, will need to be designed and implemented to reduce runoff pollutants before the runoff enters a surface water of the state.
- (e) **FUELING AND VEHICLE MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen. A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

- (4) GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in managing runoff:
- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
  - (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (5) LOCATION AND REGIONAL TREATMENT OPTION.
- (a) The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.
  - (b) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in non-navigable surface waters.
  - (c) Except as allowed under par. (d), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
  - (d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this ordinance if:
    - 1. The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Wis. Stats., permit; and
    - 2. The BMP is designed to provide runoff treatment from future upland development.
  - (e) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
    - 1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
    - 2. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as ch. NR 103, Wis. Adm. Code and ch. 30, Wis. Stats.
  - (f) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.
  - (g) The Administering Authority may approve off-site management measures provided that all of the following conditions are met:
    - 1. The Administering Authority determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Village of Howard and that contains management requirements consistent with the purpose and intent of this ordinance.
    - 2. The off-site facility meets all of the following conditions:

- a. The facility is in place.
    - b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
    - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
  - (h) Where a regional treatment option exists such that the 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 include but is not limited to an equitable distribution of the cost for land, engineering design, construction, interest and maintenance of the regional treatment option.
- (6) **ALTERNATE REQUIREMENTS.** The Administering Authority may establish storm water 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 storm water 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 NR 151 Wisconsin Administrative Code.

**Sec. 22-23.08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.**

- (1) **PERMIT REQUIRED.** No responsible party may undertake a land disturbing construction activity without receiving a post-construction stormwater management permit from the Administering Authority.
- (2) **PERMIT APPLICATION AND FEES.** The responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit to the Administering Authority a permit application made on a form provided by the Administering Authority for that purpose.
  - (a) A permit application must be accompanied by a storm water management plan, a maintenance agreement, a non-refundable permit administration fee, and if required a financial guarantee.
  - (b) The stormwater management plan shall be prepared to meet the requirements of Sec. 22-23.07, and Sec. 22-23.09. The maintenance agreement shall be prepared to meet the requirements of Sec. 22-23.10 and the financial guarantee shall meet the requirements of Sec. 22-23.11.

- (c) The fee shall be \$500 plus \$50 per disturbance acre. The fee may from time to time be modified by resolution. A schedule of the fees established by the Administering Authority shall be available for review in the office of the Department of Public Works.
  - (d) By submitting an application, the applicant is authorizing the Administering Authority to enter the site to obtain information required for the review of the permit application.
- (3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The Administering Authority shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the financial guarantee if required. The following approval procedure shall be used:
- (a) Within 60 calendar days of the receipt of a complete permit application, including all items as required by sub. (2), the Administering Authority shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
  - (b) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the Administering Authority shall issue the permit.
  - (c) If the storm water permit application, plan or maintenance agreement is disapproved, the Administering Authority shall detail in writing the reasons for disapproval.
  - (d) The Administering Authority may request additional information from the applicant. If additional information is submitted, the Administering Authority shall have 60 calendar days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
  - (e) Failure by the Administering Authority to inform the permit applicant of a decision within 60 calendar days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) PERMIT CONDITIONS. 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 Sec. 22-23.14.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
  - (b) The responsible party, may construct the proposed site development, and shall install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.

- (c) The BMP installations required as part of the approved storm water management plan and the developed site development condition shall be certified "built according to the approved plan" by a licensed professional engineer. The approved plan is the storm water management plan retained "on file" in the office of the Administering Authority that is signed by the responsible party. Said Engineer shall submit a signed certificate, after completing a detailed survey of the installed storm water facilities and developed site conditions. The engineer shall state that the extent and type of proposed development, storm water conveyances and BMP's are in accordance with the approved storm water management plan and all of the permit conditions, as personally reviewed by the professional engineer, in the office of the Administering Authority. The completed storm water BMP's and site development conditions may be inspected by the Administering Authority to determine if they are in accordance with the approved storm water management plan, permit and ordinance, at any time, before or after certification. The Administering Authority shall notify the responsible party in writing of any changes required to bring any practices into compliance with the conditions of the permit.
- (d) The responsible party shall notify the Administering Authority in writing of any modifications it intends to make to an approved storm water management plan. Modifications shall be submitted to the Administering Authority for approval prior to incorporation into the storm water management plan and execution by the responsible party. Modifications approved by Administering Authority shall be made in writing. Significant modifications may require the submittal of a new permit application and fees as determined by the Administering Authority.
- (e) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan.
- (f) The responsible party authorizes the Administering Authority to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and/or Maintenance Agreement, and consents to a special charge to be entered on the tax role against the property to be collected with any other taxes levied thereon, or charging such costs against the financial guarantee posted under Sec. 22-23.11.
- (g) 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 storm water management plan.
- (h) 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 storm water management plan and this permit.

- (i) 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.
  - (j) The responsible party is subject to the enforcement actions and penalties detailed in Sec. 22-23.13, if the responsible party fails to comply with the terms of this permit.
  - (k) Permits issued under this subsection may include additional conditions established by Administering Authority needed to meet the performance standards in Sec. 22-23.07 or a financial guarantee as provided for in Sec. 22-23.11.
- (5) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date that all storm water management practices have passed the certification required under sub. (4)(d).
- (6) **ALTERNATE REQUIREMENTS.** The Administering Authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 22-23.07 (5).

**Sec. 22-23.09 STORM WATER MANAGEMENT PLAN.**

- (1) **PLAN REQUIREMENTS.** The storm water management plan required under Sec. 22-23.08 (2) shall be prepared, designed, and stamped by a professional engineer registered in the State of Wisconsin and contain at a minimum the following information:
- (a) Name, address, and telephone number of the responsible party including signature on the plan sheets and report cover.
  - (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or lot numbers within a recorded certified survey map or plat.
  - (c) Pre-development site conditions, including:
    - 1. One or more site maps at a scale of not less than 1 inch equals 50 feet. The site maps shall show the following; site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 1 foot; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyances; watershed boundaries used in hydrology determinations to

show compliance with performance standards; lakes, streams, wetlands channels ditches and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis.

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

(d) Post-development site conditions, including:

1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff direction, rates and volumes to surface waters and wetlands.
2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
3. One or more site maps at a scale of not less than 1 inch equals 50 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed 1 foot; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyances; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including

cross-sections and profiles of all permanent storm water conveyance and treatment practices.

- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in Sec. 22-23.07.
  - (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
  - (g) Other information requested in writing by the Administering Authority to determine compliance of the proposed storm water management measures with the provisions of this ordinance.
  - (h) All site investigations, plans, designs, computations, and drawings shall be stamped by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this ordinance.
- (2) ALTERNATE REQUIREMENTS. The Administering Authority may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 22-23.07 (5).

**Sec. 22-23.10 MAINTENANCE AGREEMENT.**

- (1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under Sec. 22-23.08 (2) for storm water management practices shall be an agreement between the Village of Howard and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be recorded by the responsible party with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices. The responsible party shall provide a title search in the form of a letter report from a title company stating ownership. In the case of a partnership or corporation, the responsible party shall provide proof of authorization for execution of the maintenance agreement on behalf of the corporation, or partnership.
- (2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by Sec. 22-23.09(1) (f):
- (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.

- (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under Sec. 22-23.08 (2).
  - (c) Identification of the responsible party(s), responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under Sec. 22-23.08 (2).
  - (d) Requirement that the responsible party, shall maintain storm water management practices including maintenance records in accordance with the schedule included in par. (b) and as detailed in the approved stormwater plan.
  - (e) Authorization for the Administering Authority to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
  - (f) A requirement on the Administering Authority to maintain records of the results of any site inspections and to inform the responsible party of any corrective actions required to bring the storm water management practice into proper working condition.
  - (g) Agreement that the party designated under par. (c), as responsible for installation and long term maintenance of the storm water management practices, may be notified by the Administering Authority of problems which require correction, and that the specified remedial corrective actions shall be undertaken within a reasonable time frame as set by the Administering Authority.
  - (h) Authorization of the Administering Authority to perform the remedial corrective actions identified in the written notice if the responsible party designated under par. (c) does not make the required corrections in the specified time period, and that the Administering Authority shall recover the cost of the required corrections per Sec. 22-23.13(11), and take emergency action to protect persons, property, public facilities, or waters of the state without notice and recover costs per Sec. 22-23.13(12).
  - (i) The responsible party shall immediately upon request furnish all maintenance records and inspection results for the BMP's associated with the approved Storm Water Management Plan. Failure to provide maintenance records shall be considered a violation of this ordinance and subject to enforcement and penalties under Sec. 22-23.13.
- (3) **ALTERNATE REQUIREMENTS.** The Administering Authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 22-23.07 (5).

**Sec. 22-23.11 FINANCIAL GUARANTEE.**

- (1) 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 of a cost of maintenance of the storm water management practices for the expected duration of the permit coverage. The financial guarantee shall give the Administering Authority the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Administering Authority that the requirements of this ordinance have not been met.
  
- (2) CONDITIONS FOR RELEASE. Conditions for the release of the financial guarantee are as follows:
  - (a) The Administering Authority shall release the portion of the financial guarantee established under this section, less any costs incurred by the Administering Authority to complete installation of practices, upon submission of the certification required under Sec. 22-23.08(4)d. The Administering Authority may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
  - (b) The Administering Authority shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the Administering Authority.
  
- (3) ALTERNATE REQUIREMENTS. The Administering Authority may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under Sec. 22-23.07 (5).

**Sec. 22-23.12 INSPECTION.**

- (1) The Administering Authority may inspect any site that holds a permit or maintenance agreement under this chapter to ensure compliance with the approved "stormwater management plan". Said inspections shall document items in need of corrective action in order to maintain compliance with this ordinance.

- (2) If land disturbing construction activities are being carried out or have been carried out without a permit required by this ordinance, the Administering Authority may enter the land pursuant to the provisions of ss.66.0119 (1), (2), and (3), Wis. Stats. for inspection of developed site conditions, and to take enforcement actions.

**Sec. 22-23.13 ENFORCEMENT.**

- (1) Any responsible party violation any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$200 dollars or more that \$500 dollars per offences, together with the costs of prosecution. Each day a violation exists shall constitute a separate offense.
- (2) Any land disturbing construction activity or post-construction runoff initiated by any person, firm, association, or corporation subject to the provisions of this ordinance shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (3) The Administering Authority may post a stop-work order if any of the following occurs:
  - (a) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
  - (c) Stormwater management plan is not being implemented in a good faith manner.
  - (c) The conditions of the permit are not being met.
- (4) The Administering Authority shall notify the responsible party, by mail, e-mail, fax or in person, of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, and a schedule for remedial action.
- (5) Upon receipt of written notification from the Administering Authority under sub. (4), the responsible party shall correct work that does not comply with the stormwater management plan, permit or other provisions of this ordinance. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Administering Authority in the notice.
- (6) 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 stormwater management plan or permit conditions, the Administering Authority may revoke the permit.
- (7) 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 sub. (3), the Administering Authority shall request that the Village Attorney obtain a cease and desist order in any court with jurisdiction.

- (8) 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.
- (9) The Administering Authority is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the Village Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (11) If the Administering Authority determines that the responsible party pursuant to this ordinance has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules or maintenance set forth in said storm water management plan, the Administering Authority shall provide a schedule of remedial action under sub. (4), and where the responsible party has not made the required corrections under sub. (5), the Administering Authority may issue a notice of intent to the responsible party of the Village's intent to perform the remedial work. The Administering Authority may enter upon the land and perform the work after issuing the notice of intent. The Administering Authority shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses plus interest and legal fees shall be billed to the responsible party or recovered from any financial security posted pursuant to this ordinance. In the event the responsible party fails to pay the amount due, or where financial security has not been established, or where such the financial security is insufficient to cover these costs, the clerk shall enter the amount due on the tax roll as a special charge against the property to be collected with any other taxes levied thereon.
- (12) If violations to the approved storm water management plan, maintenance agreement, or this ordinance are likely to result in damage to persons, property, public facilities, or waters of the state, the Administering Authority may enter the land and take emergency actions necessary to prevent such damage without notice to the responsible party. The costs incurred by the Administering Authority plus interest and legal costs shall be billed to the responsible party, in the manner specified under sub. (11).

**Sec. 22-23.14 APPEALS.**

- (1) **BOARD OF ZONING APPEALS.** The Board of Zoning Appeals, created pursuant to section 1.03(1) of the Village of Howard ordinances pursuant to s. 61.354(4) (b), Wis. Stats:
  - (a) The Board 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 ordinance, except for cease & desist orders.
  - (b) The Board upon appeal, may authorize variances to any order decision or determination made by the Administering Authority that is not contrary to the public interest where a literal enforcement of the order will result in unnecessary hardship, and
  - (c) The board shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals.
  
- (2) **WHO MAY APPEAL.** Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of Howard affected by any decision of the Administering Authority.

**SECTION 4. Sec. 22-24 ILLICIT DISCHARGES AND CONNECTIONS**

**Sec. 22-24.01 AUTHORITY**

- (1) This ordinance is adopted by the Village of Howard pursuant to the authority granted by §281.33, Wis. Stats. This ordinance supersedes all conflicting and contradictory storm water management regulations previously enacted under §61.35, Wis. Stats. Except as specifically provided for in §281.33, Wis. Stats., §61.354, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
  
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
  
- (3) The Village of Howard hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.
  
- (4) The requirements of this ordinance do not pre-empt more stringent requirements that are imposed by any of the following:

- (a) Wisconsin Department of Natural Resources Administrative rules, permits or approvals including those authorized order ss.147.021, 281.16, and 283.33, Wis. Stats.

**Sec. 22-24.02 FINDINGS OF FACT.**

The Village of Howard finds that polluted storm water runoff from lands within the Village of Howard has a significant impact upon water resources and the health, safety, and general welfare of the community. Specifically, polluted storm water runoff can:

- (1) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational, and water supply uses by increasing loadings of nutrients and other urban pollutants.
- (2) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (3) Reduce the quality of groundwater by increasing pollutant loads.
- (4) Threaten public health, safety, property, and general welfare by discharging polluted storm water runoff.
- (5) Diminish the public enjoyment of natural resources.

**Sec. 22-24.03 PURPOSE AND INTENT.**

- (1) PURPOSE. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Village of Howard through the regulation of non-storm water discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law.
- (2) INTENT. This ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:
  - (a) To regulate the introduction of pollutants to the MS4 and to waters of the state.
  - (b) To prohibit illicit connections to the MS4.
  - (c) To prohibit discharges, spilling or dumping of non-stormwater substances or materials to the MS4 or waters of the state.
  - (d) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

**Sec. 22-24.04 APPLICABILITY AND JURISDICTION.**

- (1) **APPLICABILITY.** This ordinance shall apply to; all water and non-stormwater discharges,; including spilling or dumping of non-stormwater substances or materials to the MS4 or waters of the state and all connections to MS4 unless explicitly exempted by an authorized enforcement agency.
- (2) **JURISDICTION.** This ordinance applies to all lands within the boundaries of the Village of Howard.

**Sec. 22-24.05 DEFINITIONS.** For the purposes of this ordinance, the following shall mean:

- (1) "ADMINISTERING AUTHORITY" means a governmental employee or their designee or agents empowered under s.61.345 Wis. Stats., that is designated by the Village Board to administer this ordinance.
- (2) "AEA" or "AUTHORIZED ENFORCEMENT AGENCY" means the Village of Howard Department of Public Works, employees or designees are designated to enforce this ordinance.
- (3) "BMP's" or "BEST MANAGEMENT PRACTICES" 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.
- (4) "BUSINESS DAY" means a day that the office of the Department of Public Works is routinely and customarily open for business.
- (5) "CEASE AND DESIST ORDER" means a court issued order to halt activity that is being conducted without the required permit or does not comply with the provisions of this ordinance.
- (6) "CONNECTION" means any drainage or conveyance, whether surface or subsurface including but not limited to an inlet, pipe, ditch, swale, or other flowage, that allows a discharge to enter the MS4 or waters of the state.
- (7) "COMMERICAL LAND USE" means any land use that is not utilized solely as a 1 or 2 family dwelling.
- (8) "CONTAMINATED STORM WATER" means storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216.
- (9) "DNR" or "DEPARTMENT" means the Wisconsin Department of Natural Resources.
- (10) "DISCHARGE" means as defined in Wisconsin Statute 283, when used without qualification includes a discharge of any pollutant.

- (11) "DIRECTOR OF PUBLIC WORKS" see "Administering Authority" office being located at 1336 Cornell Road, Green Bay, WI 54313
- (12) "DISCHARGE OF POLLUTANT(s)" means as defined in Wisconsin Statute 283, meaning the addition of any pollutant to the waters of this state from any point source.
- (13) "DISCHARGE VOLUME" means the quantity of runoff discharged from the land surface as the result of a rainfall event.
- (14) "HAZARDOUS MATERIALS" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, spilled, or otherwise managed.
- (15) "ILLICIT DISCHARGE" means any discharge to a municipal separate storm sewer system (MS4) or water of the state that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.
- (16) "ILLICIT CONNECTION(S)" means an illicit connection as defined as either of the following:
- (a) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 or water of the state including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the MS4 or waters of the state and any connections to the MS4 or waters of the state from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
  - (b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 or water of the state which has not been documented in plans, maps, or equivalent records of the authorized enforcement agency and approved by the authorized enforcement agency.
- (17) "IMPERVIOUS SURFACE" means a surface that does not allow or reduces natural infiltration during precipitation events. Rooftops, sidewalks, parking lots, and street surfaces are examples of impervious surface.
- (18) "INDUSTRIAL ACTIVITY" means activities subject to WPDES Industrial Permits per NR 216 and Wisconsin Statute 283.

- (19) "INDUSTRIAL LAND USE" means any land use that is not utilized solely as a 1 or 2 family dwelling.
- (20) "MUNICIPAL(ITY)" means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.
- (21) "MS4" or "MUNICIPAL SEPARATE STORM SEWER SYSTEM" means as defined in Wisconsin Administrative Code NR 216, meaning a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:
- (a) Owned or operated by a municipality, and
  - (b) Designed or used for collecting or conveying storm water, and
  - (c) Which is not a combined sewer conveying both sanitary and storm water, and
  - (d) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment, and
  - (e) Discharges directly or indirectly to waters of the state.
- (22) "NATURAL WETLANDS" means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. These wetlands include existing, mitigation and restored wetlands.
- (23) "NON-STORMWATER DISCHARGE" means a discharge to the MS4 or water of the state created by some process other than the runoff from precipitation.
- (24) "OWNER" means any person holding fee title, an easement or other interest in property
- (25) "OUTFALL" means the point at which storm water is discharged to waters of the state or to a storm sewer.
- (26) "PERSON" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (27) "POLLUTANT" means as defined in Wisconsin Statute 283, meaning any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, petroleum product (gasoline, kerosene, oil, diesel), antifreeze, 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.
- (28) "POLLUTION" means as defined in Wisconsin Statute 283, meaning any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- (29) "POLLUTION PREVENTION" means taking measures to eliminate or reduce pollution.
- (30) "PREMISES" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

- (31) "PRIVATE DRAINAGE SYSTEM" means all facilities which are not owned and operated by the Village of Howard, Brown County or the Wisconsin Department of Transportation for the purpose of collecting, conveying, storing, treating and properly disposing of storm water runoff.
- (32) "PUBLIC DRAINAGE SYSTEM" means all facilities owned and operated by the Village of Howard, Brown County or the Wisconsin Department of Transportation for the purpose of collecting, conveying, storing, treating and properly disposing of storm water runoff.
- (33) "RESPONSIBLE PARTY" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency; that person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance, and who shall notify the department immediately of any discharge not exempted by law.
- (34) "STORM WATER" means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (35) "STORM WATER MANAGEMENT PLAN / STORM WATER POLLUTION PREVENTION PLAN" means documents which describe the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and / or Receiving Waters to the Maximum Extent Practicable.
- (36) "WASTEWATER" means any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- (37) "WATERCOURSE" means a natural or artificial channel through which water flows. These channels include:
- (a) All blue and dashed blue lines on the USGS quadrangle maps,
  - (b) All channels shown on the soils maps in the NRCS soils book for Brown County,
  - (c) All channels identified on the site, and
  - (d) New channels that are created as part of a development.
  - (e) The term watercourse also includes waters of the state as herein defined.
- (38) "WATERS OF THE STATE" means as defined in Wisconsin Statute 283, meaning those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.
- (39) "WPDES" or "WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM STORM WATER DISCHARGE PERMIT" means a Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283.

**Sec. 22-24.06 COMPATIBILITY WITH OTHER REGULATIONS.**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**Sec. 22-24.07 ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

**Sec. 22-24.08 DISCHARGE PROHIBITIONS.**

(1) **PROHIBITION OF ILLICIT DISCHARGES.** No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water, except as defined in sub(2).

(2) **PERMISSIBLE / ALLOWED NON-STORMWATER DISCHARGES.**

- (a) Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, de-chlorinated swimming pool discharges, and street wash water.
- (b) Discharges or flow from firefighting, and other discharges specified in writing by the Administering Authority as being necessary to protect public health and safety.
- (c) Discharges associated with dye testing; however, this activity requires a verbal notification to the Administering Authority and the Department of Natural Resources a minimum of one day prior to the time of the test.
- (d) Any non-storm water discharge permitted under either a NPDES or a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency or the Wisconsin

Department of Natural Resources. Any person subject to such either a NPDES or a WPDES storm water discharge permit shall comply with all provisions of such permit.

(3) PROHIBITION OF ILLICIT CONNECTIONS.

- (a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (d) Improper connections in violation of this ordinance must be disconnected and redirected, to a permitted onsite wastewater management system or the municipal sanitary sewer system that has the capability of treating and where the operator has authorized or approved the discharge or pollutant to the system.
- (e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located, surveyed and mapped to scale by the owner or occupant of that property upon receipt of written notice of violation from the Administering Authority requiring that such documentation be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the MS4 or other discharge point be identified. Results of these investigations are to be documented and provided to the Administering Authority.

**Sec. 22-24.09 WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Sec. 22-24.10 COMPLIANCE MONITORING.**

- (1) **RIGHT OF ENTRY; INSPECTING AND SAMPLING.** The Administering Authority shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
- (a) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Administering Authority.
  - (b) Facility operators shall allow the Administering Authority ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
  - (c) The Administering Authority shall have the right to set up on any facility such devices as are necessary in the opinion of the Administering Authority to conduct monitoring and/or sampling of the facility's storm water discharge.
  - (d) The Administering Authority has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
  - (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Administering Authority and shall not be replaced. The costs of clearing such access shall be borne by the operator.
  - (f) Unreasonable delays in allowing the Administering Authority access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the Administering Authority reasonable access to the facility for the purpose of conducting any activity authorized or required by this ordinance.
- (2) **SPECIAL INSPECTION WARRANT.** If the Administering Authority has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Administering Authority may seek issuance of a special inspection warrant per Wisconsin Statute 66.0119.

**Sec. 22-24.11 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.**

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the State shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal MS4 or watercourses through the use of structural and nonstructural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. The BMP's shall be part of a Storm Water Management Plan (SWMP)/Storm Water Pollution Prevention Plan (SWPPP) as necessary for compliance.

**Sec. 22-24.12 NOTIFICATION OF DISCHARGES OR SPILLS.**

- (1) GENERAL. Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises, or operation, or responsible for emergency response for a facility, premises or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- (2) HAZARDOUS DISCHARGE NOTIFICATION. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- (3) NON-HAZARDOUS DISCHARGE NOTIFICATION. In the event of a release of non-hazardous materials, said person shall notify the Administering Authority in person or by phone or facsimile no later than the next business day.
- (4) WRITTEN NOTIFICATION & RECORDS. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Administering Authority within 3 business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall

be retained for at least 7 years. Failure to provide notification of a release as provided above is a violation of this ordinance.

**Sec. 22-24.13 VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

- (1) **VIOLATIONS.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- (2) **VIOLATIONS DEEMED A PUBLIC NUISANCE.** Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, and may be summarily abated or restored by the Village of Howard at the violator's expense.
- (3) **EMERGENCY SITUATIONS OF PUBLIC HEALTH & SAFETY / EMERGENCY ACTION**
  - (a) In the event the violation constitutes an immediate danger to public health or public safety, the Administering Authority is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The Administering Authority is authorized to seek costs of the abatement.
  - (b) Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative and legal costs. If the amount due is not paid by the date determined by the municipal authority, the charges shall become a special charge against the property and shall constitute a lien on the property.
  - (c) Nothing in the subsection shall limit the authority of the Administering Authority to take action, including emergency action or any other enforcement action without giving a prior warning notice or notice of violation.
- (4) **WARNING NOTICE.** When the Administering Authority believes that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the Administering Authority may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieve the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice.

(5) **NOTICE OF VIOLATION.** Whenever the Administering Authority finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Administering Authority shall order compliance by written notice of violation to the responsible person. The Notice of Violation shall contain:

- (a) The name and address of the alleged violator;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (f) A statement that the determination of violation may be appealed to the Administering Authority by filing a written notice of appeal within 3 days of service of notice of violation; and
- (g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.

Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of BMPs.

(6) **SUSPENSION OF MS4 ACCESS/CEASE & DESIST ORDERS.**

- (a) When the Administering Authority finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4, waters of the State which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Administering Authority shall issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all ordinance requirements; and
2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Administering Authority may take such steps as deemed necessary to prevent or minimize harm to the MS4, waters of the State and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Administering Authority may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Administering Authority that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit to the Administering Authority a written preliminary action plan within not more than three days of the order and/or violation which addresses in some detail what action is intended to be taken, a description of the causes of the harmful discharge and the measures that will be taken to prevent any future occurrence, to the Administering Authority within 10 days of receipt of the prerequisite for taking any other action against the violator.

- (b) Suspension due to Illicit Discharges in Emergency Situations. The Administering Authority may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, or waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Administering Authority may take such steps as deemed necessary to prevent or minimize damage to the MS4, or waters of the State, or to minimize danger to persons.
- (c) Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Administering Authority will notify a violator of the proposed termination of its MS4 access. The violator may petition the Administering Authority for reconsideration and/or an appeal hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Administering Authority.

- (7) PROSECUTION AND PENALTIES. Any person that has violated or continues to violate this ordinance shall be prosecuted to the fullest extent of the law. In the event the alleged violator fails to take the remedial measures and cure the violations described as within the set time period set forth in the notice of violation, the Administering Authority shall impose a penalty not less than \$200 nor more than \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied.
- (8) REMEDIES NOT EXCLUSIVE. The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law; and it is within the discretion of the Administering Authority to seek cumulative remedies. The Administering Authority may recover all attorney's fees court costs, administration, and other expenses and resources associated with enforcement of this ordinance, including sampling and monitoring expenses.

**Sec. 22-24.14 APPEALS.**

- (1) BOARD OF ZONING APPEALS. The Board of Zoning Appeals created pursuant to section 1.03(1) of the Village of Howard ordinances pursuant to s. 61.354(4)(b), Wis. Stats:
- (a) The Board 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 ordinance.
  - (b) The Board upon appeal, may authorize variances to any order, decision, or determinations made by the Administering Authority that is not contrary to the public interest, and where a literal enforcement of the ordinance will result in unnecessary hardship, and
  - (c) The board shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. The hearing on the appeal shall take place before the Board within 10 days from the receipt of the notice of appeal.
  - (d) In the event of an unsuccessful appeal where the Board of Zoning Appeals has upheld the decision of the Administering Authority, and where the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the representatives of the Administering Authority are authorized to enter upon the property and are authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(2) WHO MAY APPEAL. Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of Howard affected by any decision of the Administering Authority, within 3 days of the notice of violation.

**Sec. 22-24.15 SEVERABILITY.**

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

**SECTION 5.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

**SECTION 6.** This ordinance shall take effect upon its adoption and publication.

Approved and adopted this \_\_\_\_\_ day of December, 2008.

  
Burt R. McIntyre, Village President

ATTEST:

  
Joshua A. Smith, Village Clerk

DATE OF PUBLICATION:

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