CHAPTER XXXVI
POST-CONSTRUCTION
STORMWATER MANAGEMENT ORDINANCE

36.01 AUTHORITY

A. Statutory Authority. This Ordinance is adopted by the Common Council of the City of Kenosha, Wisconsin, pursuant to Section 62.234 of the Wisconsin Statutes. Except as otherwise specified in Section 62.234, Wisconsin Statutes, Section 62.23 of the Wisconsin Statutes, applies to this Chapter and to any amendments to this Ordinance.

B. Nonlimitation. The provisions of this Chapter are deemed not to limit any other lawful regulatory powers of the City of Kenosha.

C. More Stringent Standards. The requirements of this Chapter do not preempt more stringent stormwater management requirements that may be imposed by any of the following:

1. Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under Sections 281.16 and 283.33 of the Wisconsin Statutes.

2. Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Section NR 151.004, Wisconsin Administrative Code.

D. Responsibility For Enforcement. The Common Council hereby designates the Director of Public Works, or his/her designee, shall administer and enforce the provisions of this Chapter.

36.02 FINDINGS AND PURPOSE

A. Findings. The Common Council 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, recreation 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, drainageways 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.

B. Purpose. It is the purpose of this Chapter to establish long term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and aquatic environment. Specific purposes are to:

1. Further the maintenance of safe and healthful conditions.

2. Prevent and control the adverse effects of stormwater; 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.

3. 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.

36.03 INTENT

It is the intent of the Common Council that this Chapter will reduce post-construction stormwater discharges and associated pollutants reaching waters of the State. This Chapter may be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this Chapter is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the State. Where such plans are in conformance with the

performance standards developed under Section 281.16 of the Wisconsin Statutes, for regional stormwater management measures and have been approved by the Common Council, it is the intent of this Chapter that the approved plan be used to identify post-construction management measures acceptable for the community.

36.04 APPLICABILITY OF CODE

A. Application. This Chapter applies after final stabilization to a site of land-disturbing construction activity on a post-construction site that was subject to one (1) or more acres of land-disturbing construction activity. This Chapter also applies to post-construction sites of any size that, in the opinion of the Director of Public Works, or designee, 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.

B. Exemption. Subsection 36.04 A. notwithstanding, a site that meets any of the following criteria is exempt from the requirements of this Chapter:

1. Nonpoint discharges from agricultural facilities and practices.

2. Nonpoint discharges from silviculture activities.

3. Routine maintenance for project sites under five (5) acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

4. Underground utility construction, such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any aboveground structures associated with utility construction.

5. Activities conducted by a State agency, as defined under Section 277.02(1) of the Wisconsin Statutes, but also including the office of District Attorney, which is subject to the State plan promulgated or a memorandum of understanding entered into under Section 281.33 of the Wisconsin Statutes.

C. Extraterritorial Jurisdiction. This Chapter applies to post-construction sites within the boundaries and jurisdiction of the City, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Sections 236.45(2) and (3) of the Wisconsin Statutes.

36.05 DEFINITIONS

Administering Authority means the City's Director of Public Works, or his/her designee.

Agricultural Facility means a structure associated with an agricultural practice, per the meaning given in Section 281.16 of the Wisconsin Statutes, or as amended.

Agricultural Practice means beekeeping; commercial feedlots; dairying; egg production; floricultural; fish or fur farming; grazing; livestock raising; maintaining orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in Federal programs in return for payments in kind; owning land, at least thirty-five (35) acres of which is enrolled in the Conservation Reserve Program under 16 USC 3831 to 3836; and, vegetable raising, per the meaning given in Section 281.16 of the Wisconsin Statutes, but vegetable raising is included in the definition of agricultural practice only if the pervious areas in which the vegetable raising activity is occurring is separated from pervious surfaces contiguous to the public right-of-way by a buffer area of grass which maintains separation of no less than ten (10') feet between the pervious area where the vegetable raising activity is occurring and the impervious area.

As-Built means a record or plan illustrating how a project was built in fact and not necessarily how it was planned.

Average Annual Rainfall means a calendar year of precipitation, excluding snow, which is considered typical.

Best Management Practice (BMP) means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the State.

Business Day means a day the office of the City's Director of Public Works is routinely and customarily open for business.

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

Combined Sewer System means a system for conveying both sanitary sewage and storm water runoff.

Connected Imperviousness means an impervious surface that is directly connected to a separate storm sewer or water of the State via an impervious flowpath.

Design Storm means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

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

Division of Land means the creation from one parcel of five (5) or more parcels or buildings sites of five (5) or fewer acres each in area where such creation occurs at one time or through the successive partition within a five (5) year period.

Effective Infiltration Area means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

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

Exceptional Resource Waters means waters listed in Section NR 102.11, Wisconsin Administrative Code.

Extraterritorial means the unincorporated area with three (3) miles of the corporate limits of the City of Kenosha.

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 seventy (70%) percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

Financial Guarantee means a Performance Bond, Maintenance Bond, Surety Bond, Irrevocable Letter of Credit, or similar guarantees submitted to the Director of Public Works, or his/her designee, by the responsible party to assure that the requirements of this Chapter are carried out in compliance with the Stormwater Management Plan.

Governing Body means the Common Council of the City of Kenosha, Wisconsin.

Impervious Surface means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets, including those comprised of compacted stone or gravel, are examples of areas that typically are impervious surfaces.

In-Fill Area means an undeveloped area of land located within existing development.

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

Infiltration System means a device or practice, such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or roadside channels designed for conveyance and pollutant removal only.

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.

Land-Disturbing Construction Activity means any manmade 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.

Maintenance Agreement means an agreement that provides for long term maintenance of stormwater management practices.

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.

Navigable, when applied to a waterway, means is capable of floating any boat, skiff, canoe, or kayak, of the shallowest draft used for recreational purposes in a waterway, that if not occurring continuously, at least occurs seasonably of a sufficient length of time

to make the waterway useful as a highway.

New Development means development resulting from the conversion of previously undeveloped land or agricultural land uses.

Non-Navigable, when applied to a waterway, means not navigable.

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

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

Ordinary High Water Mark means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark, such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of the ordinary high water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high water mark in Section NR 115.03(6), Wisconsin Administrative Code, per the meaning in Section NR 115.03, Wisconsin Administrative Code, or as amended.

Outstanding Resource Waters means waters listed in Section NR 102.10, Wisconsin Administrative Code.

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

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

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

Permit Administration Fee means a sum of money paid to the Director of Public Works or his/her designee by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

Pervious Surface means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious surfaces.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water, per the meaning given in Section 283.01 of the Wisconsin Statutes, or as amended.

Pollution includes contaminating or rendering unclean or impure the waters of the State, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life, per the meaning given in Section 281.01 of the Wisconsin Statutes, or as amended.

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

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

Preventive Action Limit means a numerical value expressing the concentration of a substance in groundwater which is adopted under Section 160.15 of the Wisconsin Statutes, and Sections NR 140.10, 140.12 or 140.20, Wisconsin Administrative Code, per the meaning given in Section NR 140.05, Wisconsin Administrative Code, or as amended.

Protective Area means an area of land that commences at the top of the ordinary high water mark of lakes, streams, or 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.

1. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Section NR 103.04, Wisconsin Administrative Code, seventy-five (75') feet.

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

3. For lakes, fifty (50') feet.

4. For highly susceptible wetlands, fifty (50') feet. Highly susceptible wetlands include the

following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Section NR 103.08(1m), Wisconsin Administrative Code. This Section 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.

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

6. In Paragraphs 1, 4, and 5 of this definition, determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Section NR 103.03, Wisconsin Administrative Code.

7. For concentrated flow channels with drainage areas greater than one hundred thirty (130) acres, ten (10') feet.

Redevelopment means areas where development is replacing older development.

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

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

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

1. Is designed or used for collecting water or conveying runoff.

2. Is not part of a combined sewer system.

3. Is not draining to a storm water treatment device or system.

4. Discharges directly or indirectly to waters of the State.

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

Stop Work Order means an order issued by the Director of Public Works, or his/her designee, which requires that all construction activity on the site be stopped.

Stormwater Management Facilities means facilities designed to properly manage stormwater runoff in accordance with the City's Stormwater Management Criteria, which criteria may be updated or amended from time to time.

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

Stormwater Management System Plan is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

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

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

TR-55 means the United State Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

Type II Distribution means a rainfall-type curve as established in the United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

Waters of the State includes those portions of Lake Michigan and Lake Superior within the boundaries of this State, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or

artificial, public or private, within this State or its jurisdiction, per the meaning given in Section 281.01 of the Wisconsin Statutes, or as amended.

36.06 TECHNICAL STANDARDS

A. The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of stormwater practices needed to meet the water quality standards of this Chapter.

1. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wisconsin Administrative Code.

2. Design guidance and technical standard identified in the City of Kenosha Stormwater Management Criteria as developed and revised by the Director of Public Works, or his/her designee, and on file in the office of the City Engineer.

3. In this Chapter, the following year and location have been selected as average annual rainfall: Milwaukee, 1969 (March 28 - December 6).

B. Where technical standards have not been identified or developed in **Section 36.06 A**., other technical standards may be used provided that the methods have been approved by the Director of Public Works or his/her designee.

C. The Director of Public Works, or his/her designee, shall approve final design criteria, standards and specifications for BMP requirements in the event of conflicts between technical sources in **Section 36.06 A**.

36.07 PERFORMANCE STANDARDS

A. Responsible Party. The Responsible Party shall implement a Post-Construction Stormwater Management Plan that incorporates the requirements of this Section.

B. Plan. A written Stormwater Management Plan in accordance with **Section 36.09** shall be developed and implemented for each post-construction site.

C. Requirements. The plan required under **Subsection 36.07 B.** shall include the following:

1. Total Suspended Solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

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

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

c. Reduction of Total Suspended Solids Load. Notwithstanding Subsections a. and b., if the design cannot achieve the applicable total suspended solids reduction specified, the Stormwater Management Plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

2. Peak Discharge.

a. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates as compared to pre-development conditions of the two (2) year, twenty-four (24) hour design storm applicable to the post-construction site. For pre-development conditions, the runoff curve numbers in Table 1 shall be used.

TABLE 1
MAXIMUM PRE-DEVELOPMENT RUNOFF CURVE NUMBERS

Hydro-logic Soil Group	A	B	C	D
Runoff Curve Numbe r	56	70	71	71

b. By design, BMP's shall be designed and employed to reduce the peak discharge rates of the post-construction conditions for any storm, in areas where there is inadequate storm sewer or drainageway capacity. The control of peak discharge shall be required for all areas draining to navigable streams or to storm sewer systems that do not have at least capacity for the five (5) year rational method storm. Any site with inadequate capacity downstream shall have the peak discharge reduced to a

proportional share of the available downstream capacity based on the ratio of the development's area to the total drainage area. The available downstream capacity shall be set by the capacity of storm sewer pipes when flowing full, the overflow level for ditches and the top of the upstream end of the pipe for any culverts. None of these criteria shall preempt more stringent release rates.

3. Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in **Subparagraphs e.** through **h.**

a. Residential Developments. For residential developments, one of the following shall be met:

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

(2) Infiltrate twenty-five (25%) percent of the post-development runoff from the 2 year, twenty-four (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. When designing appropriate infiltration systems to meet this requirement, no more than one (1%) percent of the project site is required as an effective infiltration area.

b. Non-Residential Development. For nonresidential development, including commercial, industrial and institutional development, one of the following shall be met:

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

(2) Infiltrate ten (10%) percent of the runoff from the 2 year, twenty-four (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. When designing appropriate infiltration systems to meet this requirement, no more than two (2%) percent of the project site is required as an effective infiltration area.

c. Pretreatment. 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 Subparagraph h. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

d. Exclusions. The runoff from the following areas are prohibited from meeting the requirements of this Section:

(1) Areas associated with Tier 1 Industrial Facilities identified in Section NR 216.21(2)(a), Wisconsin Administrative Code, including storage, loading, rooftop and parking.

(2) Storage and loading areas of Tier 2 Industrial Facilities identified in Section NR 216.21(2)(b), Wisconsin Administrative Code.

(3) Fueling and vehicle maintenance areas.

(4) Areas within one thousand (1,000') feet upgradient, or within one hundred (100') feet downgradient of Karst features.

(5) Areas with less than three (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 subsection does not prohibit infiltration of roof runoff.

(6) Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than five (5') feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

(7) Areas within four hundred (400') feet of a community water system well as specified in Section NR 811.16(4), Wisconsin Administrative Code, or within one hundred (100') feet of a private well as specified in Section NR 812.08(4), Wisconsin Administrative Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

(8) Areas where contaminants of concern, as defined in Section NR 720.03(2), Wisconsin Administrative Code, are present in the soil through which infiltration will occur.

(9) 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 three (3) foot soil layer with twenty (20%) percent fines or greater; or at least a five (5) foot soil layer with ten (10%) percent fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This Subsection does not prohibit infiltration of roof runoff.

e. Exemptions. The following are not required to meet the requirements of this Section:

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

(2) Parking areas and access roads less than

five thousand (5,000) square feet for commercial and industrial development.

(3) Redevelopment post-construction sites.

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

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

(6) Roads in commercial, industrial and institutional land uses, and arterial residential roads.

f. Alternate Uses. 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 Section.

g. Compliance with Preventive Action Limit.

(1) Infiltration systems designed in accordance with this Section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Chapter NR 140, Wisconsin Administrative Code. If site-specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

(2) Notwithstanding Subsection (1) above, the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

i. Design of Infiltration BMPs. Design of infiltration BMPs shall comply with the technical standards developed by the Wisconsin Department of Natural Resources under Subchapter V of Section NR 151, Wisconsin Administrative Code.

j. Evaluation of Infiltration BMP' Performance. The performance of infiltration BMPs shall be evaluated using the WinSLAMM, Version 9.2.5. computer model available from the Wisconsin Department of Natural Resources.

4. Protective Areas.

a. Post-Construction Sites. This Paragraph 36.07 C.4. applies to post-construction sites located within a protective area, except those areas exempted pursuant to **Subparagraph c**. "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.

b. Requirements. The following requirements shall be met:

(1) Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The Stormwater Management Plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

(2) 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 seventy (70%) percent 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.

(3) 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.

c. Nonapplicable Areas. This Paragraph does not apply to:

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

(2) Structures constructed in accordance with Section 59.692(1v) of the Wisconsin Statutes.

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

5. 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.

6. Swale Treatment For Transportation Facilities.

a. Applicability. Except as provided in **Subparagraph b**., transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this Section, if the swales are designed to the maximum extent practicable to do all of the following:

(1) Be Vegetated. Where appropriate, however, nonvegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

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

b. Exemptions. The Director of Public Works, or his/her designee, may, consistent with water quality standards, require other provisions of this Section be met on a transportation facility with an

average daily travel of vehicles greater than two thousand five hundred (2,500) and where the initial surface water of the State that the runoff directly enters is any of the following:

(1) An outstanding resource water.

(2) An exceptional resource water.

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

(4) Waters where targeted performance standards are developed under Section NR 151.004, Wisconsin Administrative Code, to meet water quality standards.

D. General Considerations For On-Site and Off-Site Storm Water Management Measures. The following considerations shall be observed in managing runoff:

1. Natural Topography and Land Cover Features. Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this Section.

2. Emergency Overland Flow. Emergency overland flow for all Stormwater Management Facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety. Emergency overland flow must be in compliance with the Kenosha Stormwater Management Criteria.

E. Location and Regional Treatment Option.

1. On-Site/Off-Site Locations. The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system.

2. Post-Construction Runoff. 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 Chapter. Post-construction BMPs may be located in non-navigable surface waters.

3. New Development Post-Costruction Runoff. Except as allowed under **Subparagraph 4.**, post-construction runoff from new development shall meet the post-construction performance standards prior to entering navigable surface water.

4. Exceptions. Post-construction runoff from any development within navigable surface water that flows into a BMP is not required to meet the performance standards of this Chapter if:

a. The BMP was constructed prior to the effective date of this Chapter and the BMP either received a permit issued under Chapter 30 of the Wisconsin Statutes, or the BMP did not require a Chapter 30 of the Wisconsin Statutes, permit; and,

b. The BMP is designed to provide runoff treatment from future upland development.

5. Runoff From Existing Development, Redevelopment and In-Fill Areas. Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this Section.

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

b. Post-construction BMPs for such runoff may be located in navigable surface water if allowable under all other applicable Federal, State and local regulations, such as Section NR 10, Wisconsin Administrative Code and Chapter 30 of the Wisconsin Statutes.

6. Runoff From a BMP. 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.

7. Off-Site Management Measure Approval. The Director of Public Works, or his/her designee, may approve off-site management measures provided that all of the following conditions are met:

a. The Director of Public Works, or his/her designee, has determined that the post-construction runoff is covered by a Stormwater Management System Plan that contains management requirements consistent with the purpose and intent of this Chapter.

b. The off-site facility meets all of the following conditions:

(1) The facility is in place.

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

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

8. Fee For Post-Construction Runoff. Where a regional treatment option exists such that the Director of Public Works, or his/her designee, exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Director of Public Works, or his/her designee. In determining the fee

for post-construction runoff, the Director of Public Works, or his/her designee, shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

F. Additional Requirements to Protect Sensitive Resources. The Director of Public Works, or his/her designee, may establish stormwater management requirements more stringent than those set forth in this Section if the Director of Public Works, or his/her designee, determines that an added level of protection is needed to protect sensitive resources.

36.08 PERMIT REQUIREMENTS; PROCEDURES AND FEES

A. Permit Required. No responsible party may undertake a land-disturbing construction activity without receiving a Post-Construction Runoff Permit from the Director of Public Works, or his/her designee, prior to commencing the proposed activity.

B. Permit Application and Fees. Unless specifically excluded by this Chapter, any responsible party desiring a permit shall submit to the Director of Public Works, or his/her designee, a permit application made on a form provided by the Director of Public Works, or his/her designee, for that purpose.

1. Accompanying Documents. Unless otherwise excepted by this Chapter, a permit application must be accompanied by a Stormwater Management Plan, a Maintenance Agreement and a nonrefundable permit administration fee.

2. Requirements. The Stormwater Management Plan shall be prepared to meet the requirements of **Sections 36.07** and **36.09**. The Maintenance Agreement shall be prepared to meet the requirements of **Section 36.10**; the financial guarantee shall meet the requirements of **Section 36.11.** Fees shall be those established from time to time by Resolution of the Common Council as set forth in **Section 36.12.**

C. Review and Approval of Permit Application. The Director of Public Works, or his/her designee, shall review any permit application that is submitted together with a Stormwater Management Plan, Maintenance Agreement and the required fee. The following approval procedure shall be used:

1. Within twenty (20) business days of the receipt of a complete permit application, including all items as required by **Subsection B.** above, the Director of Public Works, or his/her designee, shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this Chapter.

2. If the Stormwater Permit application, plan and maintenance agreement are approved, or if an agreed-upon payment of fees in lieu of stormwater management practices is made, the Director of Public Works, or his/her designee, shall issue the permit.

3. If the Stormwater Permit application, plan or maintenance agreement are disapproved, the Director of Public Works, or his/her designee, shall detail, in writing, the reasons for disapproval.

4. The Director of Public Works, or his/her designee, may request additional information from the applicant. If additional information is submitted, the Director of Public Works, or his/her designee, shall have twenty (20) business days from the date the additional information is received, to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

5. Failure by the Director of Public Works, or his/her designee, to inform the permit applicant of a decision within twenty (20) business days of a required submittal shall be deemed to mean disapproval of the submittal and the applicant may not proceed.

D. Permit Requirements. All permits issued under this Chapter shall be subject to the following conditions, and holders of permits issued under this Chapter shall be deemed to have accepted these conditions. The Director of Public Works, or his/her designee, may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Director of Public Works, or his/her designee, to suspend or revoke this permit may be appealed in accordance with **Section 36.14.**

1. Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable Federal, State and local laws and regulations.

2. The responsible party shall design and install all structural and nonstructural stormwater management measures in accordance with the approved Stormwater Management Plan and this permit.

3. The responsible party shall notify the Director of Public Works, or his/her designee, in writing, at least two (2) business days before commencing any work in conjunction with the Stormwater Management Plan, and within two (2) business days upon

completion of the stormwater management practices. If required as a special condition under **Subsection E.**, the responsible party shall make additional notification according to a schedule set forth by the Director of Public Works, or his/her designee, so that practice installations can be inspected during construction.

4. Stormwater Management Facilities required as part of this Ordinance shall be certified "as-built" by a licensed professional engineer. Completed Stormwater Management Facilities must pass a final inspection by the Director of Public Works, or his/her designee, to determine if they are in accordance with the approved Stormwater Management Plan and this Chapter. The Director of Public Works, or his/her designee, shall notify the responsible party, in writing, of any changes required in such practices to bring them into compliance with the conditions of this permit.

5. The responsible party shall notify the Director of Public Works, or his/her designee, of any significant modifications it intends to make to an approved Stormwater Management Plan. The Director of Public Works, or his/her designee, may require that the proposed modifications be submitted for approval prior to incorporation into the Stormwater Management Plan and execution by the responsible party.

6. The responsible party shall maintain all stormwater management practices in accordance with the Stormwater Management Plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved Maintenance Agreement.

7. The responsible party authorizes the Director of Public Works, or his/her designee, to perform any work or operations necessary to bring stormwater management measures into conformance with the approved Stormwater Management Plan, and consents to a special assessment or charge against the property as authorized under Subchapter VII of Chapter 66 of the Wisconsin Statutes, or to charging such costs against the financial guarantee posted under **Section 36.11**.

8. If so directed by the Director of Public Works, or his/her designee, the responsible party shall repair, at his/her own expense, all damage to adjoining municipal facilities and drainageways caused by runoff, where such damage is caused by activities that are not in compliance with the approved Stormwater Management Plan.

9. The responsible party shall permit property access to the Director of Public Works, or his/her designee, for the purpose of inspecting the property for compliance with the approved Stormwater Management Plan and this permit.

10. Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Director of Public Works, or his/her designee, may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

11. The responsible party is subject to the enforcement actions and penalties detailed in Section 36.13, if the responsible party fails to comply with the terms of this permit.

E. Permit Conditions. Permits issued under this Section may include conditions established by the Director of Public Works, or his/her designee, in addition to the requirements needed to meet the performance standards in **Section 36.07**, or a financial guarantee as provided for in **Section 36.11**.

F. Permit Duration. Permits issued under this Section shall be valid from the date of issuance through the date the Director of Public Works, or his/her designee, notifies the responsible party that all stormwater management practices have passed the final inspection required under **Subsection D.4.**

36.09 STORMWATER MANAGEMENT PLAN

A. Plan Requirements. The Stormwater Management Plan required under **Section 36.08 B**. shall contain, at a minimum, the following information:

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

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

3. Pre-development site conditions, including:

a. One (1) or more site maps at a scale of not less than one (1") inch equals two hundred (200') feet. The site maps shall show the following: site location and legal description of the property; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic

contours of the site not to exceed five (5') feet; topography and drainage network, including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the one hundred (100) year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Section NR 811.16, Wisconsin Administrative Code.

b. 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).

4. Post-development site conditions, including:

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

b. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.

c. One (1) or more site maps at a scaled of not less than one (1″) inch equals two hundred (200') 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 five (5') feet; post-construction drainage network, including enough of the contiguous properties to show runoff patterns onto, through and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the Maintenance Agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet, such as a curbed street, storm drain or natural drainageway; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches and other watercourse on and immediately adjacent to the site.

d. 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).

e. Results of investigations of soils and groundwater required for the placement an design of stormwater management measures. Detailed drawings, including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.

5. A description and installation schedule for the stormwater management practices needed to meet the performance standards in **Section 36.07.**

6. A Maintenance Plan developed for the life of each stormwater management practice, including the required maintenance activities and maintenance activity schedule.

7. Cost estimates for the construction, operation and maintenance of each stormwater management practice.

8. Other information requested in writing by the Director of Public Works, or his/her designee, to determine compliance of the proposed stormwater management measures with the provisions of this Chapter.

9. All site investigations, plans, designs, computations, and drawings shall be certified by a professional engineer licensed in the State of Wisconsin to be prepared in accordance with accepted engineering practice and the requirements of this Chapter.

B. Alternate Requirements. The Director of Public Works, or his/her designee, may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under **Subsection 36.07 E**.

36.10 MAINTENANCE

A. Maintenance Agreement Required. The Maintenance Agreement required under **Subsection 36.08 B.** for stormwater management practices shall be an agreement between the City and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The Maintenance Agreement shall be filed with the Kenosha County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

B. Agreement Provisions. The Maintenance Agreement shall contain the following information and provisions, and be consistent with the Maintenance Plan required by **Subsection 36.09**:

1. Identification of the stormwater facilities and designation of the drainage area served by the facilities.

2. A schedule for regular maintenance of each aspect of the Stormwater Management System consistent with the Stormwater Management Plan required under **Subsection 36.08 B**.

3. Identification of the responsible party(ies), organization or government responsible for long-term maintenance of the stormwater management practices identified in the Stormwater Management Plan required under **Subsection 36.08 B**.

4. Requirement that the responsible party(ies), organization or government shall maintain stormwater management practices in accordance with the schedule included in **Paragraph 2**.

5. Authorization for the Director of Public Works, or his/her designee, to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

6. A requirement on the Director of Public Works, or his/her designee, to maintain public records of the results of the site inspections, to inform the responsible party responsible for the maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.

7. Agreement that the party designated under **Paragraph 3**, as responsible for long-term maintenance of the stormwater management practices, shall be notified by the Director of Public Works, or his/her designee, of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Director of Public Works, or his/her designee.

8. Authorization of the Director of Public Works, or his/her designee, to perform the corrected actions identified in the inspection report if the responsible party designated under **Subsection 3** does not make the required corrections in the specified time period. The Director of Public Works, or his/her designee, shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subchapter VII of Chapter 66 of the Wisconsin Statutes.

C. Maintenance of Stormwater Facilities. The responsible party shall maintain stormwater facilities in accordance with standards identified in the City of Kenosha Stormwater Management Facilities Maintenance Criteria as developed and revised by the Director of Public Works, or his/her designee, and on file in the City Engineer's Office.

36.11 FINANCIAL GUARANTEE

A. Establishment of the Guarantee. The Director of Public Works, or his/her designee, may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Director of Public Works, or his/her designee. The financial guarantee shall be in an amount determined by the Director of Public Works, or his/her designee, to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the Maintenance Agreement has maintenance responsibilities. The financial guarantee shall give the Director of Public Works, or his/her designee, the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved Stormwater Management Plan, upon written notice to the responsible party by the Director of Public Works, or his/her designee, that the requirements of this Chapter have not been met.

B. Conditions For Release. Conditions for the release of the financial guarantee are as follows:

1. Upon submission of "as built plans" by a professional engineer licensed in the State of Wisconsin, the Director of Public Works, or his/her designee, shall release the portion of the financial guarantee established under this Section to assure completion of installation of practice; the City shall retain therefrom, nevertheless, any costs incurred by the City to complete installation of practices. The Director of Public Works, or his/her designee, may allow for a partial pro rata release of the financial guarantee based on the completion of various development stages.

2. At such time that the responsibility for practice maintenance is passed on to another entity via an approved Maintenance Agreement, and the other entity has posted suitable financial guarantees, the Director of Public Works, or his/her designee, shall release the portion of the financial guarantee established under this Section to assure maintenance of stormwater practices, less any costs incurred by the City,

36.12 FEE SCHEDULE

The fees referred to in this Chapter shall be established by Resolution of the Common Council and may from time to time be modified by Resolution. A schedule of the fees established by the Common Council shall be available for review in the Office of the Director of Public Works.

36.13 ENFORCEMENT

A. Violations. Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this Chapter by any person, firm, association or corporation subject to the Chapter provisions shall be deemed a violation, unless conducted in accordance with the requirements of this Chapter.

B. Notification of Violation(s). The Director of Public Works, or designee thereof, shall notify the responsible party **in writing** of noncomplying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

C. Corrective Action. Upon receipt of written notification for the Director of Public Works, or his/her designee, under **Subsection B.**, the responsible party shall correct work that does not comply with the Stormwater Management Plan or other provisions of this Chapter. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Director of Public Works, or his/her designee, in the notice.

D. Damage Caused By Violations. If the violations to a permit issued pursuant to this Chapter are likely to result in damage to properties, public facilities, or waters of the State, the parties working under the direction and authority of the Director of Public Works, or his/her designee, may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City, plus interest and legal costs, shall be billed to the responsible party.

E. Stop Work Order. The Director of Public Works, or his/her designee, is authorized to post a Stop Work Order on all land-disturbing construction activity that is in violation of this Chapter, or to request the City Attorney obtain a Cease and Desist Order in any court with jurisdiction.

F. Permit Revocation For Noncompliance. The Director of Public Works, or his/her designee, may revoke a permit issued under this Chapter for noncompliance with Chapter provisions.

G. Continuing Nature of Orders. Any permit revocation, Stop Work Order, or Cease and Desist Order shall remain in effect unless retracted by the Director of Public Works, or his/her designee, or by a court with jurisdiction.

H. Legal Proceedings. The Director of Public Works, or his/her designee, is authorized to refer any violation of this Chapter, or of a Stop Work Order or Cease and desist Order issued pursuant to this Chapter, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.

I. Penalties. Any person, firm, association or corporation who does not comply with the provisions of this Chapter shall be subject to a forfeiture of not less than Five ($5.00) Dollars, nor more than Five Hundred ($500.00) Dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

J. Injunction. Compliance with the provisions of this Chapter may also be enforced by injunction in any court of competent jurisdiction. It shall not be necessary to prosecute for forfeiture or a Cease or Desist Order before resorting to injunctional proceedings.

K. City Make Take Direct Action To Obtain Compliance. When the Director of Public Works, or his/her designee, determines that the holder of a permit issued pursuant to this Chapter has failed to follow practices set forth in the Stormwater Management Plan, or has failed to comply with the schedule set forth in said Stormwater Management Plan, parties working under the direction and authority of the Director of Public Works, or his/her designee, may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with the requirements of the approved plan. The Director of Public Works, or his/her designee, shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to **Section 36.11** of this Chapter. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

36.14 APPEALS

A. Appeals Before The Stormwater Utility

Committee. The Stormwater Utility Committee of the City of Kenosha shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director of Public Works, or his/her designee, in administering this Chapter. The Committee shall also use the rules, procedures, duties and powers authorized by Statute in hearing and deciding Appeals. Upon appeal, the Committee may authorize variances from the provisions of this Chapter that are not contrary to the public interest, and where owing to special conditions, a literal enforcement of the Ordinance will result in unnecessary hardship.

B. Who May Appeal. Appeals to the Stormwater Utility Committee of the City of Kenosha may be taken by any aggrieved person, or by an officer, department, board or bureau of the City affected by any decision of the Director of Public Works, or his/her designee.

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