

CHAPTER 8

Stormwater Management

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SEC. 8-8-1 PURPOSE

The purpose of this ordinance is to implement the requirements of Wis. Stat. §§ 281.16, 281.33, and to take other appropriate measures to manage stormwater quantity and quality to protect public health, safety and welfare.

SEC. 8-8-2 AUTHORITY

This Chapter is adopted under the authority granted by Wis. Stat. § 62.234. The provisions of this ordinance do not limit any other lawful regulatory powers of the City.

SEC. 8-8-3 DEFINITIONS

Unless specifically defined, words and phrases in this chapter shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and is not discretionary. As used in this chapter, the following terms shall have the meanings indicated:

- (a) **Best Management Practice (BMP)**. Best Management Practice (BMP) means structural or non-structural measures, practices, techniques, or devices employed to prevent or reduce the discharge of pollutants directly or indirectly

to stormwater, stormwater conveyance systems, or waters of the state by avoiding or minimizing soil, sediment or other pollutants carried in stormwater. BMPs include schedules of activities; prohibitions of practices; general good housekeeping practices; pollution prevention and educational practices; maintenance procedures; treatment practices; operating procedures and practices to control site runoff, spillage, leaks, sludge, water disposal, drainage from raw materials storage; and other management practices.

- (b) **City.** City means the City of Thorp.
- (c) **City's Designee.** City's Designees means employees or agents of the City of Thorp designated to enforce this ordinance.
- (d) **Construction Site.** Construction Site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.
- (e) **Contaminated Stormwater.** Contaminated Stormwater means stormwater 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 Wis. Admin. Code Ch. NR 216.
- (f) **Discharge.** Discharge means discharge as defined in Wis. Stat. Ch. 283, and any amendments thereto, when used without the qualification includes a discharge of any pollutant to the waters of this state from any point source.
- (g) **Erosion Control Plan.** Erosion Control Plan means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (h) **Hazardous Materials.** 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, or otherwise managed.
- (i) **Illicit Connection.** Illicit Connection means any connection that is either:
 - (1) Any drain or conveyance whether on the surface or subsurface, which allows an illegal discharge to enter

the stormwater conveyance system or waters of the state. This includes but is not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater and wash water to enter the stormwater conveyance system or waters of the state. It also includes any connections to the stormwater conveyance system 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

- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (j) **Illicit Discharge.** Illicit Discharge means any discharge to a stormwater conveyance system that is not composed entirely of stormwater except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit limited to landscape irrigation, individual residential car washing, firefighting, 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.
- (k) **Impervious Area.** Impervious Area 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, gravel or paved parking lots, and streets shall be considered impervious unless specifically designed to encourage infiltration and approved by the City.
- (l) **Industrial Activity.** Industrial Activity means activities subject to WPDES Industrial Permits as defined in 40 C.F.R. § 122.26(b)(14) or subject to Wis. Admin. Code NR 216.20.
- (m) **Land Disturbing Construction Activity.** Land Disturbing Construction Activity means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes stump removal, demolition, excavating, pit trench dewatering, filling and grading activities. This term does not include agricultural land uses.

- (n) **Municipal Separate Storm Sewer System (MS4).** Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which regulated under Wis. Admin Code Ch. NR 216.
- (o) **New Development.** New Development means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (p) **Non-Stormwater Discharge.** Non-Stormwater Discharge means any discharge to the stormwater conveyance system or waters of the state that is not composed entirely of stormwater.
- (q) **Owner.** Owner means any person holding fee title, an easement or other interest in property.
- (r) **Performance Standard.** Performance Standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (s) **Permit.** Permit means a written authorization made by the City's designee to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (t) **Pollutant.** Pollutant has the meaning in Wis. Stat. § 283.01(13).
- (u) **Post-Construction Site.** Post-Construction Site means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (v) **Premises.** Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (w) **Redevelopment.** Redevelopment means areas where development is replacing older development.
- (x) **Runoff.** Runoff means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (y) **Sediment.** Sediment means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (z) **Site.** Site means the entire area included in the legal description of the parcel or other land division on which the land disturbing construction activity is proposed in the permit application.
- (aa) **Stormwater.** Stormwater means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (bb) **Stormwater Management Plan.** Stormwater Management Plan means a comprehensive plan designed to control flow rates

and volumes, and reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of construction activity.

- (cc) **Stormwater Management System or Stormwater Conveyance System.** Stormwater Management System or Stormwater Conveyance System means the existing stormwater collection system of the City including, but not limited to, storm sewers, retention ponds, detention ponds, ditches, drainageways, streams, wetlands, qualifying receiving water, and all activities undertaken to conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.
- (dd) **Transportation Facility.** Transportation Facility means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes. "Transportation Facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the department pursuant to Wis. Stat. § 281.33.
- (ee) **Wastewater.** Wastewater means water carrying domestic sanitary wastewater and/or non-domestic waste.
- (ff) **Waters of the State.** Waters of the State has the meaning in Wis. Stat. § 283.01(20).
- (gg) **WPDES Stormwater Discharge Permit.** WPDES Stormwater Discharge Permit means a permit issued by the Wisconsin Department of Natural Resources under Wis. Stat. § 283.33 which authorizes the discharge of stormwater from construction sites, industrial facilities, and selected municipalities to waters of the state.

SEC. 8-8-4 STORMWATER MANAGEMENT POLICIES AND PROCEDURES

- (a) **Applicability and Jurisdiction.** This Section applies to all construction sites within the jurisdiction of the City involving sites with land disturbing construction activity of one acre or more, or sites less than one acre if they are part of a larger common plan of development or sale under the control of the permittee.
- (b) This Section does not apply to the following:
 - (1) Stormwater discharges from projects directed and supervised by the Wisconsin Department of

Transportation in accordance with Wis. Admin. Code § NR 216.42(5).

- (2) Agriculture. Stormwater discharges from planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock, including sod farms and tree nurseries are not regulated by this subchapter. This exemption does not include the construction of structures such as barns, manure storage facilities or barnyard runoff control systems.
 - (3) Stormwater discharges from silviculture activities, including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control are not regulated by this subchapter. Clearing and grubbing of an area of a construction site is not a silviculture activity.
 - (4) Mill and Crush Operation. If construction activity does not result in land disturbing construction activity including a mill and crush operation that does not have soil disturbance, filling or road shoulder grading, the activity is not regulated under this subchapter.
 - (5) Routine Maintenance. Routine maintenance for project sites that involve under 5 acres of land disturbing construction activity that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility is not regulated under this subchapter.
- (b) **Erosion Control and Stormwater Management Permit Required.** Any person desiring to undertake a construction activity subject to this ordinance shall obtain an erosion control and stormwater management permit from the City prior to the commencement of the land disturbing construction activity. The permit can be issued as part of a City building permit for the project site or where there is no building permit it can be issued as a separate permit.
- (c) **Application Requirements.** Any person desiring to obtain an Erosion Control and Stormwater Management permit shall submit the following information:
- (1) An erosion control plan meeting the requirements of Wis. Admin. Code § NR 216.46 and the applicable performance standards in Wis. Admin. Code § NR 151.11 for construction sites (or NR 151.23 for transportation facility sites).
 - (2) A stormwater management plan meeting the requirements of Wis. Admin. Code § NR 216.47 and the applicable performance standards in Wis. Admin. Code §§ NR

151.121 to NR 151.128 for construction sites (or NR 151.24 to NR 151.249 for transportation facility sites).

- (3) A long-term maintenance agreement meeting the requirements of Section 8-6-4(k).
 - (4) A plan to manage solid waste on construction sites such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste to reduce adverse impacts from stormwater runoff.
 - (5) Applicable permit fees set by the City.
- (d) **Review and Approval of Permit Application.** The City's designee shall review any Erosion Control and Stormwater Management permit in accordance with the following procedures.
- (1) Within 14 working days from the date the City of Thorp receives the application, the City shall inform the applicant whether the application materials are approved or disapproved based on the requirement of this ordinance.
 - (2) If all the requirements of this ordinance have been met, the City shall approve the application and issue a permit. If all the requirements of this ordinance have not been met, the City shall state in writing the reasons for disapproval. In the case of disapproval, if the applicant reapplies within 30 calendar days from the disapproval notification date, with a revised application, an additional review fee will not be administered and the City will have 14 working days to respond to the revised application.
 - (3) If within the 14 working day application review period, the City determines that the application is incomplete, or requests additional information from the applicant, the City shall have 14 working days from the date the additional information is received to review and act on the application.
 - (4) Failure of the City to inform the applicant of missing information or of a decision within the 14 working days shall be deemed to mean approval of the application and the applicant may proceed as if a permit had been issued.
- (e) **Standard Permit Conditions.**
- (1) The erosion control plan components shall be implemented prior to the start of any land disturbing activity and shall be maintained over the duration of the project. Stormwater components of the plan shall be maintained for the life of the project.

- (2) The permittee is responsible for successful completion of the erosion control plan and the stormwater management plan. The permittee shall be liable for all costs incurred, including environmental restoration costs, resulting from noncompliance with an approved plan.
- (3) Application for a permit shall constitute express permission by the permittee and landowner for the City's Designee to enter the property for purposes of inspection to determine compliance with this Ordinance.
- (4) All incidental mud-tracking off-site onto adjacent public thoroughfares shall be cleaned up and removed by the end of each working day using proper disposal methods.
- (5) A copy of the approved permit and erosion control plan shall be kept on the project site, in a place readily accessible to contractors, engineers, City inspection staff and other authorized personnel.
- (6) The permittee shall perform required inspections of the construction site and also of the post construction site following construction and perform the repairs and/or maintenance required in accordance with NR 216.48(4).
- (7) The permittee shall provide the City notice if there is a material change in design, construction, operation, or maintenance at the construction site which has not otherwise been addressed in the erosion control and stormwater management plans. In such a case an amendment to the permit shall be requested under paragraph F of this section.
- (8) At the time which land disturbing construction activities have been completed, the permittee shall provide the certification required in Section 8-6-4(j).

(f) **Permit Transfers.**

- (1) When a permittee transfers ownership, possession or control of real estate subject to either or both an uncompleted erosion control or stormwater management plan, the successor in interest to any portion of the real estate shall be responsible to control soil erosion and runoff and shall comply with the minimum standards provided in this section; and the permittee shall notify the new owner of this obligation.
- (2) Transfers of interest in real estate subject to an approved but uncompleted plan may be conducted

consistent with this section under any of the following arrangements:

- a) The transferee files a new erosion control or stormwater management plan, or both to be approved by the City.
- b) The transferee obtains an approved assignment from the City as sub-permittee to complete that portion of the approved plan regulating soil erosion and runoff on the transferee's property.

(g) **Plan or Permit Amendments.**

- (1) Any proposed modifications to approved plans, construction schedules or alterations to accepted sequencing of land disturbing site activities shall be approved by the City engineer in consultation with the plan review agency prior to implementation of said changes. This may require an updated plan or modeling depending on the extent of the change.
- (2) The City shall approve or disapprove these changes after the revised information is received from the applicant, but in no case shall the review process extend beyond 14 working days.

(h) **Request for a Variance.**

- (1) An applicant may include in the application a request for a variance from the requirements of subchapter.
- (2) No variance shall be granted unless the applicant demonstrates and the City finds that all of the following conditions are present:
 - a) Enforcement of the standards set forth in this section will result in unnecessary hardship to the landowner;
 - b) The hardship is due to exceptional physical conditions unique to the property;
 - c) Granting the variance will not adversely affect the public health, safety or welfare, nor be contrary to the spirit, purpose and intent of this section;
 - d) The applicant has proposed an alternative to the requirement from which the variance is sought that will provide equivalent protection of the public health, safety and welfare, the environment and public and private property;
 - e) The net cumulative effect of the variance will not impact downstream conditions; and
 - f) Existing regional facilities are shown to meet the performance standards of this subchapter.
- (3) If all of the conditions set forth in subsection (2) of this section are met, a variance may only be

granted to the minimum extent necessary to afford relief from the unnecessary hardship, with primary consideration to water quality.

- (4) The procedures for public hearing review of variances by the Zoning Board of Appeals shall be those used in Section 12-6-3.

(i) **Inspection.**

- (1) Any permittee subject to an erosion control and stormwater management permit shall conduct site inspections in accordance with NR 216.48(4)
- (2) Application for a permit under this section shall constitute permission by the applicant and landowner for the City to enter upon the property and inspect during the construction phase as necessary to confirm compliance with the requirements of this section.
- (3) As part of the plan approval process, the City shall determine the minimum number of City inspections required to ensure compliance.

(j) **Completion of the Construction Activities.**

(1) **Notice of Installation and City Review.**

- a) Within ten days after installation of all practices in an approved erosion control plan and achievement of soil stabilization, the permittee shall notify the City engineer by providing a completed using DNR Notice of Termination Form 3400-162. The City shall inspect the property to verify compliance with the erosion control plan within ten days of notification of soil stabilization.
- b) Within ten days after installation of all practices in an approved stormwater management plan, the permittee shall notify the City. The City engineer shall inspect the property to verify compliance within ten days of notification.

- (2) **Certification of Completion.** At the time in which land disturbing construction activities at the construction site have been completed the permittee shall provide a certification including the following:

- a) 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 that employ equivalent permanent stabilization measures.
- b) All stormwater improvements were constructed substantially in conformance with the design plans, specifications, and modeling as applicable

and that the temporary erosion control BMPs have been removed.

- (k) **Long Term Maintenance.** A long-term maintenance agreement shall be required for all permanent stormwater BMPs installed to comply with the requirements of this ordinance. The long-term maintenance agreement shall, at a minimum, contain the following information and provisions:
- (1) **Ownership.** Identification of the owner(s) of the land parcel(s) where the stormwater BMP(s) is located.
 - (2) **Long Term Maintenance Plan.** A description of all long-term maintenance activities that will likely be required for each BMP included in the agreement, and an estimated time interval between each activity;
 - (3) **Access.** Authorization for vehicle access, including a minimum 15-foot-wide access easement dedicated to the City, to allow for future BMP maintenance work.
 - (4) **Maintenance Responsibility.** Identification of the person(s), organization, municipality or other entity responsible for long term maintenance of the stormwater BMP.
 - (5) **Inspections shall be performed by the responsible party.** The responsible party shall maintain a log of inspection activities.
 - (6) **Municipal maintenance.** Authorization for the local municipality or their designee to carry out any maintenance activities and associated inspections if the entity does not perform the required activity within the specified time period or if the local municipality does not accept the work conducted by the designated entity;
 - (7) **Special Assessment.** A statement that the applicable local unit of government may exercise their statutory authority to levy and collect a special assessment or charge pursuant to sub-Ch. VII of Ch. 66 Wisconsin Statutes for any services carried out
 - (8) **Recording.** Upon certification of compliance by the City of Thorp, an abridged long term maintenance agreement shall be recorded with the County Register of Deeds referencing any plat, certified survey or other ownership transfer device pertaining to land which contains the subject stormwater BMP or is subject to maintenance responsibility in the approved agreement. For new land divisions, the recording of the long-term maintenance agreement shall occur simultaneously with the recording of the land division. However, no stormwater BMP long term

maintenance agreement shall be recorded prior to City of Thorp approval.

SEC. 8-8-5 ILLICIT DISCHARGE AND ILLICIT CONNECTION

- (a) **Applicability.** This Section shall apply to all water entering the stormwater conveyance system or waters of the state generated on any developed or undeveloped lands unless explicitly exempted by an authorized enforcement agency.
- (b) **Prohibition of Illicit Discharges.** No person shall discharge or cause to be discharged into the municipal stormwater conveyance system or waters of the state or watercourses any illicit discharge as defined in Section 8-6-3(j) of this Ordinance.
- (c) **Prohibition of Illicit Connections.**
 - (1) The construction, use, maintenance or continued existence of illicit connections to the stormwater conveyance system is prohibited.
 - (2) 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.

SEC. 8-8-6 INSPECTION AND MONITORING

- (a) Whenever necessary to enforce any provision of this ordinance or whenever the City has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this ordinance, the City may request to enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- (b) During any inspection as provided herein, the City may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

SEC. 8-8-7 INDUSTRIAL WPDES PERMIT REQUIREMENTS

The owner or operator of a commercial or industrial establishment subject to a WPDES permit shall comply with their

permit including the development and implementation of a stormwater pollution prevention plan (SWPPP).

SEC. 8-8-8 NOTIFICATION OF SPILLS

- (a) Notwithstanding other requirements of law, including compliance with the Wisconsin Spill Statute, Wis. Stat. Ch. 292, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the United States said person shall take all necessary steps to ensure the discovery, containment and, cleanup of such release.
- (b) In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Thorp's designee within three 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 seven years. Failure to provide notification of a release as provided above is a violation of this ordinance.

SEC. 8-8-9 APPEAL.

Any person who is aggrieved by an order, decision or other determination under this Ordinance including but not limited to the issuance of erosion control and stormwater management permits and enforcement orders, may file an appeal in accordance with Chapter 68 of the Wisconsin Statutes.

SEC. 8-8-10 ENFORCEMENT

The provisions of this Ordinance are subject to the following enforcement provisions at the option of the City in its discretion.

- (a) **Notice of Noncompliance.** Whenever the City finds any noncompliance with the provisions of this Chapter, the City may provide a notice of any noncompliance by personal

service, written notice by certified mail, electronic mail, or facsimile transmission of any noncomplying activity. 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. The City shall attempt to communicate with the owner or person performing the work to obtain immediate and voluntary compliance.

(b) **Stop Work Order.**

- (1) If the owner or person performing the work refuses to voluntarily comply immediately to a notice of noncompliance or the noncompliance presents an imminent danger or will cause or threatens to cause bodily injury or damage to off-site property or the waters of the state, the City shall post in a conspicuous place on the premises, a stop work order which shall cause all activity not necessary to correct the noncompliance to cease until noncompliance is corrected.
- (2) The stop work order shall provide the following information: date of issuance, identification of the property subject to the stop work order, reason for posting and the signature of the inspector posting the order.
- (3) It shall be a violation of the Chapter for the unauthorized removal of the stop work order from the premises.
- (4) In addition to posting a stop work order, the City shall provide notification to the owner or contractor by personal service, written notice by certified mail, electronic mail, or facsimile transmission. The owner or permittee shall have 24 hours to respond to the City and initiate remedial measures to correct any noncompliance.

(c) **City Remedial Action.** If the violations of this Ordinance are not corrected and are likely to result in significant damage to properties, public facilities, or waters of the state, the City's 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.

(d) **Permit Revocation.** The City may revoke a permit issued under this ordinance for noncompliance with this Ordinance or the terms and conditions of the permit.

(e) **Penalty.** Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to forfeiture in accordance with Thorp Code of

Ordinances, Section X, for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

(f) **Injunctive and Other Judicial Relief.**

- (1) The City's designee is authorized to refer any violation of this ordinance, or of a stop work order issued pursuant to this ordinance, to the municipal attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (2) Any condition in violation of any of the provisions of this chapter and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.
- (3) 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 other remedies before resorting to seeking an injunction.

(g) **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 authorized enforcement agency to seek cumulative remedies.