# Title III - Chapter 5

Property – Erosion Control on Construction Site

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#### 5.01 Authority.

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

- (c) Wisconsin Department of Commerce administrative rules, permits or approvals including those authorized under Comm 21.12, Comm 21.125 or Comm. 50.115, Wis. Admin. Code
- 5.02 **Findings of Fact.** The Village Board finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state.
- 5.03 **Purpose.** It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the Village of Poynette.

## 5.04 Applicability and Jurisdiction.

- (1) Applicability.
  - (a) This ordinance applies to land disturbing construction activities on public or private lands, except as provided under sub. (b), if::
    - 1. Land disturbing construction activity is to be conducted that includes the construction of a building or is otherwise regulated by the Wisconsin Department of Commerce under s. COMM 21.125 or COMM 61, Wis. Adm. Code.
    - 2. An area of 5,000 square feet or greater will be disturbed by excavation, grading, filling or other earthmoving activities resulting in the loss or removal or protective ground cover or vegetation; or
    - 3. Excavation, fill or any combination thereof, will be conducted exceeding 1,000 cubic yards or more of dirt, soil or other excavation or fill material; or
    - 4. Any public (federal, state, or local) street, road or highway is to be constructed, enlarged, relocated or reconstructed; or
    - 5. any proposed land use by a unit of government or by public or private utilities will require that underground conduits, cables, piping, wiring, water lines, sanitary sewers or storm sewers be laid, repaired, replaced or enlarged, if such use involves more than 300 linear feet of trenching or earth disturbance; or

- 6. The development of any subdivision requiring plat approval or any certified survey; or
- 7. The conduct of any land disturbing activity on slopes greater than 15%.
- (b) This ordinance does not apply to Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- (c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to construction sites of any size that, in the opinion of the Village Engineer, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (2) <u>Jurisdiction</u>. This ordinance applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the Village of Poynette, as well as all lands located within the extraterritorial plat approval jurisdiction of Village of Poynette (the unincorporated area within 1.5 miles of the Village), even if plat approval is not involved, pursuant to §§ 236.45(2) and (3) Wis. Stats.
- (3) <u>Exclusions</u>. This ordinance is not applicable to activities conducted by a state agency, as defined under s. 59.001 (1), Wis. Stats.

## 5.05 **Definitions.**

- (1) "Best Management Practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff beyond the construction site, and to waters of the state.
- (2) "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.
- (3) "Division of land" means the creation of two (2) or more parcels or building sites from one parcel.
- (4) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

- (5) "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 but is not limited to clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (6) "Permit" means a written authorization made by the Village Engineer to the applicant to conduct land disturbing construction.
- (7) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (8) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (9) "Responsible party" means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.
- (10)"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.
- (11)"Separate storm drain inlet structure" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
  - (a) Is designed or used for collecting water or conveying runoff.
  - (b) Discharges directly or indirectly to waters of the state.
- (12)"Site" means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed.
- (13)"Stop work order" means an order issued by the Village Engineer which requires that all construction activity on the site be stopped.
- (14)"Village Engineer" means the professional engineer or certified building inspector designated by the Village Board of Poynette to administer this Ordinance, and includes any other persons supervised by the professional engineer or certified building inspector.

## 5.06 **Technical Standards.**

(1) <u>Design Criteria, Standards and Specifications</u>. All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:

- (a) Applicable design criteria, standards and specifications identified in the *Wisconsin Construction Site Best Management Practice Handbook,* WDNR Pub. WR-52, current revision.
- (b) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (2) <u>Other Standards</u>. Other technical standards not identified or developed in sub. (1), may be used provided that the methods have been approved by the Village Engineer.

## 5.07 Land Disturbance for Construction of Buildings.

- (1) <u>Grade</u>. (per Comm 21.12) The finished grade of the soil shall slope away from the dwelling at a rate of at least 1/2–inch per foot for a minimum distance of 10 feet, or to the lot line, whichever is less.
- (2) <u>Erosion control procedures</u>. (per Comm 21.125)
  - (a) Performance Standards. General. Perimeter erosion control measures shall be placed within 24 hours after beginning of excavation. Erosion control measures shall be placed along downslope areas and along sideslope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. The best management practices as defined in s. Comm 20.07 (8m) or alternative measures that provide equivalent protection to these practices may be utilized to satisfy the requirements of this section. When the disturbed area is stabilized, the erosion control measures may be removed.
    - 1. Stabilization by seeding and mulching. Slopes greater than or equal to 12%, with a downslope length of 10 feet or more, are not considered stabilized with seeding and mulching unless used in conjunction with a tackifier, netting, or matting. Asphalt emulsion may not be used as a tackifier.
    - 2. Tracking. Sediment tracked by construction equipment from a site onto a public or private paved road or sidewalk shall be minimized by providing a non-tracking access roadway. The access roadway shall be installed as approved on the plot plan, prior to framing above the first floor decking. The sediment cleanup provisions of par. 3. are unaffected by the presence or absence of an access roadway.

**Note:** It is not the intent of par. 2. to require a gravel access roadway where natural conditions, such as sandy soils or solidly frozen soil, already provide non-tracking access.

- 3. Sediment cleanup. Off-site sediment deposition occurring as a result of a storm event shall be cleaned up by the end of the next work day following the occurrence. All other off-site sediment deposition occurring as a result of construction activities shall be cleaned up at the end of the work day.
- 4. Public sewer inlet protection. Downslope, on-site public sewer inlets shall be protected with erosion control procedures.
- 5. Building material waste disposal. All building material waste shall be properly managed and disposed of to prevent pollutants and debris from being carried off the site by runoff.
- (3) Best Management Practices.
  - (a) General. Appropriate best management practices, as specified in chapter 3, Wisconsin Construction Site Best Management Practices Handbook, published by the department of natural resources, may be selected, installed, maintained and remain in place until the site is stabilized to meet the performance standards specified in 5.05(4).
- (4) Maintenance of Control Procedures.
  - (a) General. During the period of construction at a site, all erosion control procedures necessary to meet the performance standards of this section shall be properly implemented, installed and maintained by the building permit applicant or subsequent landowner. If erosion occurs after building construction activities have ceased, some or all of the erosion control procedures shall be maintained until the site has been stabilized.
  - (b) Exceptions and clarification. The maintenance procedures and inspection sequences within chapter 3, Wisconsin Construction Site Best Management Practices Handbook, are not adopted as a part of this code.
- (5) <u>Dismantling of Erosion Control Procedures</u>. Except for permanent erosion control systems, the owner shall be responsible for dismantling and removing erosion control procedures once the soil on the site is stabilized.

# 5.08 **Land Disturbing Construction Sites.** (not for buildings) Performance Standards.

- (1) <u>Plan</u>. The responsible party shall implement a written erosion and sediment control plan for each construction site, developed in accordance with 5.10, that incorporates the requirements of this section.
- (2) <u>Erosion and Other Pollutant Control Requirements</u>. The plan required under sub. (1) shall include the following:

- (a) BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or BMPs until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment controls may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
- (b) Notwithstanding par. (a), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
- (c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
  - 1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
  - 2. Prevent the discharge of sediment as part of site de-watering.
  - 3. Protect the separate storm drain inlet structure from receiving sediment.
- (d) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance beyond the construction site or into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.
- (3) <u>Location</u>. The BMPs used to comply with this section shall be located to prevent runoff entering properties owned by others, Village stormwater conveyance systems or waters of the state.
- (4) <u>Alternate Requirements</u>. The Village Engineer may establish storm water management requirements more stringent than those set forth in this section if the Village Engineer determines that an added level of protection is needed for sensitive resources.

## 5.09 **Permitting Requirements, Procedures and Fees.**

(1) <u>Permit Required</u>. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Village Engineer.

- (2) <u>Permit Application and Fees</u>. At least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of 5.10 and shall pay the application fee described in 5.11 to the Village. By submitting an application, the applicant is authorizing the Village Engineer to enter the site to obtain information required to review the erosion and sediment control plan.
- (3) <u>Review and Approval of Permit Application</u>. The Village Engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
  - (a) Within three weeks of the receipt of a complete permit application, as required by sub. (2), the Village Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
  - (b) If the permit application and plan are approved, the Village Engineer shall issue the permit.
  - (c) If the permit application or plan is disapproved, the Village Engineer shall state in writing the reasons for disapproval.
  - (d) The Village Engineer may request additional information from the applicant. If additional information is submitted, the Village Engineer shall have five weeks from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
  - (e) Failure by the Village Engineer to inform the permit applicant of a decision within three weeks of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) Surety Bond. As a condition of approval and issuance of the permit, the Village Engineer may require the applicant to deposit a surety bond or irrevocable letter of credit in an amount equal to one-hundred and twenty-five percent (125%) of the estimated cost of all required control measures to guarantee a good faith execution of the approved erosion control plan and any permit conditions. The security shall remain in full force for the entire period of the permit unless released earlier by the Village. If the approved plan is include as part of a plat or certified survey map conditions of approval, than the overall security for performance of the approved plan may be included as part of the overall security required for installation of improvements under the Village's Land and Subdivision Ordinance.
- (5) <u>Permit Requirements</u>. All permits shall require the responsible party to:
  - (a) Notify the Village Engineer at least two working days prior to commencing any land disturbing construction activity.

- (b) File a notice of completion of all land disturbing activities and/or installation of BMPs within 10 days after their installation.
- (c) Obtain permission in writing from the Village Engineer prior to any modification of the erosion and sediment control plan, pursuant to 5.10(3).
- (d) Install all BMPs as identified in the approved erosion and sediment control plan.
- (e) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
- (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.
- (g) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
- (h) Allow the Village Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (6) <u>Permit Conditions</u>. Permits issued under this section may include conditions established by Village Engineer in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in 5.06.
- (7) <u>Permit Duration</u>. Permits issued under this section shall be valid for a period of 180 days, from the date of issuance. The Village Engineer may extend the period one or more times for up to an additional 180 days. The Village Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.
- (8) <u>Maintenance</u>. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

## 5.10 **Erosion and Sediment Control Plan, Statement and Amendments.**

- (1) Erosion and Sediment Control Plan.
  - (a) An erosion and sediment control plan shall be prepared and submitted to the Village Engineer.
  - (b) The erosion and sediment control plan shall be designed to meet the performance standards in 5.06 and other requirements of this ordinance.
  - (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
    - 1. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include estimated start and end dates for construction.
    - 2. Description of the site and the nature of the construction activity.
    - 3. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
    - 4. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
    - 5. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.
    - 6. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
    - 7. Existing data describing the surface soil as well as subsoils.
    - 8. Depth to groundwater, as indicated by Natural Resources Conservation
    - 9. Service soil information where available.

- (d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed two feet.
  - 1. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
  - 2. Boundaries of the construction site.
  - 3. Drainage patterns and approximate slopes anticipated after major grading activities.
  - 4. Areas of soil disturbance.
  - 5. Location of major structural and non-structural controls identified in the plan.
  - 6. Location of areas where stabilization practices will be employed.
  - 7. Areas which will be vegetated following construction.
  - 8. Area of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.
  - 9. An alphanumeric or equivalent grid overlying the entire construction site map.
- (e) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from leaving the site. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:
  - 1. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
  - 2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Village Engineer, structural measures shall be installed on upland soils.
  - 3. Management of overland flow at all sites, unless otherwise controlled by outfall controls.

- 4. Trapping of sediment in channelized flow.
- 5. Staging construction to limit bare areas subject to erosion.
- 6. Protection of downslope drainage inlets where they occur.
- 7. Minimization of tracking at all sites.
- 8. Clean up of off-site sediment deposits.
- 9. Proper disposal of building and waste materials at all sites.
- 10. Stabilization of drainage ways.
- 11. Control of soil erosion from dirt stockpiles.
- 12. Installation of permanent stabilization practices as soon as possible after final grading.
- 13. Minimization of dust to the maximum extent practicable.
- (f) The erosion and sediment control plan shall require controls be placed to slow the flow of water at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (2) Erosion and Sediment Control Plan Statement. For each construction site identified under 5.04 (1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Village Engineer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.
- (3) <u>Amendments</u>. The applicant shall amend the plan if any of the following occur:
  - (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants beyond areas addressed in the plan.
  - (b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
  - (c) The Village Engineer notifies the applicant of changes needed in the plan.

- 5.11 <u>Fee Schedule</u>. Any person who submits an application for approval of an erosion control plan or issuance of approval by the Ordinance, shall pay a fee as specified on the Administrative Fees, Charges and Deposits Schedule in Title VI, Chapter 2 Administrative Fees, Charges and Deposits, and, in addition, shall pay the Village's actual cost for engineering work by the Village Engineer in connection with the plan. The fee shall be paid prior to issuance of the permit if the engineering review fees have been billed by that time. If billed to the Village after issuance of the permit, the fee shall be paid within 30 days of its receipt by the applicant. Failure to pay such a fee within 30 days shall be grounds for revocation of the permit, issuance of a stop work order, and/or charging the cost as a special tax against the property pursuant to Wis. Stats. Section 66.0703.
- 5.12 **Inspection.** If land disturbing construction activities are being carried out without a permit required by this ordinance, the Village Engineer may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats.

## 5.13 Enforcement.

- (1) The Village Engineer may post a stop-work order if any of the following occurs:
  - (a) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
  - (b) The erosion and sediment control plan is not being implemented in a good faith manner.
  - (c) The conditions of the permit are not being met.
- (2) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Village Engineer may revoke the permit.
- (3) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Village Engineer, or if a responsible party violates a stop-work order posted under sub. (1), the Village Engineer may request the Village Attorney to obtain a cease and desist order in any court with jurisdiction.
- (4) The Village Engineer may retract the stop-work order issued under sub. (1) or the permit revocation under sub. (2).
- (5) After posting a stop-work order under sub. (1), the Village Engineer may issue a notice of intent to the responsible party of the Village's intent to perform work necessary to comply with this ordinance. The Village Engineer may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this

subsection by the Village Engineer or Village Attorney, plus interest at the rate of 1% per month for each month or part thereof, shall be billed to the responsible party. In the event the amount due if not paid, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.

- (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (7) 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 issue a cease and desist order before resorting to injunction proceedings.

## 5.14 **Appeals.**

- (1) The Village of Poynette Plan Commission shall:
  - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village Engineer in administering this ordinance except for cease and desist orders obtained under Title III, Chapter 6. 6.03.
  - (b) Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
  - (c) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- 5.15 **Severability.** If a court of competent jurisdiction judges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.
- 5.16 **<u>Effective Date</u>**. This ordinance shall be in force and effect from and after its adoption and publication.