

**STORM WATER
INTERDEPARTMENTAL AGREEMENT**

**Department of Public Works and
Department of Parks and Land Use**



A. Abbreviations & Terminology

The following terms are used throughout this document and are defined below:

- “BMP” = Best management practices – used to control soil erosion or sedimentation during construction and to manage and treat post-construction storm water runoff
- “DNR” = Wisconsin Department of Natural Resources
- “LRD” = Land Resources Division of the Department of Parks and Land Use, or the primary contact person from the LRD, depending on the context.
- “MS4” = Municipal Separate Storm Sewer System, a type of pollution discharge elimination system permit issued under subchapter I of Chapter NR 216 Wis. Admin. Code.
- “Responsible Party” = the permit holder and any person or entity holding fee title to the property or acting as the owners representative, including any person, firm, corporation or other entity performing services, contracted, subcontracted or obligated by other agreement to design, implement, inspect, verify or maintain the BMPs and other approved elements of erosion control and storm water plans and permits.
- “SW & EC Plan” = Storm water management and erosion control plans
- “SW Ordinance” = Waukesha County Storm Water Management and Erosion Control Ordinance (Chapter 14, Article VIII County Code of Ordinances)
- “SW Permit” = Storm Water Permit (i.e. the LRD permit issued under the SW Ordinance)
- “WPDES” = Wisconsin Pollution Discharge Elimination System, a type of permit issued by DNR for all point sources of water pollution under the federal Clean Water Act, including MS4 Permits and construction sites with greater than 1 acre disturbed area.

B. Objectives of Agreement

The objectives of this agreement are to:

1. Describe how the departments will cooperate to the fullest extent to minimize environmental damages during and after construction of county infrastructure while ensuring safe and economical public roads, parks, buildings and other facilities.
2. Maintain compliance with the SW Ordinance and LRD’s “Authorized Local Program” status under s. NR 216.415 Wis. Admin Code. This authorization allows a County SW Permit to also meet the DNR WPDES permit requirements under subchapter III of Chapter NR 216 Wis. Admin. Code, and confers coverage under the WPDES storm water discharge general permit WI-S067831-3, issued by the DNR. This agreement is a condition of the Authorized Local Program approval letter dated 11-19-10;
3. Maintain compliance with the County’s MS4 Permit requirements. This includes providing DNR a copy of this agreement to document detailed county policies and procedures on controlling soil erosion and sedimentation during construction and

- managing post-construction storm water runoff for applicable county construction projects, as required in a DNR correspondence dated 7-17-09;
4. Maintain compliance with other applicable environmental regulations, including wetlands, endangered resources and historical and archeological sites, as required under Chapter NR 216 Wis. Admin. Code, and floodplains, shoreland, environmental corridors and other applicable regulations under county ordinances. The LRD will screen all county-owned sites for applicability of these regulations and notify the Project Manager as early in the planning phase as possible. (Note: This does not include Army Corp of Engineers or municipal permits);
 5. Ensure regulatory consistency in administering LRD SW Permits, regardless of the permit holder;

C. Applicability

This agreement applies to all county-owned construction or reconstruction projects that trigger the need for a SW permit under the SW Ordinance applicability criteria. For projects subject to the DNR/DOT Cooperative Agreement that are at least as restrictive as the county SW Ordinance, the Project Manager may apply for a SW Permit exemption under section 14-333(c)1.D of the SW Ordinance. Unless granted an exemption by the LRD, any project that meets one of the following triggers must obtain a SW Permit from the LRD and meet all applicable standards:

1. Storm Water Management and Erosion Control Plan Required:
 - a. Any new road;
 - b. Any road widening or reconstruction where 0.5 acres or more of impervious surface is added that drains to a single defined discharge point (*Note: Each discharge point that meets the 0.5 acre threshold will need treatment*);
 - c. Any conversion of an existing road from a rural cross-section (grass swales) to an urban cross-section (curb & gutter) that results in 0.5 acres or more of impervious surface no longer being treated by a grass swale.
 - d. Other building, road, parking lot or other project that adds 0.5 acres or more of impervious surface, including smaller individual projects that are part of a common plan of development that may be constructed at different times;
2. Erosion Control Plan Only required for the following activities:
 - a. Any land disturbance of 3,000 square feet or greater;
 - b. 400 cubic yards or greater of excavation or filling or a combination of the two;
 - c. Land disturbance of 300 lineal feet or more, including road ditches and utility work (The LRD may exempt if plowed or bored outside of a channel/ditch. The LRD has standard erosion control templates to use for ditching permits and will help determine stabilization needs based on state technical standards.).

Notes:

- Any LRD issued SW Permit shall also serve as WPDES permit coverage under NR 216.
- Some portions of this agreement may be covered under private contracts or other interdepartmental agreements, including those covered under TRANS 401 Wis. Admin. Code. For these sites, documentation of the responsible party will be provided to the LRD and an appropriate variance may be processed in accordance with the SW Ordinance procedures.

- *A storm water management or erosion control plan may also be required for any other land disturbing or development activity that the LRD determines is likely to cause an adverse impact to an environmentally sensitive area or other property (including chronic wetness), or may violate any other storm water or erosion control standard set forth in the SW Ordinance*

D. Communication and Conflict Resolution

It is recognized that effective communication is key to this agreement accomplishing its stated objectives. Therefore, all parties agree to maximize communication on construction projects, starting as early in the planning process as practicable and extending through final landscaping and SW Permit termination procedures. Effective communication is especially important on larger more complex projects where there may be many consultants, contractors and others involved.

1. **Primary Contact Person.** For every planned construction project subject to this agreement, the applicable department shall assign a primary contact person, who shall be referred to as the *Project Manager* for the remainder of this agreement. The LRD Manager shall also assign a primary contact person for each project to communicate and enforce SW Ordinance requirements. Together, the Project Manager and the LRD will work cooperatively to ensure compliance with this agreement.
 - a. The Project Manager shall be the Storm Water Permittee, representing either the Department of Public Works or the Department of Parks and Land Use.
 - b. The Project Manager shall provide the LRD primary contact information for all consultants or contractors that are assigned SW Permit compliance duties during the planning, design and construction phases.
2. **Meeting Notices.** The Project Manager shall notify the LRD of all project planning and design meetings where SW Permit related issues may be discussed, and send the LRD copies of any pertinent reports, plans (i.e. concept, 30%, 60%, final designs) or publically posted meetings relating to the project. If LRD action is requested prior to an upcoming meeting, the Project Manager shall ensure the LRD is given adequate advance notice to complete the requested action – generally 10 working days under this agreement.
3. **Annual Planning Meeting.** Every January at a minimum, the LRD will schedule meetings with the Parks Manager and the Managers from Public Works Engineering and Architectural divisions to discuss all currently planned construction projects. The primary purposes of the meeting are to:
 - a. Discuss the scope, status and projected timeline for each construction project;
 - b. Determine which projects are subject to a SW Permit and which could qualify for an exemption under the DNR/DOT Cooperative Agreement;
 - c. Determine roles and responsibilities of staff and consultants (see E.2.. below) and the lead contact people for each project; and
 - d. Discuss scheduling of individual project meetings to address the issues described in the following sections of this agreement.

- e. Review a summary prepared by LRD of SW Ordinance violations that may have occurred on county-owned construction projects during the prior year and discuss opportunities to improve compliance for upcoming projects.
4. **Final Approved Construction Plans and Permits.** Before construction begins, it is very important that: a) everyone involved is working from the final approved construction plans, including SW & EC plans; b) all applicable permits have been obtained; and c) contractors confirm the plans can be effectively implemented. The procedures described in section E. below include a number of steps designed to ensure this happens and that any plan amendments made during construction are properly communicated, recorded and approved, as needed.
 5. **Conflict Resolution.** If there is disagreement on the practicability of SW Permit compliance requirements or other compliance issues arise, the appropriate department staff shall meet to resolve the issue. . If the issue cannot be resolved, the following steps shall apply:
 - a. The applicable Division Managers shall meet in a timely manner and make every reasonable attempt to resolve the conflict. If they are unable to reach agreement, the involved parties shall jointly prepare a written summary of the issue and the remaining points of conflict.
 - b. The applicable Department Director(s) shall be provided a copy of the above noted written summary and, in a timely manner, meet with no more than two representatives of the divisions involved and make every reasonable effort to resolve the conflict. If the Directors are unable to resolve the disagreement they may choose to call in a third party to resolve the issue.

E. Procedures

The following procedures apply to any project requiring a SW Permit, as described in Section C. above. The order and applicability of steps and timelines will depend on the size and complexity of the project and other applicable procedures, such as the Wisconsin Department of Transportations Facilities Development Manual. The LRD will provide the Project Manager a checklist, which they will both use to track what steps are applicable, who will take the lead, the projected timeline, and the completion date.

1. **Complete Conceptual Grading & Storm Water Mgt. Plan.** For each planned construction project, the Project Manager will invite LRD staff to participate in the site planning process early, especially if significant site constraints exist, or land acquisition is involved. Minimal technical details are worked out at this stage. However, space/ROW, soils, utility and permit issues may need to be investigated to determine the feasibility, possible location and estimated size of storm water BMPs. Other issues that need further investigation can be identified and scheduled for follow-up. Concept plans could be prepared during capital planning or, as for highways, during the Operational Planning Meeting, which occurs later in the process. (3-5 years before construction/may be part of capital planning if needed) Some other notes about this step:

- a. Review preliminary roles and responsibilities, including what portions of a project will be completed by consultants versus county staff – and who.

- b. Concept plans can be prepared using available data such as GIS air photos, soil maps, topographic maps, etc. However, additional soil borings and site investigation work may be needed, which would require funding.

2. Refine Roles & Complete Preliminary SW & EC Plan (1-3 yrs before construction)

- a. Refine roles and responsibilities for consultants and county staff - ensure all applicable tasks are included in an RFP for consulting services. Examples:
 - i. Soil profile evaluations & interpretive reports (USDA/Comm 85 stds.)
 - ii. Site survey & utility mapping
 - iii. Map & identify all regulatory boundaries/jurisdictions (see c. below)
 - iv. Complete storm water & erosion control plans and BMP designs
 - v. Obtain all applicable regulatory permits (see c. below)
 - vi. Supervise construction/implement BMP inspection plan
 - vii. Conduct & log weekly erosion control inspections
 - viii. Complete BMP as-built surveys & final PE construction verification
 - ix. Complete planting verification (warm season & wetland plants)
 - x. Link consultant payment schedules to the completion of above tasks or delivery of stated products

Note: Upon request, LRD may assist with site investigation, design work, plan preparation, maintenance documents, construction inspection, etc.

- b. Complete site investigation work (site survey, soils, utilities, etc.) .
- c. Research and identify all applicable permits and who will take the lead in obtaining them (such as):
 - i. Storm water (NR 216 and LRD)
 - ii. Waterway navigability (Chapter 30, Zoning, etc.)
 - iii. Wetlands (NR 103 and Zoning)
 - iv. Endangered resources (NR 27)
 - v. Floodplains (Zoning)
 - vi. Shoreland (Zoning)
 - vii. Environmental corridors (Zoning)
 - viii. Dredging requirements (NR 347)
 - ix. Historic/archeological resources (s. 44.45 Wis. Stats.)

Note: LRD must conduct initial site screening for wetlands, endangered resources and historical/archeological resources. Any positive results must be sent to the applicable regulatory authority.

- d. Prepare preliminary SW & EC/grading plans for larger projects, following applicable LRD checklists.
 - i. Identify storm water management goals and applicable performance standards based on receiving waters and known site conditions.
 - ii. Prepare preliminary BMP designs.
 - iii. Identify any major fill or soil disposal needs and proposed areas.
- e. Submit preliminary SW & EC/grading plans to LRD for review.
- f. LRD will review and comment within 10 working days.
- g. The Project Manager will not advance a project to the final design phase until LRD provides preliminary concurrence regarding its oversight responsibilities on the project.

3. Complete/Approve Final SW & EC Plans (Before bidding construction)

- a. Prepare final storm water & erosion control plans, following applicable LRD check lists, including:
 - i. BMP construction specifications & construction inspection plan
 - ii. Construction sequence & site stabilization plan

Note: For small projects like re-ditching, LRD templates are available to make this process as efficient as possible. The primary project-specific task would be to generate a simple map of the project area, with watersheds and erosion controls annotated.

- iii. Erosion control narrative.

Note: For small projects, LRD has sample fill-in-the-blank erosion control narratives available that can be used to meet this requirement.

Note: For large projects, implementation details may be deferred to the selected contractor (Erosion Control Implementation Plan). However, for permitting and bidding purposes some guidance is needed to establish clear erosion control expectations and performance standards. Bidders are allowed to propose alternatives, but costs for erosion control compliance should never be an issue after the bidding process is completed, unless the county makes changes. LRD can assist with writing erosion control performance expectations to be included in bid documents.

- b. Project Manager applies for SW permit (no fee)

Note: On highway projects where construction oversight is covered under a Memorandum of Understanding between DOT and DNR (construction oversight by DOT), the normal county SW permit process would not apply beyond this point. However, if the county will own a storm water BMP after construction, LRD will maintain permitting authority only for the BMP so we can enforce the construction inspection and as-built verification processes, which the MOU does not cover. Also, contact information must be provided to LRD for the lead staff supervising construction and the regulator charged with enforcing erosion control

activities. Construction contracts must also clarify financial responsibility if sedimentation from construction is determined to be the cause of any type of BMP noncompliance.

- i. Fill out “General Requirements Agreement”. This document outlines some key requirements that apply to all SW permits.
- c. LRD reviews and approves final SW & EC plans
 - i. LRD will review final plans within 10 working days and notify Project Manager of any necessary changes, additions, etc.
 - ii. Conditional plan approval may be granted if other permits or approvals are required before LRD can approve SW & EC plans.
 - iii. Plans may be approved, but the SW permit is not usually issued until after the PIM meeting under 5.a. below.
- d. The Project Manager will not advance a project to bidding or apply for other regulatory permits until LRD provides concurrence regarding its oversight responsibilities on the project.
- e. Project Manager applies for other applicable regulatory permits using approved plans. (List LRD contact person for DNR permits.)

4. Prepare Bid Documents & Bid Construction Work (After SW & EC plans approved)

- a. Bid Documents: Include LRD approved SW & EC plans and “General Requirements Agreement” in bid documents. Allow the successful contractor to propose alternative construction site erosion control measures, to be approved by the LRD and other applicable county staff (see 5.a. below).
- b. Construction contract:
 - i. If possible, add liquidated damages or comparable measures to contracts to improve adherence to approved SW & EC plans and construction sequence.
 - ii. Ensure final contractor payments are contingent on LRD accepting applicable BMP construction as-built and verification documents in accordance with standard SW Ordinance procedures.

Note: These items may be added to the county AIA document template.

5. LRD Issues SW Permit & Project Manager Coordinates Construction

- a. All involved parties attend plan implementation meeting (PIM), which is designed to occur 2-4 weeks before construction begins. Complete PIM form, designating who is responsible for carrying out all elements of the SW & EC plans. Allow the contractor to request modification of the approved EC plans, increasing the likelihood that the plans will be implemented as intended. If needed, make EC plan amendments. Some key designations of responsibility include:
 - i. *Erosion Control Inspector* (may be county staff or consultant, and may or may not be the same person as the engineer overseeing any storm water management BMPs). This person is responsible for:

- Performing inspections weekly and following rain events >0.5",
- Implementing necessary repairs to erosion control BMPs, and
- Maintaining an on-site inspection log.

Note: In the case of minor projects performed by county staff, the crew leader will likely fulfill this role. LRD will provide staff training upon request or as required under the county MS4 permit.

- ii. *Project Engineer* is charged with overseeing construction inspection schedule for permanent storm water BMPs, if any, and certifying BMP as-built plans. This person may designate a BMP inspector, but is ultimately responsible for the results.
- b. LRD issues the SW Permit to the Project Manager (after PIM form is completed and any changes made to the SW & EC plans are approved).
 - c. Attend preconstruction meeting. Ensure utilities, wetlands, etc. are marked and applicable permits have been obtained. Answer any contractor questions.
 - d. Project Engineer must oversee and inspect BMP construction following approved inspection plan. Conduct surveys as needed to collect key grades and structure elevations while they are still visible and grading equipment is available. Have qualified professional oversee warm season or wetland plantings.
 - e. Erosion Control Inspector conducts and records a log for weekly erosion control inspections and daily dewatering inspections. Have log available for LRD inspections.
 - f. The Project Manager will monitor the activities of the contractor and compliance with approved construction plans. If there are regular site progress meetings, the Project Manager will invite LRD staff to participate as needed.
 - g. Project Manager will keep the LRD abreast of any significant proposed plan changes that may affect erosion control and storm water management. Obtain approvals or documentation as needed if the proposed changes affect BMP construction or performance.

6. LRD Enforcement Process

- a. LRD Inspections. At a minimum, LRD staff will perform erosion control spot inspections on a biweekly basis, to meet NR 216 Municipal Separate Storm Sewer System Permit requirements. These will be coordinated with the Project Manager and with the on-site Erosion Control Inspector to make the inspections more effective. For highway projects in the construction phase, the Project Manager will invite the primary LRD contact to weekly contractor meetings to facilitate discussion of erosion control issues.
 - i. If the LRD is designated as the Erosion Control Inspector, LRD staff will perform all duties assigned to that position, as noted in section 5.a. above.
- b. Notice of Noncompliance.
 - i. Minor Noncompliance. Minor noncompliance issues are those the LRD determines have not caused or do not pose an imminent threat to cause

significant environmental damage. If minor noncompliance issues are found on the site, the LRD will notify the Project Manager and the Erosion Control Inspector by email with specifics of the noncompliance issue (including photos), required corrective actions, and deadlines for bringing the site into compliance. The Project Manager is responsible for ensuring compliance in a timely manner, working through the Erosion Control Inspector and the applicable contractors involved.

- (1) If a follow-up inspection by the LRD shows a previous noncompliance issue has not been addressed, the LRD inspector will send an additional notice to the Project Manager, the Erosion Control Inspector and the applicable county manager (Parks Manager, Enterprise Operations Manager, Engineering Services Manager, etc.) with a copy to the Land Resources Manager reiterating the noncompliance information noted above.
 - (2) If a follow-up inspection by the LRD shows the noncompliance issue has still not been addressed, the LRD inspector will send an additional notice to the same group noted above plus the Department Directors reiterating the noncompliance information noted above.
 - (3) If the noncompliance issue remains after all of the above noted steps, the LRD will issue a Notice of Violation and other enforcement action may be taken, as noted in subsection (c) below.
- ii. Major Noncompliance. Major noncompliance issues are those the LRD determines have caused or pose an imminent threat to cause significant environmental damage. As a result, the enforcement process is expedited to address the significance of the issues. The correction actions and timelines will reflect the expedited nature. If the LRD or Project Manager determines there are major noncompliance issues on the site, they will notify the other immediately. The LRD shall complete an inspection report and issue a Notice of Noncompliance to the Project Manager, the applicable county manager (Parks Manager, Enterprise Operations Manager, Engineering Services Manager, etc.) with a copy to the Land Resources Manager and other "responsible party". The Notice of Noncompliance shall include a list of noncompliance items (including photos), required corrective actions, deadlines for bringing the site into compliance, and a warning of further penalties that may be imposed if the deadlines are not met.
- (1) Prior to issuing the Notice of Noncompliance, the LRD will, in communication with the Project Manager, ascertain if approved plans and applicable technical standards were followed, existing contracts were adhered to, BMPs were properly maintained, or unforeseen conditions occurred, such as a storm event that exceeded the design storm. The LRD will use this information to determine the responsible party for purposes of the enforcement process.

- (2) The LRD and Project Manager will jointly work toward resolving the violation in a timely manner, considering all legal and contractual remedies available.
 - (3) If a follow-up LRD inspection shows the issue has not been resolved in a timely manner, the LRD Manager will notify the Department Directors in order to expedite resolution.
 - (4) The LRD Manager has the discretion to advance major noncompliance notices directly to the Department Directors and other responsible parties in order to expedite resolution.
 - (5) If the noncompliance issue remains after the above noted expedited steps, the LRD will issue a Notice of Violation and other enforcement action may be taken, as noted below.
- c. Other Enforcement Action. The LRD may also use other enforcement powers provided in the SW Ordinance to ensure compliance on the site, including citations, stop work orders, permit revocation, LRD emergency actions, injunctions, forfeitures or other court orders, etc. The LRD will direct any enforcement action to whom they determine is the responsible party (as defined by ordinance), which includes contractors and subcontractors. The DNR will be notified of any enforcement actions taken under this section.

7. Emergency Facility Maintenance

It is understood that emergency maintenance activities necessitate expedited procedures. Contemporaneous with emergency maintenance situations, or as soon thereafter as practicable, the Project Manager shall contact the LRD and furnish details on the emergency maintenance activity. However, the degree of notice furnished to LRD in emergency situations shall be in direct correlation to the severity of the emergency. The Project Manager will make all efforts to give as much advance notice as possible. In emergency maintenance situations, the LRD shall submit its recommendations concerning the project to the Project Manager on an expedited basis.

8. Carry Out SW Permit Closure Activities (After construction)

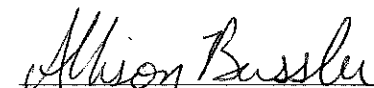
- a. Request final inspection and permit termination by LRD staff when site stabilization is achieved and temporary erosion control BMPs have been removed such as silt fence, sediment traps, sediment basins, diversion berms, and other structural BMPs.
- b. Survey BMPs and prepare and certify as-built drawings (PE or RLS), along with revision of any design information.
- c. Complete planting verification where warm-season or wetland plants are involved.
- d. File / record any long-term maintenance documentation for storm water BMPs.
- e. Submit termination documentation for any other permitting agencies.

9. Agreement Approval and Future Amendments

This agreement shall be effective upon execution by the Directors of the Department of Public Works and the Department of Parks and Land Use, and shall remain in effect until otherwise terminated or amended. This agreement may be amended upon execution by both department Directors and upon review and written verification of no objection by the Wisconsin Department of Natural Resources.

I have read, understand and fully support this agreement. I have instructed the LRD Manager to notify me if any of my staff do not cooperate in its implementation.

 5-29-13
Dale Shaver, Director Date
Department of Parks & Land Use

 6-18-13
Allison Bussler, Director Date
Department of Public Works