

City of Appleton  
Post-Construction Stormwater Management Program  
Section 2.5 WPDES Permit No. WI-S050075-3  
Permit Start Date May 1, 2019  
October 2020

Since 2003, the City of Appleton has progressively addressed post-construction stormwater management. The City has a post construction stormwater management ordinance and an established program. This document describes that program as required in the Phase II Stormwater Permit from the Wisconsin Department of Natural Resources (WDNR). All costs associated with this program are funded through the City of Appleton Stormwater Utility.

This document will be kept in the Engineering Division of the Department of Public Works located on the fifth floor of City Center, 100 N. Appleton Street, Appleton, Wisconsin.

Bold text is language from the permit.

**The permittee shall continue to implement and enforce its program to require control of the quality of discharges from areas of new development, infill and redevelopment, after construction is completed. The permittee shall implement the following measurable goals:**

**2.5.1 Post-construction stormwater ordinance. An ordinance or other regulatory mechanism to regulate post-construction stormwater discharges from new development and redevelopment. At a minimum, the ordinance or other regulatory mechanism shall establish or include:**

**2.5.1.a Applicability and jurisdiction, pursuant to the authority provided to the permittee under Wisconsin Statutes, the ordinance shall apply to construction sites with one acre or more acres of land disturbance, and sites of less than one acre if they are part of a larger common plan of development or sale.**

**2.5.1.b Requirements for design and implementation of post-construction storm water management control practices consistent with the criteria of those approved by the WDNR.**

**2.5.1.c For new development and infill, post-construction performance standards equivalent to those in ss. NR 151.122 through 151.126 and 151.242 through 151.246, Wis. Adm. Code, that meet the measurable goals for pollutant removal and post-construction stormwater treatment. Post-construction performance standards for new development and infill may be more restrictive than those required in this section if necessary to comply with federally approved TMDL requirements.**

**2.5.1.d For redevelopment, post-construction performance standards equivalent to or more restrictive than those in ss. NR 151.122 through 151.126 and 151.242 through 151.246, Wis. Adm. Code, that meet the measureable goals for pollutant removal and post-construction stormwater treatment.**

**2.5.1.e Stormwater plan requirements for landowners of construction sites equivalent to those contained in s. NR 216.47, Wis. Adm. Code.**

**2.5.1.f Long-term maintenance requirements for landowners and other persons responsible for long-term maintenance of post-construction stormwater control measures, including requirements for routine inspection and maintenance of privately owned post-construction stormwater control measures that discharge to the MS4 to maintain their pollutant removal operating efficiency.**

**2.5.1.g Inspection and enforcement authority.**

The first City of Appleton post-construction stormwater management ordinance became effective January 1, 2004 and was updated in May 2016. The 2020 ordinance update meets the permit requirements to be equivalent to the specified sections of NR 151 and NR 216 and was effective April 27, 2020. The 2020 ordinance is available at the Department of Public Works and in the on-line Municipal Code as Article VI of Chapter 20, as periodically updated.

The water quality requirements of the ordinance are more stringent than the WDNR model ordinance, requiring 80% Total Suspended Solids removal for redevelopment sites with over 5 acres of disturbed area. It also requires TSS reduction from all areas of a redevelopment site, not just parking areas and roads, and includes provisions for flood control. The model ordinance is only for water quality and provides a statewide standard. The City is subject to the Lower Fox River TMDL and Upper Fox and Wolf Rivers TMDL. These EPA approved documents place more stringent requirements for water quality on the City. The flood control provisions in the ordinance are helping to reduce the amount of street and private property flooding throughout the City.

**2.5.2 Administrative procedures. Written procedures for the administration of the post-construction stormwater management program including the process for obtaining local approval and responding to complaints.**

This document contains the written procedures for administration of this program.

The post-construction stormwater management program is administered by the Engineering Division of the Department of Public Works, with assistance from the Inspections Division of the Department of Public Works. The Utilities Committee, comprised of 5 alderpersons, and the Common Council govern the stormwater program.

Since 2004, the Department of Public Works has received very few complaints regarding the post-construction stormwater management program. Complaints are logged into the Customer Service Record for documentation and then directed to a staff engineer assigned to the program. Unresolved issues are then discussed with the Director of Public Works. If issues remain unresolved, they can be appealed to the Utilities Committee and Common Council.

**2.5.3 Stormwater management plan review. Written procedures for post-construction site plan review which incorporate consideration of potential water quality impacts. Post-**

**construction site plan reviews shall be conducted for all construction sites with greater than one acre of land disturbance.**

Appleton contracts with a qualified consultant to review stormwater management plans for site plans and subdivisions submitted under the ordinance. The process for obtaining a Post-Construction Stormwater permit in the City of Appleton is outlined in the attached flowchart.

Post-construction sites with stormwater management requirements are documented on an Excel spreadsheet. The spreadsheet follows the project from initial submittal through plan review and approval, recording of the Operation and Maintenance Agreement and receipt of record drawings and certification. Hard copy files for all projects since the beginning of the program in 2004 are in the process of being scanned for electronic storage.

The Appleton City Attorney created a template for Operation and Maintenance Agreements between property owners and the City of Appleton to ensure long-term maintenance of stormwater facilities designed and constructed under the stormwater management ordinance. The applicant is responsible for providing a legal description for the agreement that is acceptable for recording at the appropriate County. This requirement is included on the application form signed by the owner and applicant.

Stormwater Management Plans include Operation and Maintenance (O & M) Plans and are reviewed for engineering standards by the consultant. The legal description for the agreement is reviewed by the City Surveyor. Once a stormwater management plan is approved, the O & M Plan and agreement, with approved legal description, are sent to the City Attorney's office for processing. The Attorney's office formats the document for recording, obtains signatures from the property owner and the City of Appleton, and records the document at the appropriate county. To ensure the agreements are signed and returned to the City within the allotted time, the City uses additional enforcement measures, such as a Stop Work Order or Notice of Non-compliance.

**2.5.4 Long term maintenance, inspections and enforcement. Written procedures that will be used by the permittee through its ordinance jurisdiction, approval process, and authority to, at a minimum, track and enforce the long-term maintenance of stormwater management facilities implemented to meet the applicable post-construction performance standards in section 2.5.1.c and d. of this permit. The procedures shall include:**

**a. A mechanism for tracking regulated sites.**

The city uses an Excel spreadsheet as a tracking mechanism for post-construction stormwater practices constructed on private property under the requirements of the ordinance.

**b. At a minimum, long-term maintenance inspections shall occur once during the permit term.**

The 2020 ordinance updated included the requirement for private stormwater practices to be inspected and certified by a Professional Engineer upon notification by the City. The City anticipates sending out the first notifications in 2021.

**c. Inspection documentation.**

Inspections and certification documents will be stored with the approved plans in on-line storage.

**d. Follow up enforcement with time frames for corrective maintenance.**

The City will issue a Notice of Non-compliance for any sites not providing the inspection and certification documents per the timeline in the notification.

Residential subdivisions are governed by development agreements between the City and the Developer that cover all aspects of the development, not just stormwater management. All residential subdivisions that have developed since 2004 have used wet ponds to meet the ordinance requirements. Through the development agreements, the City of Appleton has taken over ownership and long-term maintenance of these stormwater ponds after they have been constructed and stabilized per the approved vegetation plan. The details of the city's stormwater pond maintenance program are covered in the City of Appleton Pollution Prevention Program.

Attachments:

Stormwater Permit Application

Operation and Maintenance Agreement Template

Flowchart of plan approval process



# Stormwater Management Permit Application

Application Date: \_\_\_\_\_ Tax Key: 31- \_\_\_\_\_

Site Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

Proposed Activity: New Building \_\_\_\_\_ Building Addition \_\_\_\_\_ New Paving \_\_\_\_\_  
Grading/Repaving \_\_\_\_\_ Subdivision \_\_\_\_\_ Redevelopment \_\_\_\_\_

Area of Parcel: \_\_\_\_\_ square feet Disturbed Area: \_\_\_\_\_ square feet

Site Owner Name: \_\_\_\_\_ Company: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Billing Name: \_\_\_\_\_ Company: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Engineer Name: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

The undersigned agrees to conduct the above-described activities in accordance with the approved Stormwater Management Plan, and in strict compliance with all the provisions of the City of Appleton Ordinance and the Code of the State of Wisconsin, and to grant permission for reasonable inspections as a condition of this permit.

**OWNER'S STATEMENT:** I request that plans be reviewed for compliance with City of Appleton Municipal Code Chapter 20 and applicable State codes. I recognize that I am responsible for compliance with all code requirements and any conditions of plan approval. At a minimum, owner shall be responsible for submitting the following as conditions of the plan approval:

1. Owner shall submit as-built plans of the stormwater management practices identified in the Stormwater Management Plan within thirty (30) days of completion; and
2. Owner shall submit a certification by the design engineer stating that all practices function as approved in the Stormwater Management Plan. Said certification shall be submitted within ten (10) days of completion.
3. Owner shall provide a recordable legal description to be included with the Stormwater Management Practices Maintenance Agreement.

Owner recognizes that failure to provide the above information may be viewed as a violation of section 20-313 of the Appleton Municipal Code.

\_\_\_\_\_  
Owner – Print name

\_\_\_\_\_  
Approved By  
 - File

\_\_\_\_\_  
Signature of Owner  
 - Building Inspector  - Applicant

STORMWATER MANAGEMENT PRACTICES  
MAINTENANCE AGREEMENT

Record and return to:  
City of Appleton – City Attorney’s Office  
100 North Appleton Street  
Appleton, WI 54911-4799

Tax Key No:

**STORMWATER MANAGEMENT PRACTICES  
MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_, hereinafter called the "Owner" and the City of  
Appleton, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of  
Appleton, \_\_\_\_\_ County, State of Wisconsin, to-wit:

Tax Key No.

Hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan identified as \_\_\_\_\_, hereinafter called  
the "Plan", which is expressly made a part of hereof, as approved or to be approved by the City,  
provides for on-site stormwater management practices within the confines of the Property; and

WHEREAS, the City and the Owner, its successors and assigns, including any homeowners  
association, agree that the health, safety and welfare of the residents of the City of Appleton,  
require that the on-site stormwater management practices as defined in Wisconsin Administrative  
Code NR 151, and the City of Appleton Stormwater Ordinance be constructed and maintained on  
the Property; and

WHEREAS, the City requires that on-site stormwater management practices as shown on  
the Plan be constructed and adequately maintained by the Owner, its successors and assigns,  
including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Owner, its successors and assigns, in accordance with the plans and specifications identified in the Plan, shall construct the on-site stormwater management facilities.
2. The Owner, its successors and assigns, including any homeowners association, shall adequately maintain the stormwater management practices, including, but not limited to, all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as keeping the stormwater management facilities in good working condition so that these facilities are performing their design functions and are in accordance with the Operation and Maintenance Plan attached to this agreement as Exhibit A and by this reference made a part hereof.
3. The Owner, its successors and assigns, shall regularly inspect the stormwater management practices as often as conditions require, but in any event at least twice each year. The standard Operation and Maintenance Report attached to this Agreement as Exhibit B and by this reference made a part hereof shall be used for the purpose of the regular inspections of the stormwater management practices. This report form may be periodically updated by the City. The Owner, successors and assigns shall keep the Operation and Maintenance Reports from past inspections as well as a log of maintenance activity indicating the date and type of maintenance completed. The reports and maintenance log shall be made available to the City for review upon request. The purpose of the inspections is to assure safe and proper functioning of the facilities. The inspections shall cover all facilities including, but not limited to, berms, outlet structures, pond areas and access roads. Deficiencies shall be noted in the Operation and Maintenance Report.
4. The Owner, its successors and assigns, hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management practices whenever the City deems necessary. The purpose of inspection is to investigate reported deficiencies, to respond to citizen complaints, or verify maintenance of on-site stormwater management practices. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
5. If the Owner, its successors and assigns, fails to maintain the stormwater management practices in good working condition acceptable to the City and does not perform the required corrective actions in the specified time, the City may:



- a. Issue a citation to the Owner, its successors and assigns. The penalty for violation of this section shall be not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and
  - b. Perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns for the cost of such work. The cost of such work shall be specially assessed against the Property pursuant to Wisconsin Statutes Section § 66.0703. If the facilities are located on an outlot owned collectively by a homeowners association, the City may assess each member of the homeowners association according to the ownership interest in the facilities located on the Property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the easement for the stormwater management practices. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said stormwater management practices, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The Owner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management practices (including sediment removal) is outlined in the Operation and Maintenance Plan, the schedule will be followed.
7. This Maintenance Agreement may be modified by mutual agreement of the *responsible party* and the City of Appleton. The modification date shall be the date City of Appleton records the modified Maintenance Agreement with the \_\_\_\_\_ County Register of Deeds, as a property deed restriction so that the modified agreement is binding upon all subsequent owners of the land served by the stormwater management practices. Responsible party, as used in this paragraph, shall mean the Owner, its successors or assigns, who is responsible for the Maintenance Agreement at the time of any amendment.
8. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder. Failure of the Owner to make payment within thirty (30) days shall result in the amount being added to the tax roll as a special charge pursuant to paragraph 5(b).
9. This Agreement imposes no liability of any kind whatsoever on the City and the

Owner agrees to hold the City harmless from any liability in the event the stormwater management practices fail to operate properly.

10. This Agreement shall be attached as an exhibit to any document which creates a homeowners association that is responsible for maintenance of the stormwater management practices and be recorded at the Outagamie County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association. The Owner shall provide the City with a copy of any document, which creates a homeowners association that is responsible for the stormwater management practices.
11. Upon receipt of the executed Maintenance Agreement, the City of Appleton shall record said agreement in the Office of the Register of Deeds.

WITNESS the following signatures and seals:

**Owner Name**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN            )  
                                          : ss.  
\_\_\_\_\_ COUNTY )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by \_\_\_\_\_ and \_\_\_\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My commission is/expires \_\_\_\_\_

**City of Appleton**

By: \_\_\_\_\_  
Jacob A. Woodford, Mayor

By: \_\_\_\_\_  
Kami Lynch, City Clerk

STATE OF WISCONSIN        )  
                                          : ss.  
OUTAGAMIE COUNTY        )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Jacob A. Woodford, Mayor and Kami Lynch, City Clerk.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher R. Behrens, City Attorney

This instrument was drafted by:  
Attorney Christopher R. Behrens  
City Law A20-0275 (Form)

# STORMWATER PLAN REVIEW PROCESS

June 24, 2020

