

CHAPTER 4  
SUBCHAPTER 2  
PART 11

LAND USE MANAGEMENT AND ZONING, ENVIRONMENTAL  
MANAGEMENT AND BOARD OF ADJUSTMENT  
Subchapter 2 – Environmental Management

Part 11 – Construction Site Erosion Control

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## **Part 11 – Construction Site Erosion Control**

### **4.1101 Title**

Title. This ordinance may be cited as the Rock County Construction Site Erosion Control Ordinance.

### **4.1102 Authority**

- (1) This ordinance is adopted under the authority granted by secs. 59.693, 92.07(15) and 101.1205(4), Wis. Stats. This ordinance supersedes all conflicting and contradictory construction site erosion control regulations previously adopted by the County of Rock under sec. 59.69, Wis. Stats.
- (2) The requirements of this ordinance do not preempt more stringent construction site erosion control requirements that may be imposed by the Wisconsin Department of Natural Resources ("DNR").
- (3) The requirements of this ordinance are not intended to limit any other lawful regulatory powers of the County of Rock.
- (4) The Rock County Board of Supervisors ("County Board") designates the Rock County Land Conservation Department (LCD) to administer and enforce the provisions of Part 11 of this Ordinance. LCD staff will be responsible for the administration and enforcement of Part 11 of this Ordinance. The Land Conservation Committee (LCC) may review staff decisions upon written request by an applicant or permit holder to the Committee chair. The LCD may also administer and enforce an identical ordinance of a town, village, or city that has entered into an intergovernmental agreement with the County of Rock under sec. 66.0301, Wis. Stats. for ordinance administration services.

### **4.1103 Findings of Fact**

- (1) The County Board finds that runoff from land disturbing activity carries a significant amount of sediment and other pollutants to the waters of the state in Rock County. The County Board also finds that sediment and other pollutants have a detrimental effect on water quality and downstream water uses and increases the potential for flooding of adjacent lands.
- (2) Recognizing the well-established relationship between soil erosion and sedimentation and the loss of water quality and the increased dangers of flooding, the County Board finds that effective erosion control practices should be required. The County Board also finds that construction site erosion and sediment control best management practices (BMPs) are commonly available and effective, and that the effectiveness of these BMPs depends upon proper planning and design, timely installation, and continuous maintenance.

#### **4.1104 Purpose and Intent**

- (1) Purpose. The general purpose of this ordinance is to promote the health, safety, and general welfare of the people, preserve the natural resources, and protect the quality of the waters of the state in Rock County. Specific purposes are to:
  - (A) Minimize the amount of sediment and other pollutants carried by runoff or discharged from land disturbing activities to the waters of the state, or adjacent property, to the extent practicable.
  - (B) Foster consistent, statewide application of the non-agricultural performance standards developed by the DNR in subchapters III and IV of chapter NR 151, Wisconsin Administrative Code (“Wis. Adm. Code”).
  - (C) Assist the County of Rock in becoming an "Authorized Local Program" pursuant to chapter NR 216, Wis. Adm. Code.
- (2) Intent. The intent of this ordinance is to require, through the use of a permit, BMPs to reduce the amount of sediment and other pollutants leaving sites of land disturbing activities. It is intended that permit holders be able to choose the most cost-effective BMPs meeting the performance standards required under this ordinance. This ordinance is not intended to limit activity or land division permitted under the applicable zoning and land division ordinances.

#### **4.1105 Jurisdiction, Applicability and Waivers**

- (1) Jurisdiction
  - (A) The provisions of this ordinance shall apply in all unincorporated lands within the jurisdictional boundaries of the County of Rock where a town board has not adopted an ordinance under sec. 60.627, Wis. Stats.
  - (B) This ordinance shall continue in effect in any area annexed by a city or village, unless the city or village enacts, maintains and enforces an ordinance that complies with minimum standards established by the DNR and meets or exceeds the standards of this ordinance, as established under sec. 59.693(10), Wis. Stats.
- (2) Applicability
  - (A) This ordinance applies to the following land disturbing activities:
    1. Grading, removal of protective ground cover or vegetation, excavation, land filling, or other land disturbing activity where:
      - a. The cumulative area affected exceeds a surface area of 1,000 square feet on a slope of 12 percent or greater, or

- b. Where the cumulative area affected exceeds a surface area of 4,000 square feet or more. This includes any activity directly affecting a cumulative surface area less than 4,000 square feet that is part of a larger construction site that in total disturbs more than 4,000 square feet.
2. For land disturbing activities on land annexed after the effective date of this ordinance into an incorporated municipality that requires a site plan review for parcels less than one acre the surface area applicability in (2)(A)1-8. rendering the county's ordinance applicable shall be not less than one acre within that municipality.
  3. Grading, removal of protective ground cover or vegetation, excavation, land filling, or other activity affecting a cumulative surface area of more than 1,000 square feet, or more than 40 cubic yards of fill, within the Shoreland Overlay District as defined in Chapter 4, Rock County Code of Ordinances;
  4. Grading, excavation or filling, or any combination thereof, affecting 400 cubic yards or more of soil, sand, or other excavation or fill material;
  5. Laying, boring, repairing, replacing, or enlarging underground pipe, cable, or wire for a distance of 300 feet or more;
  6. Disturbing 100 feet or more of road ditch, grass waterway, or other land area where surface drainage flows in a defined open channel;
  7. Constructing new public or private roads, access roads, or driveways, or portions thereof, exceeding 100 feet in length;
  8. Land disturbing activities relating to land divisions, including subdivision plats, certified survey maps, and condominium plats requiring public or quasi-public improvements;
  9. Land disturbing activities, on a site of any size, that have been observed to cause, or have been determined likely to result in, undue channel erosion, increased water pollution by scouring or the transportation of particulate matter, or endangerment of property or public safety. The LCC shall make this determination after review and recommendation by the LCD.

(B) Exemptions

1. This ordinance does not apply to the following:
  - a. Agricultural Activities: to include land disturbing activities directly involved with the planting, growing and harvesting of any plant grown for human or animal consumption and pasturing or yarding of livestock;
  - b. Silviculture Activities: to include land disturbing activities directly relating to nursery operations and sod farms;
  - c. Routine maintenance for project sites under 1 acre of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
  - d. Land disturbing activities conducted, or contracted by, a state agency, as defined under sec. 227.01(1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under sec. 281.33(2), Wis. Stats.;

- e. Land disturbing activity that includes the construction of a building and is regulated by the Wisconsin Department of Commerce under sec. COMM 21 Wis. Adm. Code;
  - f. Projects specifically exempted from local erosion control ordinances under state or federal statute. It is the responsibility of the landowner to demonstrate such exemption with documentation acceptable to the LCD.
  - g. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
2. Any project that is designed and/or certified by the LCD or the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as part of a soil conservation or water pollution control project shall comply with all of the requirements of this ordinance, but shall be exempted from obtaining a permit, providing a financial guarantee, or paying fees under sec. 4.1109.
  3. Any land disturbing activity that is conducted by or for the County of Rock, or by or for any city, town or village on lands located within the County, shall comply with all of the requirements of this ordinance, including obtaining a permit and submitting an erosion and sediment control plan, but shall be exempted from providing a financial guarantee, or paying fees under sec. 4.1109.
    - a. At the discretion of the LCD, any land disturbing activity that is conducted by or for the County of Rock, may be administered by a qualified employee or agent of the county department undertaking the land disturbing activity.

(3) Waivers

- (A) The LCC may waive any or all of the requirements of this ordinance if the LCC determines that:
  1. A requirement is not necessary for a particular site to ensure compliance with performance standards set forth in sec 4.1107 of this ordinance; or
  2. The site land disturbing activities will have no appreciable off-site impact.
- (B) The LCD shall be responsible for making recommendations to the LCC concerning all waiver applications.

**4.1106 Technical Standards**

- (1) All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications identified, developed or disseminated by the DNR under subchapter V of Chapter NR 151 Wis. Adm. Code.
- (2) Where technical standards have not been identified or developed by the DNR, other technical standards may be used provided that the methods have been approved by the LCD.

#### 4.1107 Performance Standards

- (1) Erosion and Other Pollutant Control Requirements.
  - (A) All persons who conduct land disturbing activities under sec. 4.1105 of this ordinance shall design, install, apply and maintain erosion control BMPs, in accordance with a permitted erosion and sediment control plan designed to limit sediments and other pollutants from entering waters of the state, storm water systems, or adjacent property.
  - (B) BMPs shall, by design, reduce pollutants from the construction site to the maximum extent practicable by use of methods including, but not limited to, the following:
    1. Prevent gully and bank erosion.
    2. Discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization. If BMPs cannot be designed to meet the standard in this paragraph, (B)2., the plan shall include a written and site-specific explanation as to why the standard is not attainable and a statement that the sediment load shall be reduced to the maximum extent practicable.
  - (C) Calculations used to comply with paragraph (B)2. shall be determined by a methodology selected by the LCD in consultation with the DNR.
  - (D) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
  - (E) Sediment controls shall be implemented to do all of the following:
    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 separate storm drain inlet structures from receiving sediment.
    4. Prevent the discharge of sediment from soil stockpiles existing for more than 7 days.
    5. Prevent the transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.
    6. Prevent the transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period.
  - (F) Only clean fill may be used for restoration conducted on any land disturbing activity.
  - (G) BMPs for plan approval need not attempt to regulate soil transportation within the boundaries of the applicant's site, except where the site contains surface water or karst features.

- (2) Implementation. The BMPs used to comply with the performance standards must be implemented as follows:
  - (A) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the approved plan
  - (B) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (C) Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (D) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (3) Location. The BMPs used to comply with this section shall be located prior to runoff entering the waters of the state. While regional treatment facilities are appropriate for control of post-construction pollutants, they shall not be used for construction site sediment removal.
- (4) Maintenance. The permit holder shall maintain all BMPs once a week and within 24 hours of each rain of 0.5 inches or more to meet the requirements of this ordinance until the site has achieved final site stabilization and a written BMP removal authorization has been received from the LCD.
- (5) Alternate Requirements.
  - (A) The LCD may establish erosion and sediment control requirements more stringent than those set forth in this section if the LCD determines that an added level of protection is needed to protect sensitive resources.
  - (B) The LCD shall make recommendations to the LCC concerning any erosion and sediment control requirements more stringent than those set forth in this section.

#### **4.1108 Permits and Waivers**

- (1) Permit Or Waiver Required. No responsible party may undertake a land disturbing activity subject to this ordinance without receiving a permit from the LCD, or a waiver as provided in sec. 4.1105(3), prior to beginning the proposed land disturbing activity.
- (2) General Permits For Private Utility Work Projects



- (A) A General Permit may be issued for land disturbing activities which are subject to this ordinance under secs. 4.1105(2)(A)5. or 4.1105(2)(A)8. conducted by or for utilities. The following conditions apply to General Permits.
1. General Permits will be issued to a utility for a one-year period.
  2. An application for a General Permit must include an erosion control plan or plans that includes the best management practices (BMPs) used on the land disturbing activities conducted by the applicant.
  3. All land disturbing activities conducted under the General Permit must meet the performance standards specified under sec. 4.1107 ordinance using technical standards under sec. 4.1106.
  4. General Permit holders must notify the LCD two working days prior to commencing any land disturbing activities covered under the General Permit. This notification must include the following information.
    - a. Location of the planned land disturbing activity;
    - b. Purpose of the planned land disturbing activity;
    - c. Approximate amount of disturbance;
    - d. Beginning and ending dates of the planned land disturbing activity;
    - e. A sketch plan of the planned land disturbing activity;
    - f. The names and phone numbers of the individuals responsible for BMP installation, maintenance, or reestablishment, if not the General Permit holder.
  5. The enforcement, penalties, appeals, and fee schedule provisions of this ordinance shall apply to General Permits.

(3) Permit and Waiver Applications.

- (A) Any responsible party desiring a permit or waiver shall submit an application to the LCD using a form provided by the LCD.
1. If the application is from a land user, the application must be signed by the landowner of the site where the land disturbing activities are to take place. A notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent shall also be accepted, provided that it binds the landowner to the terms of this ordinance and any permit issued to the permit holder, including the enforcement actions set forth in sec. 4.1110.
  2. Submission of an application by one of several landowners or land users of a particular site shall constitute an affirmation by the applicant of authority to act on behalf of the other landowners or land users to apply for, receive, and abide by the provisions of a permit. The county shall be under no obligation to ascertain the legal authority of the applicant to so act.
  3. A permit application shall consist of a completed application form, including a waiver application for relief from any requirement deemed not necessary to ensure compliance with the intent of this ordinance as provided for in sec. 4.1105(3)(A), an erosion and sediment control plan, or simplified plan document as described in sec. 4.1108(4)(B)2. and a non-refundable application review fee.
  4. A waiver application, as provided for in sec. 4.1105(3)(B), shall consist of a completed waiver application form, including complete documentation of the

justification for the requested waiver, and a non-refundable application review fee.

5. Each application shall contain an agreement by the applicant that:
  - a. Authorizes the LCD to enter the site to obtain information required for the review of the application; and
  - b. Any land disturbing activity shall be conducted in accordance with the provisions of an approved or amended permit.

(4) Erosion And Sediment Control Plans

(A) Plan Requirements For Class One Land Disturbing Activities.

1. Class One land disturbing activities contain:
  - a. One or more acres (43,560 square feet) of disturbed area;
  - b. 4,000 square feet or more of disturbed area if any portion of that disturbed area contains slopes of 12% or greater;
  - c. More than 1,000 square feet, or a cumulative area of more than 1,000 square feet, of disturbed area, or more than 40 cubic yards of fill, if located within the Shoreland Overlay District, as defined in Chapter 4, Rock County Code of Ordinances.
2. The plan shall address pollution caused by soil erosion and sedimentation during construction until a written BMP removal authorization is received, as described in sec. 4.1107 (2). The plan shall include, at minimum, the following items:
  - a. The name(s), address(es), and phone number(s) of the owner or developer of the site, and the principal contact person of any consulting firm retained by the applicant;
  - b. The start and end dates of land disturbing activity;
  - c. The intended sequence of major land disturbing activities at the site, including stripping, rough grading, construction of utilities, infrastructure, and buildings. Sequencing shall identify the expected date on which clearing will begin, areas of clearing, the estimated duration of exposure of cleared areas, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation;
  - d. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by land disturbing activities;
  - e. Calculations showing compliance with the soil loss standards of sec. 4.1107(1)(B)2.
  - f. Existing data describing the surface soils and subsoil;
  - g. Depth to groundwater, as indicated by NRCS soil information, where available;
  - h. Name of the immediate receiving point of discharge identified on a United States Geological Service topographical map.
3. The plan shall include a site map. The site map shall be at a scale of either 1 inch equals 50 feet or 1 inch equals 100 feet, whichever is appropriate to the site size

and at a contour interval not exceeding 2 feet in areas with less than 20 percent slope. The site map shall include the following items:

- a. Existing topography, vegetative cover, natural and engineering drainage systems, and roads;
  - b. All surface waters, including lakes, ponds, rivers, streams, wetlands, channels, ditches, and other watercourses on, or immediately adjacent to, the site;
  - c. Floodways and 100-year floodplains;
  - d. Boundaries of the construction site;
  - e. Drainage patterns and approximate slopes anticipated after major grading activities;
  - f. Areas of soil disturbance;
  - g. Location and labels of all structural and non-structural BMPs identified in the plan;
  - h. Areas that will be vegetated following construction.
4. Each plan shall include a description of interim and permanent BMPs that will be implemented at the site to prevent pollutants from reaching waters of the state or adjacent property. The plan shall clearly describe the appropriate control measure(s) for each major activity and the timing during the land disturbing activity. The BMPs shall meet, when appropriate, the following minimum requirements:
- a. Preservation of existing vegetation where possible, minimize soil compaction and preservation of topsoil;
  - b. Stabilization of the disturbed portions of the site;
  - c. Diversion of flow away from exposed soils;
  - d. Limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the LCD, structural BMPs shall be installed on upland soils.
  - e. Management of sheet flow runoff at all sites, unless otherwise controlled by outfall controls;
  - f. Trapping of sediment in channelized flow;
  - g. Staging construction to limit bare areas subject to erosion;
  - h. Protection of down slope drainage inlets;
  - i. Minimization of tracking at all sites;
  - j. Clean up of off-site sediment deposits;
  - k. Proper disposal of building and waste materials at all sites;
  - l. Stabilization of drainage ways;
  - m. Control of soil erosion from soil stockpiles;
  - n. Installation of permanent stabilization BMPs immediately after final grading;
  - o. Minimization of dust to the maximum extent practicable.
5. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.

- (B) Plan Requirements For Class Two Land Disturbing Activity.
  - 1. Class Two land disturbing activities contain less than one acre (43,560 square feet) of disturbed area with no portion of that disturbed area containing slopes of 12% or greater. Class Two activities cannot be located within the shoreland overlay district as defined in Chapter 4, Rock County Code of Ordinances.
  - 2. For Class Two sites the applicant may prepare a simplified plan document as part of a permit application. Using an application form provided by the LCD, the simplified plan must contain a site description, a simplified map, a description of the BMPs, and a schedule of implementation. Applicants for a permit for Class Two sites are not required to provide financial assurance as described in paragraph (10) of this section. The submission of a simplified plan document does not relieve the permit holder from achieving the performance standards found in sec. 4.1107.
- (5) Evaluation Of Applications. Within 10 working days of receipt, the LCD shall review applications to insure they are complete. Any application found to be incomplete shall be returned to the applicant for completion. Upon receiving a complete application, the LCD shall use the following procedure:
  - (A) Completed applications will be evaluated for compliance with the requirements of this ordinance. Other governmental departments may be consulted during application evaluation.
  - (B) Additional substantive information may be requested from the applicant to better evaluate the application.
  - (C) Within 15 working days from the receipt of a complete permit application, or 10 working days from the receipt of additional information requested in accordance with paragraph (B), whichever is later, the applicant shall be informed whether the application has been approved or disapproved. The LCD shall base the decision on the requirements of this ordinance.
  - (D) Within 20 working days from the receipt of a complete waiver application, or 10 working days from the receipt of additional information requested in accordance with paragraph (B), whichever is later, the applicant shall be informed whether the application has been approved or disapproved. The LCD shall base the decision in consideration of the recommendations of other governmental departments and the requirements of this ordinance.
  - (E) Failure to inform an applicant of a decision within the applicable time specified in paragraph (C) or (D) shall constitute approval of the application. If the application was for a permit, the applicant may then proceed in accordance with the provisions of the submitted plan, including any waivers requested in accordance with sec.

4.1105 (3)(A). If the application was for a waiver under sec. 4.1105(3)(A), the waiver shall be deemed granted.

- (F) If the application is approved the LCD shall issue the permit or waiver.
  - (G) An application for a permit may be approved with conditions determined by the LCD to be needed to meet the requirements of this ordinance.
  - (H) If the application is disapproved, the LCD shall notify the applicant by certified mail and provide a written statement of the reasons for disapproval.
  - (I) If the application is disapproved, or if the applicant does not agree with the permit conditions, the applicant may request a review by the LCC. This request must be made in writing within 30 calendar days from the date of the applicant was notified of the LCD decision. The schedule and procedure for a waiver described in paragraph (D) above will be followed for this review.
- (6) Permit Modifications At The Permit Holder's Request. The permit holder must obtain permission from the LCD prior to modifying an approved plan. Plans, or portions thereof, drawn by a certified erosion control planner, professional engineer, surveyor, or landscape architect, must be amended to show that the author has approved the modifications. These modifications must be shown as amendments to the copy of the plan kept by the permit holder. The first permit modification request shall be at no charge, subsequent requests shall be subjected to a plan modification fee defined in sec 4.1109.
- (7) Permit Modifications At The Agency's Request. If the BMPs implemented as part of the approved plan are determined by the LCD to be inadequate to meet the performance standards of this ordinance, the LCD shall notify the permit holder. Plan modifications shall be the responsibility of the permit holder. The permit holder shall implement modifications according to a timetable established in the modified permit and plan.
- (8) Permit Conditions. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. Compliance with this permit does not relieve the permit holder of the responsibility to comply with other applicable federal, state and local laws and regulations. All permits shall require the permit holder to:
- (A) Install and maintain all BMPs as identified in the approved plan;
  - (B) Notify the LCD within 2 working days prior to commencing any land disturbing activity. This notification is not necessary for minor land disturbances undertaken to prepare for site development. Examples of minor disturbances are: survey work, perc tests, well borings, installation of tracking pads, or the installation of temporary electrical service;

- (C) Establish a site erosion control log to document the installation and maintenance of BMPs required by the plan. This log will not be required for a Class Two land disturbing activity as provided for under sec. 4.1108(4)(B) of this ordinance;
  - (D) Provide access to the log and a copy of the plan, including approved amendments, for referral by the LCD during site visits;
  - (E) Notify the LCD within 5 working days of the completion of the installation of all BMPs required in the plan;
  - (F) Inspect BMPs at least once each week and within 24 hours of each rain of 0.5 inches or more, make needed repairs, and document the findings of the inspections in the site log with the date of inspection and the name of the person conducting the inspection;
  - (G) Document and repair, with the permission of the property owner, any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing activities. A financial consideration may be paid by the permit holder in lieu of repair to the owner of affected property.
  - (H) Allow the LCD to enter the site for the purposes of inspecting compliance with the plan;
  - (I) Allow the LCD, or agent, to enter the site for the purposes of performing any work necessary to bring the site into compliance with the plan, as provided in sec. 4.1110 of this ordinance;
  - (J) Complete all seeding or mulching called for in the plan by the next September 15<sup>th</sup> or as soon as possible after final grade has been reached on any portion of the site. If either permanent or temporary soil stabilization by seeding or mulching is not accomplished by September 15, additional erosion control practices will be required. These practices may include additional mulching, application of erosion control matting, sodding, or application of polymer tackifiers. These additional practices will be prescribed by the LCD according to sec. 4.1108(6).
- (9) Site Visits.
- (A) If land disturbing activities are being conducted without a permit required by this ordinance, a representative of the LCD may enter the land, pursuant to the provisions of secs. 66.0129(1), (2) and (3), Wis. Stats., to obtain information necessary to undertake enforcement and penalties as provided by sec. 4.1110 of this ordinance.
  - (B) The LCD shall conduct site visits to ensure compliance with the provisions of the permit. Also the LCD shall conduct a site visit after notification of the final site stabilization and prior to issuance of the BMP removal authorization.

- (C) Site visits will be conducted at no additional cost to the permit holder, unless as the result of the visit the LCD determines that a previously issued remedial action issued as part of a notice of non-compliance, as provided for in sec. 4.1110 of this ordinance, has not been accomplished as scheduled. The cost of the site visit will then be billed to the permit holder, according to the fee schedule adopted as provided for in sec. 4.1109.
- 10) Financial Guarantee. As a condition of approval and issuance of the permit, the LCD shall require the applicant to submit a financial guarantee, the form and type of which shall be acceptable to the LCD. This financial guarantee shall not be required in the case of a Class 2 activity, as defined in sec. 4.1108(4)(B). The financial guarantee shall be in an amount determined by the LCD to be adequate to ensure payment of the estimated costs of implementing the plan. The financial guarantee shall give the LCD authorization to use the funds to complete the plan if the permit holder defaults, or does not properly implement the required BMPs in accordance with the approved plan. The LCD shall notify the permit holder in writing as provided for in sec. 4.1110 of this ordinance.
- (11) Permit Duration. Permits issued under this ordinance shall be valid for a maximum of one year.
- (A) The LCC may extend the permit duration for a maximum of 6 months, if the site construction schedule warrants a longer permit duration. This request must be submitted with the initial permit application. The permit holder may request an extension to a permits duration. The LCC may extend the permit duration for a maximum of 6 months due to unforeseen circumstances.
  - (B) A permit holder may request a permit to be re-issued. All conditions of a new permit set forth in this ordinance are applicable to the re-issued permit.
  - (C) The LCC will consider requests during their regularly scheduled monthly LCC meeting.
  - (D) In all cases, the final site stabilization notification letter from the LCD will expire permit.
  - (E) The permit holder agrees to pay additional fees identified in the adopted fee schedule as reference in sec. 4.1109 for all granted extensions and re-issued permits.

#### **4.1109 Fee Schedule**

- (1) The County Board, as part of the annual budget, shall determine the fees referenced in other sections of this ordinance. The LCC, as part of the annual budget, shall recommend the fees referenced in this ordinance. After the County Board has adopted the county's annual budget, the LCC shall prepare a separate fee schedule for all fees applicable to this ordinance. The fee schedule shall be available January 1<sup>st</sup> of any given year.

- (2) Fees paid under this section shall equal as closely as possible the LCD costs of administrating the provisions of this ordinance, including applicant consultations, application evaluation and approval, permit holder consultations and site inspections.
- (3) All fees shall be doubled if work is started before a permit is applied for and issued. Such doubled fees shall not release the applicant from full compliance with this ordinance nor from prosecution for violation of this ordinance.
- (4) The LCC may waive all fees, or portions thereof, associated with application for permits within the Shoreland Overlay District. The request for a fee waiver must be specific to land disturbance activities associated with site remediation activities for the stabilization of conditions caused by nature, conditions caused by activities not in the control of the current landowner, or the establishment of LCD designed projects.

#### **4.1110 Enforcement and Penalties**

- (1) Any land disturbing activities initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the provisions of this ordinance shall be deemed a violation unless conducted in compliance with the requirements of this ordinance.
- (2) Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by injunctive order at the suit of the County of Rock pursuant to sec. 59.69 (11), Wis. Stats. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.
- (3) The LCD is authorized to issue an ordinance citation, pursuant to Chapter 7 of the County Code of Ordinances to any person, firm, association or corporation for engaging in land disturbing construction activities that are in violation of this ordinance. Each day of violation, and each section violated, shall be considered a separate offense and subject to additional enforcement action, including, but not limited to the issuance of additional ordinance citations. Issuing a citation shall not release the applicant from full compliance with this ordinance nor from prosecution for violation of this ordinance.
- (4) The LCD shall notify the permit holder by certified mail of any non-complying land disturbing activity. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken. Non-complying activities include, but are not limited to:
  - (A) Any land disturbing activity regulated under this ordinance being undertaken without a permit or waiver;
  - (B) The plan not being implemented;
  - (C) The conditions of the permit not being met.



- (5) Upon receipt of written notification from the LCD under paragraph (3)(A) the permit holder shall comply with the remedial actions described in the notice.
- (6) Upon receipt of written notification from the LCD under paragraphs (3)(B) or (3)(C), the permit holder shall correct work that does not comply with the plan, or other provisions of the permit as necessary to meet the specifications and schedule set forth in the notice.
- (7) If a permit holder does not comply with the provisions of a notice of non-compliance, the LCD may issue a citation(s) and/or revoke the permit.
- (8) If non-compliance with this ordinance is determined by the LCD as likely to result in damage to adjacent property, public facilities, or waters of the state, the LCD may post a stop-work order at the time of notification.
- (9) If the permit holder does not comply with the provisions of a notice of non-compliance, or violates a stop-work order posed under paragraph (7), the LCD may request the Corporation Counsel to obtain a cease and desist order in any court with jurisdiction.
- (10) Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the LCD, LCC or by a court with jurisdiction.
- (11) If non-compliance with this ordinance is determined by the LCD as likely to result in damage to adjacent property, public facilities, or waters of the state, the LCD may issue to the permit holder or landowner a notice of intent to perform specific work necessary to comply the requirements of an approved plan, or to protect property, public facilities, or waters of the state.
  - (A) The LCD shall keep a detailed account of the costs and expenses of performing this work. These costs, plus legal and staff costs incurred by the County, shall be billed to the owner of title of the property.
  - (B) In the event a permit holder or landowner fails to pay the amount due, the amount shall be deducted from any financial guarantee posted pursuant to sec. 4.1108(10) of this ordinance. Where such a financial guarantee has not been established, or is insufficient to cover these costs and expenses, the amount shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon pursuant to subchapter VII of ch. 66, Wis. Stats., for the year in which the work is completed.
- (12) After 5 working days from issuing the notice of intent, the LCD may enter upon the land and perform work, or other operations necessary to bring the condition of said lands into conformance with an approved plan, or to protect adjacent property, public facilities, or waters of the state.

- (13) Upon the receipt of assurances deemed sufficient by the LCD, the permit holder may be authorized by the LCD to resume responsibility for the BMPs undertaken under paragraph (11).
- (14) Any person, firm, or corporation who removes, destroys, repositions, or otherwise renders any BMP installed under an approved plan ineffective, unless acting in a manner consistent with that plan, shall be in violation of this ordinance.
- (15) Any person, firm, or corporation who fails to comply with or violates the provisions of this ordinance shall, upon conviction, thereof, forfeit those amounts as established by reference in Resolution 08-8A-054 and any subsequent amendments thereto. Each day a violation exists or continues shall constitute a separate offense.

#### **4.1111 Appeals**

#### **BOARD OF ADJUSTMENT.**

- (1) The Board of Adjustment, created pursuant to Chapter 4, Subsection 3, Part 12, of the Code of Ordinances, functioning in accord with sec. 59.694, Wis. Stats.:
  - (A) Shall hear and decide appeals where it is alleged that there is an error in any order, decision, or determination made by the LCD in administering this ordinance, except for cease and desist orders obtained under sec. 4.1110(8);
  - (B) Shall use the rules, procedures, duties, and powers authorized by statute, in hearing and deciding appeals and authorizing variances; and
  - (C) Upon appeal, may authorize variances from the provisions of this ordinance that are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship.
- (2) Who May Appeal. Any applicant, permittee, or landowner may appeal within 30 calendar days of the date of any order, decision, or determination made by the LCD in administering this ordinance, relative to sites in which such person has an interest.

#### **4.1112 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.

#### **4.1113 Definitions**

**Agricultural Activity:** beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass,

mint, and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; and vegetable raising.

**Applicant:** the responsible party of a site subject to this ordinance.

**Application Review Fee:** money paid to the County by the permit applicant for recouping the expenses incurred by in administering the provisions of this ordinance.

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

**Best Management Practice or BMP:** structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

**Cease and Desist Order:** a court-issued order to halt land disturbing construction activity that is being conducted without the required permit, or in violation of the terms of a permit.

**Clean Fill:** uncontaminated soil, brick, building stone, concrete, reinforced concrete, or broken pavement.

**Channel:** any natural or artificial watercourse constructed, developed, and utilized for the drainage of surface waters.

**Construction Site:** an area upon which one or more land disturbing activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing activities may be taking place at different times on different schedules but under one plan.

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

**Disturbed:** a site which, due to developing or disturbing activities, has or will experience disturbance or destruction of the existing land surface and/or vegetative cover.

**Division of Land:** the division of an existing lot or land parcel; the creation of a condominium unit; an interest in real property (including land for a public facility) by the owner thereof for the purpose of sale or building development.

**DNR:** the Wisconsin Department of Natural Resources.

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

**Erosion and Sediment Control Plan or Plan:** a comprehensive plan developed to address pollution caused by soil erosion and sedimentation of soil particles or rock fragments during construction.

**Facilities Development Manual:** the most recent edition of the Facilities Development Manual published by the Wisconsin Department of Transportation.

**Final Site Stabilization:** all land disturbing construction activities at the construction site have been completed and 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.

**Financial Guarantee:** a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Land Conservation Department by the permit holder to assure that requirements of the ordinance are carried out in compliance with the erosion and sediment control plan.

**Gully Erosion:** a severe loss of soil caused by, or resulting in concentrated flow of sufficient velocity to create a defined flow channel.

**Karst Feature:** an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

**Land Conservation Committee (LCC):** the Land Conservation Committee is responsible for the oversight of the Land Conservation Department, policy actions and recommendations to the County Board of Supervisors.

**Land Conservation Department (LCD):** the Land Conservation Department responsible for the administration of this and other ordinances of the County.

**Land Disturbing Activity:** any man-made alternations of the land surface resulting in a change in the topography or existing vegetative and non-vegetative soil cover, or the existing soil topography, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing activity includes, but is not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural activity or silviculture activities.

**Land User:** any person operating upon, leasing, or renting land, or having made any other arrangements with the landowner by which the land user engages in uses of land that are subject to this ordinance.

**Landowner:** person holding title to or having an interest in a parcel of land that includes a site subject to this ordinance.

**Maximum Extent Practicable:** the highest level of performance that is achievable but is not equivalent to a performance standard in this chapter. Maximum extent practicable applies when a person who is subject to a performance standard of subchs. III and IV demonstrates to the LCD's satisfaction that a performance standard is not achievable and that a lower level of

performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, an applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

**NRCS:** the Natural Resources Conservation Service, a division of the United States Department of Agriculture.

**Off-site:** located outside the property boundary described in the permit application for land disturbing activity.

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

**Permit:** a written authorization made by the LCD to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

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

**Planning and Development:** the Rock County Committee responsible for oversight of Rock County Planning, Economic and Community Development Agency, policy actions and recommendations to the County Board.

**Pollutant** has the meaning given in sec. 283.01 (13), Wis. Stats.

**Pollution** has the meaning given in sec. 281.01 (10), Wis. Stats.

**Quasi-Public:** essentially public, as in services rendered, although under private ownership or control.

**R Factor:** a numeric value used in erosion modeling to account for the total precipitation, intensity and duration patterns of precipitation events.

**Responsible Party:** 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.

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

**Sediment:** settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

**Separate Storm Sewer:** 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:

Is designed or used for collecting water or conveying runoff,

Is not part of a combined sewer system,

Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment,

Discharges directly or indirectly to waters of the state.

**Site:** the entire area included in the legal description of which the land disturbing construction activity is proposed in the permit application, or has occurred.

**Site Visit:** an in-person observation of the site by the LCD to determine compliance with this ordinance.

**Sheet and Rill Erosion:** a loss of soil caused by sheet flow or shallow concentrated flow, and characterized by an absence of channeling, or a relatively uniform loss across the exposed layer of the soil, or shallow irregular scouring of the soil subsurface.

**Sheet Flow Runoff:** water, usually storm runoff, flowing in a thin layer of the ground surface; also called overland flow.

**Shoreland Overlay District:** as defined in Chapter 4, Rock County Code of Ordinances, an area within 1,000 feet of the ordinary high water mark of navigable lakes, ponds or flowages, or within 300 feet of the ordinary high water mark of navigable rivers or streams, or to the landward of the floodplain, whichever distance is greater.

**Stabilized:** the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures. .

**Stop-Work Order:** an order issued by the LCD that requires that all construction activity on the site be stopped.

**Technical Standard:** a document that specifies design, predicted performance and operation and maintenance specification for a material, device or method.

**Tracking Pad:** a temporary graveled access located at points of vehicular access to a construction site designed to retain sediment on-site.

**Waters of the State:** all lakes, bays, rivers, streams, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private within Wisconsin, or its jurisdiction.

**Working Day:** Monday, Tuesday, Wednesday, Thursday, or Friday, excluding any such day officially observed by the County as a legal holiday.

**Wisconsin Storm Water Manual:** the Wisconsin Storm Water Manual from the DNR.

This ordinance shall take effect February 1, 2007.