

BMP Maintenance Model Ordinance

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Model Storm Water Ordinance Insert Language to Address Long-term Storm Water Management Practice Maintenance

(Waukesha County Land Resources Division)

Table of Contents

	<u>Page</u>
Section 1. Authority for Ordinance	2
Section 2. Findings	2
Section 3. Purpose and Intent	2
Section 4. General Administration	3
Section 5. Applicability	3
Section 6. Inspection and Reporting.....	4
Section 7. Maintenance	5
Section 8. Enforcement	5
Section 9. Appeals	9
Section 10. Definitions	9
Section 11. Validity	10

Why a BMP maintenance ordinance?

- To ensure BMPs are maintained and the community can claim pollution credits
- To avoid BMP failures and property/environmental damages
- Handle complaints
- It's only a matter of time...



Definition of BMP?

- “Best Management Practice” is EPA term to describe storm water practices that reduce water pollution
 - However, not all storm water management practices reduce water pollution (i.e. dry basins, etc.)
- Solution: Use “Storm Water Management Practice”
 - Give it an all-inclusive definition

Sec. 1 - Authority

- Same authority as for storm water ordinance
- May also incorporate into a Storm Water Utility District ordinance?
(Statutory authorities less clear)



Sec. 2 - Findings

- The community finds that:

Lack of maintenance can lead to malfunction or failure of the practice, flooding, damage to public infrastructure, nuisance conditions, property damage, reduced property value, environmental degradation, and other adverse impacts upstream or downstream of the storm water management practice.

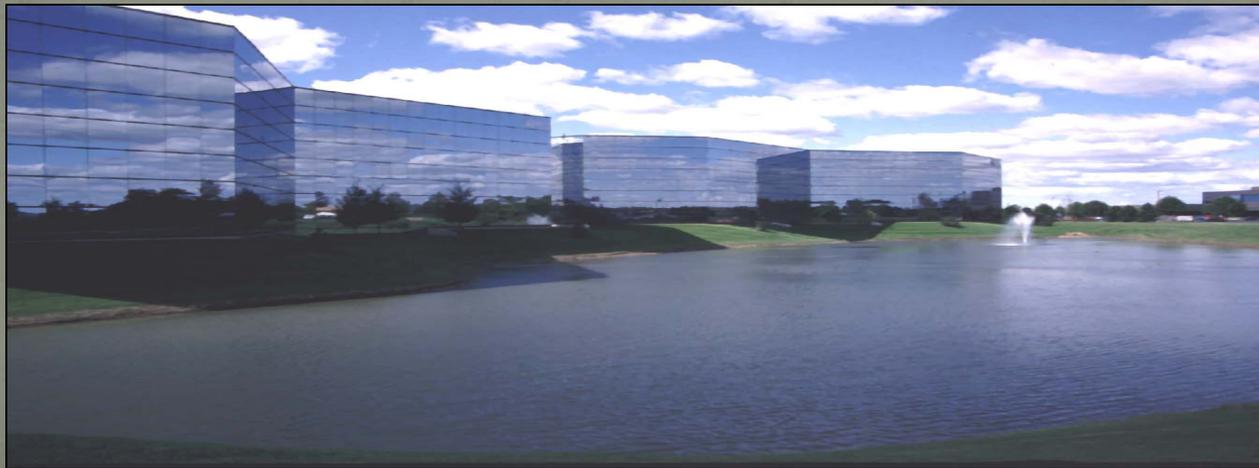
- Establishes the need for other ordinance provisions

Sec. 3 - Purpose and Intent

- This ordinance intends to:
 - Establish procedures for conducting BMP inspections, documenting maintenance needs, ensuring the completion of maintenance activities, and recovering maintenance costs that may be incurred by the community through enforcement of this Ordinance
- Needed to support any legal challenges

Sec. 4 – General Admin.

- “Administrator” or designee shall enforce (define)
 - May be a different than for SW permit
- “Shall” means mandatory
- “May” means permissive but not obligated



Sec. 5 - Applicability

- Applies to all storm water management practices that are issued a SW permit, regardless of when, by who, design, location, and ownership.
 - May be a new section in the ordinance or added to the section on BMP maintenance agreements
 - May apply to other permits (grading, zoning, etc.)
 - Main point: the community approved the BMP plans and authorized construction, so they have more authority to ensure maintenance compliance
- Several legal issues involved in older BMPs

Sec. 6 – Inspection & Reporting

- BMP inspection & report required every 2 years
- “Qualified inspector” means L.A., P.H., P.E. or other person experienced in BMP design, installation or maintenance
 - Community may reject any report that does not meet standards for accuracy or professionalism
- “Temporary inspection waiver” is allowed if Administrator determines it is not necessary
 - May require Administrator visit and/or photos, etc.
 - May help address lack of access/easements
 - 2-year maximum waiver period

Sec. 6 – Inspection & Reporting

- Inspection report (electronic) must follow community standards and include, at a minimum:
 - Location map
 - BMP description & list of features inspected
 - List of maintenance done during inspection
 - Photos of each feature inspected (before/after)
 - Condition statements
 - Maintenance recommendations
 - Signature and verification statement (true & accurate)
 - Any other items required by the Administrator

Sec. 7 - Maintenance

- Recommended maintenance shall be completed in reasonable time & follow technical standards
- Owner responsible for costs/preparing plans & obtaining applic. permits (may require a SW permit)
- 10 day prior notice to Administrator (land disturbing)
- Administrator may require professional oversight and verification of compliance with approved plans
- Maintenance report is required upon completion
 - May need photos, surveys, soil test, planting etc.

Sec. 8 - Enforcement

- List of violations subject to enforcement
- Inspection order:
 - Administrator determines is needed to check compliance with maintenance requirements
 - If owner refuses, may “arrange for” inspection
- Maintenance order:
 - Administrator determines lack of maintenance may lead to failure or malfunction; and
 - May cause damages to public infrastructure, nuisance conditions, property damage/values, environmental degradation, or other adverse impact up/downstream
 - If owner refuses, may “arrange for” maintenance work

Sec. 8 - Enforcement

- Notice of violation/orders sent to owner and other “responsible party” with a 30 day response limit
- Enforcement actions:
 - Forfeitures (\$100-\$1000 per violation/day)
 - Stop work order
 - Permit revocation
 - Injunction (court order) by govt. or affected person
 - Citation [s. 66.0113(3) Wis. Stats.]
 - “Special charge” owner for inspection & maintenance costs [s. 66.0627 Wis. Stats.]
 - May prorate to watershed properties

Sec. 9 - Appeals

- All appeals go to the Board of Appeals/Adjustment
- Procedure under local code & State law
 - Initiated by any aggrieved person
- Any variances:
 - Not be contrary to public interest;
 - Not be contrary to the purpose and intent of the ordinance; and
 - Due to special circumstances beyond the control of applicant, literal enforcement will result in undue hardship

Sec. 10 - Definitions

- **“Environmental degradation”** – water pollution, erosion, flooding, damage envir. corridors, etc.
- **“Owner”** - all those on BMP property deed
- **“Responsible party”** – others involved, in maintenance agreement, HOA, mgt. agent, etc.
- **“Technical standard”** - state or local design & maintenance standards and procedures to prorate special charges

Sec. 11 - Validity

- Supersedes other conflicting ordinances relating to BMP maintenance
- If part of ordinance is declared invalid by a court, other sections shall remain in effect

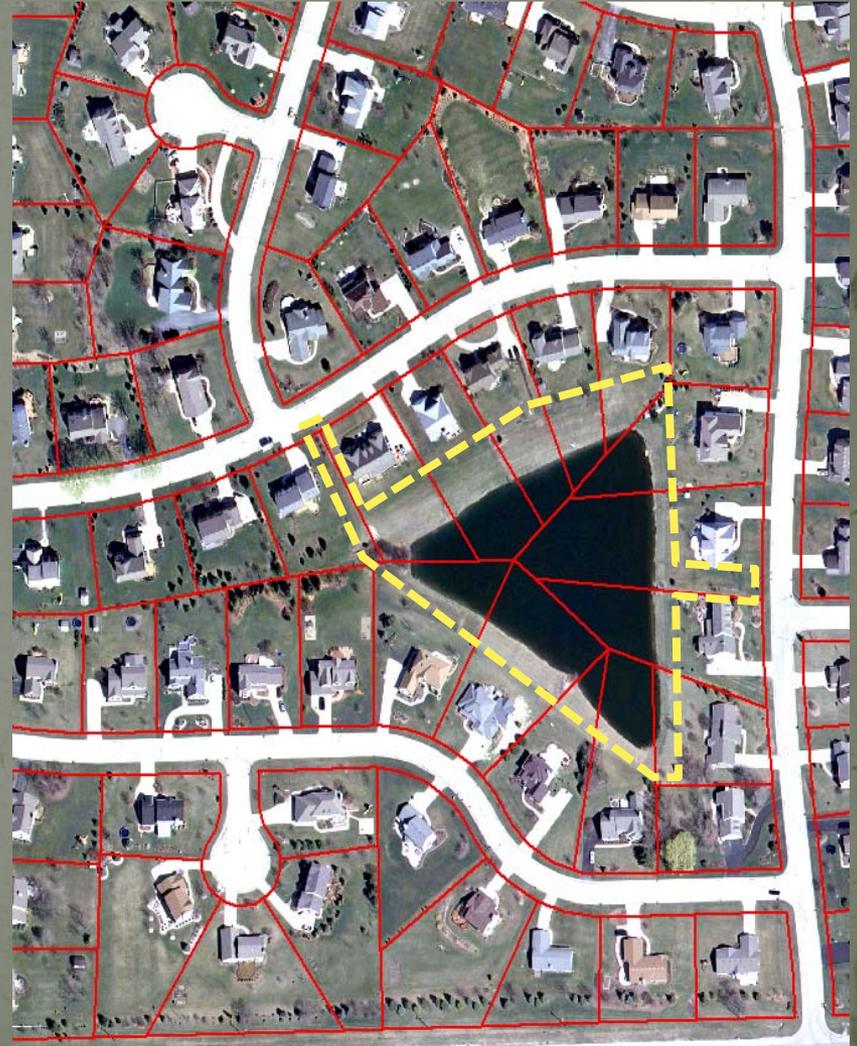


Legal Issues Involved (old BMPs)

- Can't fix deed problems with an ordinance
 - Changing deed language requires approval of by all affected property owners and their mortgage holders
 - Lack of access easements or easement definitions
 - Need landowner(s) permission, or inspection warrant
 - Conflicting or unclear deed language on BMP maintenance
 - Voluntary resolution/mediation; or court order
- Conclusion: make sure the deed language is accurate & complete before recording
 - "Certification of compliance" (county land divisions)
- Pick your battles carefully

Example: **Missing deed language**

- SW pond with “drainage easement” on 14 lots
- Undefined easement restrictions and access authorities
- Undefined maintenance responsibilities
- Many more lots drain to the pond



Legal Issues (cont.)

- Lack of BMP documentation/maintenance standards
 - What was the original BMP design?
 - Was it built as designed?
 - What maintenance is required?
- Conclusions:
 - Require recorded as-builts & maintenance plans
 - Adopt min. maintenance standards for BMP types
 - If maintenance responsibilities are adequately identified on deeds, these can help to enforcement efforts

Example: Complicated Site

- 225 acre watershed
- Several phases/40 years
- 28 ac./20 lots at the bottom
- Lots 1-20 are responsible for maintenance
- Pond #2 upstream later
- Conclusion:
 - Storm water master plan needed up front, including maintenance



Conclusions/Recommendations

- Amend storm water ordinances to:
 - Require BMP inspections & maintenance
 - Authorize inspection & maintenance orders
 - Authorize costs recovery by watershed if unspecified
- Adopt minimum BMP maintenance standards
- Prioritize enforcement based on adopted criteria
- Assemble & read BMP documents carefully
- Be consistent
- **Consult with your legal counsel!**

The End

