

**TOWN OF CEDARBURG
ORDINANCE NO. 2021-4**

**An Ordinance to Amend Chapter 110 Construction Site Erosion Control, of the
Town of Cedarburg Code of Ordinances, Ozaukee County, Wisconsin.**

WHEREAS, The Town of Cedarburg is a body corporate and politic; and

WHEREAS, the Town Board exercises village powers by Ch. 61, Wis. Stats.; and

WHEREAS, the Town of Cedarburg adopted Chapter 110 Construction Site Erosion Control through approval of Ordinance 2008-17 on October 1, 2008; and

WHEREAS, the Town of Cedarburg Director of Public Works administers and enforces the provisions of this Chapter; and

WHEREAS, the Town Board recognizes residents could benefit from an authorized designee also being able to administer and enforce Chapter 110 Construction Site Erosion Control;

NOW, THEREFORE, BE IT ORDAINED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, that Chapter 110 Construction Site Erosion Control of the Town of Cedarburg Code of Ordinances is hereby amended to read as follows:

**(The text modified with a strikethrough shall be deleted).
(The text modified with an underline shall be added).**

§ 110-1. Authority; designation of administration and enforcement officer.

A. This chapter is adopted under the authority granted by § 60.627, Wis. Stats. This chapter supersedes all provisions of a chapter previously enacted under § 60.62, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in § 60.627, Wis. Stats., § 60.62, Wis. Stats., applies to this chapter and to any amendments to this chapter.

B. The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.

C. The Town Board hereby designates the Director of Public Works and/or an authorized designee designated by the Director of Public Works (hereinafter in this chapter referred to as "designee") to administer and enforce the provisions of this chapter.

D. The requirements of this chapter do not preempt more stringent erosion and sediment control requirements that may be imposed by any of the following:

(1) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under §§ 281.16 and 283.33, Wis. Stats.

(2) Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.

§ 110-2. Findings.

The Town Board finds that runoff from land-disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the Town of Cedarburg.

§ 110-3. Purpose.

It is the purpose of this chapter to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and

promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land-disturbing construction activity to waters of the state in the Town of Cedarburg.

§ 110-4. Applicability; jurisdiction.

A. Applicability.

- (1) This chapter applies to construction sites that have one or more acres of land-disturbing construction activity except as provided under Subsection **A(2)**.
- (2) This chapter does not apply to the following:
 - (a) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR Part 122 for land-disturbing construction activity.
 - (b) Nonpoint discharges from agricultural facilities and practices.
 - (c) Nonpoint discharges from silviculture activities.
 - (d) Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- (3) Notwithstanding the applicability requirements in Subsection **A(1)**, this chapter applies to the following sites of land development or land-disturbing activities:
 - (a) Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved certified surveys.
 - (b) Those requiring a certified survey approval or the construction of houses of commercial, industrial or institutional buildings on lots of approved certified surveys.
 - (c) Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land-disturbing activity affecting a surface area of 4,000 square feet or more.
 - (d) Those involving excavation or filling or a combination of excavation and filling affecting 400 cubic yards or more of dirt, sand or other excavation or fill material.
 - (e) Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.
 - (f) Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more. (Note: The above applicability criteria are specifically stated in 1983 Wisconsin Act 416 for inclusion in this chapter. Utility companies responsible for energy repair work should enter into a memorandum of agreement with the Town Director of Public Works or designee clearly stating their responsibilities if their activities may be included under any of the above applicability criteria.)

B. Jurisdiction. This chapter applies to land-disturbing construction activity on construction sites located within the boundaries and jurisdiction of the Town of Cedarburg.

C. Exclusions. This chapter is not applicable to activities conducted by a state agency, as defined under § 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 § 281.33(2), Wis. Stats.

§ 110-5. Technical standards.

A. Design criteria, standards and specifications. All drainage facilities and practices required to comply with this chapter shall incorporate technical standards and design methods specified in the document "Town of Cedarburg Erosion Control and Stormwater Management Requirements," maintained and periodically updated by the Director of Public Works or designee. Where not superseded by stricter requirements in Town of Cedarburg Erosion Control and Stormwater Management Requirements, the following standards are also incorporated by reference:

- (1) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wis. Adm. Code.

B. Other standards. Other technical standards not identified or developed in Subsection **A** may be used, provided that the methods have been approved by the Director of Public Works or designee.

§ 110-6. Performance standards.

A. Responsible party. The responsible party shall implement an erosion and sediment control plan, developed in accordance with § 110-8, that incorporates the requirements of this section.

B. Plan. A written plan shall be developed in accordance with § 110-8 and implemented for each construction site.

C. Erosion and sediment control performance standards. All drainage facilities and practices required to comply with this chapter shall meet performance standards specified in the document "Town of Cedarburg Erosion Control and Stormwater Management Requirements," maintained and periodically updated by the Director of Public Works or designee.

D. Alternate requirements. The Director of Public Works or designee may establish erosion and sediment control requirements more stringent than those set forth in Town of Cedarburg Erosion Control and Stormwater Management Requirements, if the Director of Public Works or designee determines that an added level of protection is needed to address downstream stormwater management issues.

§ 110-7. Permitting requirements, procedures and fees.

A. Permit required. No responsible party may commence a land-disturbing construction activity subject to this chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Director of Public Works or designee.

B. Permit application and fees. At least one responsible party desiring to undertake a land-disturbing construction activity subject to this chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of § 110-8 and shall pay an application fee consistent with the fee schedule maintained by the Town of Cedarburg. By submitting an application, the applicant is authorizing the Director of Public Works or designee to enter the site to obtain information required for the review of the erosion and sediment control plan and conformance to the associated permit.

C. Review and approval of permit application. The Director of Public Works or designee shall review any permit application that is submitted with the erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

(1) The Director of Public Works or designee may request additional information if required for a complete application within 15 business days of receipt of any permit application. Within 30 business days of the receipt of a complete permit application, as required by Subsection B, the Director of Public Works or designee shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this chapter.

(2) If the permit application and plan are approved, the Director of Public Works or designee shall issue the permit.

(3) If the permit application or plan is denied, the Director of Public Works or designee shall state in writing the reasons for denial.

(4) The Director of Public Works or designee may request additional information from the applicant. If additional information is submitted, the Director of Public Works or designee shall have 10 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

D. Financial guarantee. As a condition of approval and issuance of the permit, the Director of Public Works or designee may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

E. Permit requirements. All permits shall require the responsible party to:

(1) Notify the Director of Public Works or designee two full business days prior to commencing any land-disturbing construction activity.

(2) Notify the Director of Public Works or designee of completion of any best management practices (BMPs) within three full business days after their installation.

(3) Obtain permission in writing from the Director of Public Works or designee prior to any modification pursuant to § 110-8B of the erosion and sediment control plan.

(4) Install all BMPs as identified in the approved erosion and sediment control plan.

(5) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

- (6) Provide the Director of Public Works or designee with a twenty-four-hour contact name and telephone number.
- (7) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land-disturbing construction activities and document repairs in a site erosion control log; remove accumulated sediment from downstream culverts, storm sewers, and other drainage facilities.
- (8) Inspect the BMPs within 24 hours after each rain of 0.5 inch or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
- (9) Allow the Director of Public Works or designee, his agent, or assignee to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan; keep a copy of the erosion and sediment control plan at the construction site.

F. Permit conditions. Permits issued under this section may include conditions established by Director of Public Works or designee in addition to the requirements set forth in Subsection E, where needed to assure compliance with the performance standards in § 110-6.

G. Permit duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Director of Public Works or designee may extend the period one or more times for up to an additional 180 days. The Director of Public Works or designee may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this chapter.

H. Maintenance. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this chapter until the site has undergone final stabilization.

§ 110-8. Erosion and sediment control plan, statement and amendments.

A. Plan requirements. An erosion and sediment control plan shall be prepared and submitted to the Director of Public Works or designee. The erosion and sediment control plan shall include, at a minimum, information required in the Town of Cedarburg Erosion Control and Stormwater Management Requirements, maintained and periodically updated by the Director of Public Works or designee.

B. Amendments. The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.
- (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (3) The Director of Public Works or designee notifies the applicant of changes needed in the plan.

§ 110-9. Fee schedule.

The fees referred to in other sections of this chapter shall be established by the Town Board and may from time to time be modified by resolution. A schedule of the fees established by the Town Board shall be available for review at the Town Hall.

§ 110-10. Inspection.

If land-disturbing construction activities are being carried out without a permit required by this chapter, the Director of Public Works or designee, his agent, or assignee, may enter the land pursuant to the provisions of § 66.0119(1), (2), and (3), Wis. Stats.

§ 110-11. Enforcement; violations and penalties.

A. The Director of Public Works or designee may post a stop-work order if any of the following occurs:

- (1) Any land-disturbing construction activity regulated under this chapter is being undertaken without a permit.

(2) The erosion and sediment control plan is not being implemented in a good faith manner.

(3) The conditions of the permit are not being met.

B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Director of Public Works or designee may revoke the permit.

C. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Director of Public Works or designee, or if a responsible party violates a stop-work order posted under Subsection **A**, the Director of Public Works or designee may request the Town Attorney to obtain a cease-and-desist order in any court with jurisdiction.

D. The Director of Public Works or designee may retract the stop-work order issued under Subsection **A** or the permit revocation under Subsection **B**.

E. After posting a stop-work order under Subsection **A**, the Director of Public Works or designee may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this chapter. The Director of Public Works or designee may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the Director of Public Works or designee, plus interest at the rate authorized by Director of Public Works or designee, shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to Subchapter VII of Chapter 66, Wis. Stats.

F. Any person violating any of the provisions of this chapter shall be subject to forfeiture per the Town Schedule of Deposits. Each day a violation exists shall constitute a separate offense.

G. Compliance with the provisions of this chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease-and-desist order before resorting to injunction proceedings.

§ 110-12. Appeals.

A. Board of Zoning Appeals. The Board of Zoning Appeals created pursuant to § **16-2** of the Town of Cedarburg Code pursuant to § 60.65, Wis. Stats.:

(1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director of Public Works or designee in administering this chapter except for cease and desist orders obtained under § **110-11C**;

(2) Upon appeal, may authorize variances from the provisions of this chapter which are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and

(3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

B. Who may appeal. Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the Town of Cedarburg affected by any decision of the Director of Public Works or designee.

§ 110-13. Severability.

If a court of competent jurisdiction judges any section, clause, provision or portion of this chapter unconstitutional or invalid, the remainder of the chapter shall remain in force and not be affected by such judgment.

§ 110-14. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADMINISTERING AUTHORITY

A governmental employee, a designee designated by the Director of Public Works, or a regional planning commission empowered under § 60.627, Wis. Stats., that is designated by the Town Board to administer this chapter.

AGRICULTURAL FACILITIES AND PRACTICES

Has the meaning in § 281.16(1), Wis. Stats.

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 soil, sediment or pollutants carried in runoff to waters of the state.

BUSINESS DAY

A day the office of the Director of Public Works or designee is routinely and customarily open for business.

CEASE-AND-DESIST ORDER

A court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.

CONSTRUCTION SITE

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

DIVISION OF LAND

The creation, from one parcel, of two or more parcels or building sites of five or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

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

A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

EXTRATERRITORIAL

The unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

FINAL 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.

GOVERNING BODY

The town board of supervisors of the Town of Cedarburg, ~~county board of supervisors, city council, village board of trustees, or village council.~~

LAND-DISTURBING CONSTRUCTION ACTIVITY

Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

MEP or MAXIMUM EXTENT PRACTICABLE

A level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

PERFORMANCE STANDARD

A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

PERMIT

A written authorization made by the Director of Public Works or designee to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the state. No

person may conduct land-disturbing activity or discharge post-construction runoff to waters of the state within the Town of Cedarburg without obtaining such permit from the Town indicating that the requirements of this chapter are met, and the owner shall pay the applicable permit fee according to the Annual Fee Schedule as established by the Town Board. The Town's permit application shall require that all costs incurred by the Town or its designee, agents, and/or consultants to properly review the application shall be the responsibility of the applicant who shall timely pay or reimburse the Town of Cedarburg for all engineering, inspection, legal, and administrative costs incurred by the Town in reviewing the application. This includes applications that result in after-the-fact permits.

POLLUTANT

Has the meaning given in § 283.01(13), Wis. Stats.

POLLUTION

Has the meaning given in § 281.01(10), Wis. Stats.

RESPONSIBLE PARTY

Any entity holding fee title to the property or performing services to meet the performance standards of this chapter through a contract or other agreement.

RUNOFF

Stormwater 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:

- A. Is designed or used for collecting water or conveying runoff.
- B. Is not part of a combined sewer system.
- C. Is not draining to a stormwater treatment device or system.
- D. Discharges directly or indirectly to waters of the state.

SITE

The entire area included in the legal description of the land on which the land-disturbing construction activity is proposed in the permit application.

STOP-WORK ORDER

An order issued by the Director of Public Works or designee which requires that all construction activity on the site be stopped.

TECHNICAL STANDARD

A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

WATERS OF THE STATE

Has the meaning given in § 281.01(18), Wis. Stats.

§ 110-15. Adoption and effective date.

The above and foregoing chapter was duly adopted by the Town Board of Town of Cedarburg on the first day of October, 2008, and as amended thereafter.

(The above text modified with a strikethrough shall be deleted).

(The above text modified with an underline shall be added).

This ordinance shall be in full force and effect upon its passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 5th day of May, 2021.



Jack Johnston
Assistant Administrator/Clerk



David M. Salvaggio
Town Chairman