

Brockway Township, Stearns County, MN
Ordinance # 12

**An Ordinance to Meet Construction Site Erosion and Sediment Control and Post-
Construction Stormwater Management Regulatory Requirements for Brockway
Township's MS4 General Permit**
November 13, 2018

1. Authorization, Findings, Purpose, Scope, and Interpretation

a. Statutory authorization

- 1) This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes Chapters 103B and 462; Minnesota Rules, Parts 6120.2500-6120.3900; and Minnesota Rules Chapters 8410 and 8420.
- 2) This ordinance meets the current construction site erosion and sediment control and post-construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES Permit) as defined in 40 CFR pt. 122.26(b)(14)(x) and (b)(15), respectively.
- 3) This ordinance meets the Minimal Impact Design Standards (MIDS) developed under Minnesota Statutes 2009, section 115.03, subdivision 5c.

b. Findings: Brockway Township recognizes that uncontrolled stormwater runoff and construction site erosion from land development and land disturbing activity can have significant adverse impacts upon local and regional water resources diminishing the quality of public health, safety, public and private property, and natural resources of the Township. Specifically, uncontrolled soil erosion and stormwater runoff can:

- 1) Threaten public health, safety, property and general welfare by increasing runoff volumes and peak flood flows and overburdening storm sewers, drainage ways and other storm drainage systems.
- 2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants.
- 3) Degrade physical stream habitat by increasing stream bank erosion, increasing stream bed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperatures.
- 4) Undermine floodplain management efforts by increasing the incidence and levels of flooding.
- 5) Alter wetland communities by changing wetland hydrology and increasing pollutants.
- 6) Impact groundwater by reducing recharge and increasing potential pollutant loading.

c. Purpose: This ordinance establishes regulatory requirements for land development and land disturbing activities to minimize the threats to public health, safety, public and private property and natural resources within the Township from construction site erosion and post-construction stormwater runoff. Specific purposes are to establish performance goals that will:

- 1) Meet Minimum Impact Design Standards (MIDS) performance goals.
- 2) Meet NPDES/SDS Municipal Separate Storm Sewer System (MS4) and Construction Stormwater General Permit requirements.
- 3) Meet Total Maximum Daily Load (TMDL) plan wasteload allocations for impaired waters through quantification of load reductions, when applicable.
- 4) Protect life and property from dangers associated with flooding.
- 5) Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion.
- 6) Minimize the annual stormwater runoff rates and volumes from post development site conditions and/or reduce the annual runoff rates and volumes from predevelopment site conditions.
- 7) Oversee site design that minimizes the generation of stormwater and maximizes pervious areas for stormwater treatment.
- 8) Provide a single, consistent set of performance goals that apply to all developments.
- 9) Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants.
- 10) Promote infiltration and groundwater recharge.
- 11) Provide vegetated corridors (buffers) to protect water resources from development.
- 12) Protect functional values of all types of natural waterbodies (e.g., rivers, streams, wetlands, lakes, seasonal ponds).
- 13) Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems (interface between land and river or stream).

d. Scope: Land will not be developed or redeveloped for any use without having provided stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from such developments or redevelopments.

e. Greater restrictions

- 1) Relationship to Stearns County Requirements - All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of Stearns County. In the case of provisions in this ordinance and requirements of Stearns County that overlap or conflict, the strictest provisions will apply to the activities.
- 2) Relationship to Existing Easements, Covenants, and Deed Restrictions – The provisions of this ordinance are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions the provisions of this ordinance will prevail.

2. **Definitions:** Words or phrases used in this ordinance have the meanings as defined by Appendix B of the Minnesota Construction Stormwater Permit No: MN R100001 (Construction Permit) available at <http://www.pca.state.mn.us/wfhya5b>: If not defined in the Construction Permit, then words or phrases will be interpreted to have the meaning they have in common usage. Words or phrases will be interpreted so as to give this ordinance its most reasonable application. For the purpose of this ordinance, the words “must”, “shall”, and “will” are mandatory and not permissive.
- a. **“Applicant”** means the owner of land submitting an application under the provisions of this ordinance for a stormwater and/or erosion control permit to be issued by Brockway Township.
 - b. **“Best management practices (BMPs)”** means the most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.
 - c. **“Better Site Design”** means the control and management of stormwater quantity and quality through the application of Better Site Design Techniques as outlined in the current version of the Minnesota Stormwater Manual:
http://stormwater.pca.state.mn.us/index.php/Main_Page Better Site Design includes: preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.
 - d. **“Common plan of development or sale”** means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
 - e. **“Construction activity”** includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5)

acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

- f. **“Development, new”** Any development that results in the conversion of land that is currently prairie, agriculture, forest, or meadow and has less than 15% impervious surface. Land that was previously developed, but now razed and vacant, will not be considered new development.
- g. **“Dewatering”** means the removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources (DNR) water appropriation permit, and if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.
- h. **“Energy dissipation”** means methods employed at pipe outlets to prevent erosion caused by the rapid discharge of water scouring soils. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.
- i. **“Erosion prevention”** means measures employed to prevent erosion. Examples include but not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.
- j. **“General contractor”** means the party who signs the construction contract with the owner or operator to construct the project described in the final plans and specifications. Where the construction project involves more than one contractor, the general contractor could be the party responsible for managing the project on behalf of the owner or operator. In some cases, the owner or operator may be the general contractor. In these cases, the owner may contract an individual as the operator who would become the co-permittee.
- k. **“Green Infrastructure”** means a wide array of practices at multiple scales that manage wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring, or harvesting and using stormwater. On a regional scale, green infrastructure is the preservation or restoration of natural landscape features, such as forests, floodplains and wetlands, couples with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On a local scale, green infrastructure consists of site and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
- l. **“Impervious Surface”** means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

- m. **“Inspector”** means person or entity appointed or contracted with Brockway Township to perform duties of the Board as delegated by this ordinance.
- n. **“Land Disturbance”** means any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements
- o. **“Linear Project”** means construction or reconstruction of roads, trails, sidewalks, and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.
- p. **“National Pollutant Discharge Elimination System (NPDES)”** means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.
- q. **“Normal wetted perimeter”** means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur from a two-year 24 hour storm event.
- r. **“Notice of termination”** means notice to terminate coverage under this permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.
- s. **“Operator”** means the person designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The operator must be names on the permit as the Permittee.
- t. **“Owner”** means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.
- u. **“Permanent cover”** means surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a

density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.

- v. **“Permittee”** means a person or persons, firm, or governmental agency or other entity that signs the application submitted to the MPCA and is responsible for compliance with the terms and conditions of the construction permit.
- w. **“Pre-Development”** means conditions that existed 3 years prior to the time that plans for the land development activity are submitted.
- x. **“Public waters”** means all water basins and watercourses that are described in Minn. Stat. 103G.005 subd. 15.
- y. **“Redevelopment”** means any development that is not considered new development.
- z. **“Retain”** means manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.
- aa. **“Saturated soil”** means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.
- bb. **“Sediment control”** means methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.
- cc. **“Small construction activity”** means small construction activity as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.
- dd. **“Stabilized”** means exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).
- ee. **“Standard plates”** means general drawings showing a common or repeated construction activity or practice.

- ff. **“Stormwater”** is defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.
- gg. **“Stormwater Pollution Prevention Plan”** (SWPPP) means a plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.
- hh. **“Surface water or waters”** means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland. .
- ii. **“Temporary erosion protection”** means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.
- jj. **“Underground waters (Groundwater)”** means water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.
- kk. **“Waters of the State”** (as defined in Minn. Stat. § 115.01, subd. 22) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
- ll. **“Wetland” or “Wetlands”** is defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:
 - 1) A predominance of hydric soils.
 - 2) Saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition.
 - 3) Under normal circumstances support a prevalence of such vegetation.

3. Applicability: Brockway Township’s ordinance requires that a Stormwater Pollution Prevention Plan (SWPPP) be completed, submitted for review, and approved by the Township. Applicants will complete a SWPPP. A SWPPP Plan and Permit is required prior to any proposed land development activity that meets any of the criteria in a) through e) below, unless otherwise exempted in this ordinance in section 4.

- a. Any land development activity that may ultimately result in the disturbance of one or more acres of land, including smaller individual sites that are part of a common plan of development that may be constructed at different times.
- b. Land development activity involving greater than 10,000 square feet of land disturbance that discharges to impaired or special water as described in Appendix A of the NPDES/SDS Construction Stormwater General Permit.
- c. A subdivision plat.
- d. The construction of any new public or private road.
- e. Any land development activity, regardless of size, that the Township determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

4. Exemptions: The following activities are exempt from all of the requirements of this ordinance:

- a. Emergency work necessary to protect life, limb, or property.
- b. Routine agricultural activity such as tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt including activities such as construction of structures.
- c. Silvicultural activity (tree and forest growing).

5. Permit Review Process

- a. **Pre- application meeting:** Brockway Township will facilitate a pre-application meeting with the applicant, Brockway Township’s staff, and any relevant partner agencies (e.g. Stearns County, Stearns Soil and Water Conservation District (SWCD), Environmental Services, etc when applicable. The purpose of the meeting is to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of the Township ordinance.
- b. **Application completeness review:** Brockway Township will make a determination regarding the completeness of a permit application within 15 business days of the receipt of the application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.
- c. **Application review:** The applicant cannot start any construction activity subject to this ordinance until a permit (an SWPPP) has been authorized/issued by the Township. A complete review of the permit application will be done within 60 days of the receipt of a complete permit application from the applicant. The Township will work with the necessary state, county, and local agencies to complete the review when applicable. The

Township will review all information in the permit application including proposed stormwater practices, hydrologic models, and design methodologies and certify compliance with this ordinance.

- d. Permit authorization:** If Brockway Township determines that the application meets the requirements of this ordinance, the approval will be valid for two years. The Township approval will be in written form.
- e. Permit denial:** If Brockway Township determines the application does not meet the requirements of this ordinance, the application will be denied. If the application is denied, the applicant will be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin. All building permits and inspections shall be suspended until the applicant has an approved SWPPP permit.
- f. Plan information requirements:** The minimum information requirements of the application will be consistent with the erosion and sediment control requirements in the most recent version of the NPDES/SDS Construction Stormwater General Permit and will include a fully completed Application Checklist. The application information must also include permanent treatment information showing the proposed project meets the MIDS performance goals.
- g. Modification of permitted plans:** The applicant will be required to amend an approved SWPPP permit to include additional requirements such as additional or modified BMPs designed to correct problems whenever:
 - 1) There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant outcome on the discharge of pollutants to surface water or underground water.
 - 2) Inspections or investigations by site operators, the Township, County, State or Federal officials which indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface water or underground water or that the discharges are causing water quality standard exceedances.
 - 3) The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.
- h. Permit completion:** Before work under the permit is deemed complete, the permittee must:
 - 1) Submit as-builts.
 - 2) A long term maintenance plan.
 - 3) Information demonstrating that the stormwater facilities conform to design specifications.
 - 4) Monetary surety in the amount of 125% of the total costs to cover the costs for the Township to construct or correct any project portion(s) should the Applicant fail to complete the project correctly. Surety to be returned once the final construction of the project is approved by the Township.

6. Site Design and MIDS Calculator

a. Site design process

1) **Better Site Design:** To the maximum extent practicable, new development projects will be designed using the Better Site Design Techniques of the current version of the Minnesota Stormwater Manual available at:

http://stormwater.pca.state.mn.us/index.php/Better_site_design. Better Site Design involves techniques applied early in the design process to preserve natural areas, reduce impervious cover, distribute runoff and use pervious areas to more effectively treat stormwater runoff. Site design should address open space protection, impervious cover minimization, and runoff distribution and minimization, and runoff utilization through considerations such as:

a) Open space protection and restoration:

- i. Conservation of existing natural areas (upland and wetland)
- ii. Reforestation
- iii. Re-establishment of prairies, if applicable.
- iv. Restoration of wetlands
- v. Establishment or protection of stream, shoreline and wetland buffers re-establishment of native vegetation into the landscape

b) Reduction of impervious cover:

- i. Reduce new impervious through redevelopment of existing sites and use of existing roadways, trails etc.
- ii. Consider minimizing street width, parking space size, driveway length, sidewalk width.
- iii. Consider the size and impact of an impervious surface footprint (e.g. two story buildings, parking ramp(s))

c) Distribution and minimization of runoff:

- i. Use vegetated areas for stormwater treatment (e.g. parking lot islands, vegetated areas along property boundaries, front and rear yards, building landscaping)
- ii. Direct impervious surface runoff to vegetated areas or to designed treatment areas (roofs, parking, driveways drain to pervious areas, not directly to storm sewer or other conveyances)
- iii. Encourage infiltration and soil storage of runoff through grass channels, soil compost amendment, vegetated swales, raingardens, or through other acceptable means recommended by the Minnesota Pollution Control Agency (MPCA)

iv. Plant vegetation that does not require irrigation beyond natural rainfall and runoff from the site.

d) Runoff use: Capture and store runoff for irrigation use in areas where irrigation is necessary

2) Stormwater criteria: The following general criteria will be incorporated in site design for stormwater runoff to protect surface and ground water and other natural resources by maintaining pre-development hydrological conditions:

- a) Reduce impacts on water
- b) Protect soils
- c) Preserve vegetation
- d) Decrease runoff volume
- e) Decrease erosion and sedimentation
- f) Decrease flow frequency, duration, and peak runoff rates
- g) Increase infiltration (groundwater recharge)
- h) Maintain existing flow pattern
- i) Reduce peak flows
- j) Store stormwater runoff on-site
- k) Avoid channel erosion

3) Erosion and sediment control criteria: The following general criteria will be incorporated in site design for erosion and sediment control:

- a) Minimize disturbance of natural soil cover and vegetation
- b) Minimize, in area and duration, exposed soil and unstable soil conditions
- c) Protect receiving water bodies, wetlands and storm sewer inlets
- d) Protect adjacent properties from sediment deposition
- e) Minimize off-site sediment transport on trucks and equipment
- f) Minimize work in and adjacent to waterbodies and wetlands
- g) Maintain stable slopes
- h) Avoid steep slopes and the need for high cuts and fills
- i) Minimize disturbance to the surrounding soils, root systems and trunks of trees adjacent to site activity that are intended to be left standing
- j) Minimize the compaction of site soils

b. MIDS calculator: Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS Calculator (or other model that shows the performance goal can be met) and shall meet the performance goals in this ordinance. The MIDS calculator is available at

<http://stormwater.pca.state.mn.us/index.php/Calculator>

c. Final landscaping. All “stabilization” and landscaping of the construction site and surrounding disturbed land will be completed as soon as possible but not later than one year from the start date of the permit.

7. **Stormwater Volume Reduction Performance Goals:** Any applicant for a permit resulting in site disturbance that creates one or more acres of new impervious surface or fully reconstructs one or more acre of impervious surface must meet all of the following stormwater performance goals:
- a. **New development volume control:** For new, nonlinear developments that create more than one acre of new impervious surface on sites without restrictions, stormwater runoff volumes will be controlled and the post construction runoff volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.
 - b. **Redevelopment volume control:** Nonlinear redevelopment projects on sites without restrictions that create one or more acres of new and/or fully reconstructed impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.
 - c. **Linear development volume control:** Linear projects on sites without restrictions that create one acre or greater of new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:
 - 1) 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site
 - 2) 1.1 inches of runoff from the net increase in impervious area on the site. Mill and overlay and other resurfacing activities are not considered fully reconstructed.
 - d. **Flexible treatment options for sites with restrictions (as found in the MIDS Design Sequence Flowchart):** Applicant will fully attempt to comply with the appropriate performance goals described above. Options considered and presented will examine the merits of relocating project elements to address varying soil conditions and other constraints across the site. If full compliance is not possible due to any of the factors listed below, the applicant must document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment options will be used as described below:
 - 1) Applicant will document the flexible treatment options sequence (see alternatives below) starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below. If Alternative #2 cannot be met then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below. When all of the conditions are fulfilled within an alternative, this sequence is completed.
 - 2) Volume reduction techniques considered will include infiltration, reuse & rainwater harvesting, and canopy interception & evapotranspiration and/or additional techniques included in the MIDS calculator and the Minnesota Stormwater Manual. Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs.

3) Factors to be considered for each alternative will include:

- a) Karst geology
- b) Shallow bedrock
- c) High groundwater
- d) Hotspots or contaminated soils
- e) Drinking Water Source Management Areas or within 200 feet of drinking water well
- f) Zoning, setbacks or other land use requirements
- g) Excessive cost
- h) Poor soils (infiltration rates that are too low or too high, problematic urban soils)

Alternative #1: Applicant attempts to comply with the following conditions:

- a. Achieve at least 0.55” volume reduction from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
- b. Remove 75% of the annual total phosphorus (TP) load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
- c. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

Alternative #2: Applicant attempts to comply with the following conditions:

- a. Achieve volume reduction to the maximum extent practicable.
- b. Remove 60% of the annual Total Phosphorus (TP) load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
- c. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

Alternative #3: Off-site Treatment. Mitigation equivalent to the performance of 1.1 inches of volume reduction for new development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving water body. Off-site treatment shall be achieved in areas selected in the following order of preference:

- a. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.
- b. Locations within the same Department of Natural Resource (DNR) catchment area (Hydrologic Unit 08) as the original construction activity.
http://deli.dnr.state.mn.us/metadata/wshd_lev08py3.html
- c. Locations within the next adjacent DNR catchment area upstream.
- d. Locations anywhere within Brockway’s Township’s jurisdiction.

The MIDS Design Sequence Flowchart can be found in the Minnesota Stormwater Manual: http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options

8. Other Design Standards

- a. **Minnesota Stormwater Manual:** All volume control for water quality and quantity and site design specifications will conform to the current version of the Minnesota Stormwater Manual.
- b. **Site erosion and sediment control requirements:** All erosion and sediment control requirements will conform to the current requirements of NPDES/SDS Construction Stormwater General Permit.
- c. **Stearns County requirements:** All stormwater management and erosion and sediment control activities will comply with all applicable requirements of Stearns County. In the case of provisions in this ordinance and requirements of Stearns County that overlap or conflict, the strictest provisions shall apply to the activities.

9. Inspections and Maintenance

a. Inspections and record keeping

- 1) **Applicant responsibilities:** The applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.
- 2) **Brockway Township inspections:** Brockway Township reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. Brockway Township requires mandatory inspections be conducted as follows:
 - a) Before any land disturbing activity begins
 - b) Before or during the installation of permanent stormwater treatment systems
 - c) At the completion of the project
 - d) Prior to the release of financial securities

b. Right of entry and inspection.

The issuance of a permit constitutes a right-of-entry for Brockway Township or its Inspector to enter upon the construction site. The applicant shall allow the Township and/or their Inspector, upon presentation of credentials, to:

- 1) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations or surveys
- 2) Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations

- 3) Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit
 - 4) Inspect the stormwater pollution control measures
 - 5) Sample and monitor any items or activities pertaining to stormwater pollution control measures
 - 6) Correct deficiencies in stormwater and erosion and sediment control measures
- c. **Fees:** A Fee Schedule is established by resolution of the Town Board and reviewed annually. The charges per hour will be identified in the Fee Schedule and will be assessed to the applicant for any inspections under this section by the Township.
- d. **Enforcement tools/stop work orders:** Brockway Township reserves the right to issue construction stop work orders when cooperation on inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment. The following example highlights a scenario on a site where a stop work order could be used. Ex: If stormwater and/or erosion and sediment control management measures malfunction and breach the perimeter of the site, enter streets, other public areas, or water bodies. The Township will assess the need for issuing a stop work order. The applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-way from the adjoining property owner if necessary, and implement the cleanup and restoration plan within 48 hours. If in the discretion of the Township, the applicant does not repair the damage caused by the stormwater runoff, the Township can complete the remedial work required and charge the cost to the applicant pursuant to the following statutes, M.S. § 366.012 or §429.101. If payment is not made within thirty days, payment will be made from the applicant's financial securities and any and all costs to be assessed to the property taxes. An inspection by the Township or their Inspector must follow before the construction project work can resume.
- 1) **Construction stop work order:** Brockway Township may issue construction stop work orders until stormwater management measures meet specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by Brockway Township or their Inspector must follow before the construction project work can resume.
 - 2) **Other actions to ensure compliance -** Brockway Township can take any combination of the following actions in the event of a failure by applicant to meet the terms of this ordinance:
 - a) Withhold inspections or issuance of certificates or approvals.
 - b) Revoke any permit issued by Brockway Township to the applicant.
 - c) Conduct remedial or corrective action on the development site or adjacent site affected by the failure.
 - d) Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities and/or assess to the property taxes as stated above.

- e) Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance in civil or criminal court.
- f) Any person, firm or corporation failing to comply with or violating any of these regulation, will be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

e. Long term inspection and maintenance of stormwater facilities

1) Private stormwater facilities

- a) Maintenance Plan Required - No private stormwater facilities may be approved unless a maintenance plan is provided that defines who will conduct and pay for the maintenance, the type of maintenance and the maintenance intervals. At a minimum, all private stormwater facilities shall be inspected annually and maintained in proper condition consistent with the performance goals for which they were originally designed. Annually submit report for the first 5 years then re-evaluate the maintenance plan.
- b) Facility Access - Access to all stormwater facilities that must be inspected annually and maintained as necessary. The applicant shall provide all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and/or Brockway Township.
- c) Removal of Settled Materials - All settled materials including settled solids, shall be removed from ponds, sumps, grit chambers, and other devices, and disposed of properly per the maintenance plan.
- d) Inspections - All stormwater facilities within Brockway Township will be inspected by the Township or their Inspector during construction, during the first year of operation, and at least once every five years thereafter.

2) Public stormwater facilities

- a) Acceptance of Publicly Owned Facilities - Before work under the permit is deemed complete; the permittee must submit as-builts and a maintenance plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection will be required before Brockway Township accepts ownership of the stormwater facilities.
- b) Inventory of Stormwater Facilities - Upon adoption of this ordinance, Brockway Township will inventory and maintain a database for all private and public stormwater facilities within Brockway Township requiring maintenance to assure compliance with this ordinance. The Township shall notify owners of public and private stormwater facilities of the need for conducting maintenance on an appropriate schedule based on the stormwater management practice.
- c) Maintenance - Brockway Township shall perform maintenance of publicly owned stormwater facilities in accordance with the operation and maintenance plan created for the best management practice or other regulatory requirements.

10. Financial Securities: Once a SWPPP is approved, a financial guarantee in the form of a letter of credit, cash deposit, or bond in favor of Brockway Township equal to one hundred twenty-five (125) percent of site erosion and sediment control costs shall be submitted to Brockway Township. This guarantee is necessary to ensure the satisfactory installation, completion and maintenance of the measures as required in the SWPPP. Release of any portion of the financial guarantee is contingent on approval from a professional engineer that as built conditions meet original design specifications and a site visit by Brockway Township or their Inspector is conducted to evaluate the condition of erosion and sediment control measures. Property Owners shall indemnify and hold harmless Brockway Township and its agents' and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the existence, construction, and maintenance or use of said licensed premises provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction or tangible property (other than the said property itself) including the loss of the use resulting there from, and (b) is caused in whole or in part by any negligent act or omission of Property Owners or anyone directly employed by Property Owners or anyone for whose acts Property Owners may be liable.

- a. **Amount:** Brockway Township requires financial securities from the applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by Brockway Township.
- b. **Release:** Financial securities will not be released until all permitted and remedial work is completed.
- c. **Use by Brockway Township:** Financial securities may be used by Brockway Township to complete work not completed by the applicant in a timely matter decided by Brockway Township.
- d. **Form of security:** The form of the securities shall be one or a combination of the following to be determined by Brockway Township:
 - 1) **Deposit** - A Fee Schedule will be established by resolution of the Town Board which will determine how much of a deposit will be required as part of the financial security for erosion and sediment control. The deposit will be held by Brockway Township in a separate account. Deposit, either with Brockway Township, a responsible escrow agent, or trust company, at the option of the Brockway Township, either:
 - a) An irrevocable letter of credit or negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment.

- b) Other forms and securities (e.g., disbursing agreement) as approved by Brockway Township.
- e. **Brockway Township indemnity:** This security shall save Brockway Township free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the Township.
- f. **Maintaining the financial security:** If at any time during the course of the work the amount falls below 50% of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by Brockway Township that the amount has fallen below 50% of the required amount the Township may:
 - 1) **Withhold inspections** - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy as coordinated with Stearns County.
 - 2) **Revoke permits** - Revoke any permit issued by Brockway Township to the applicant for the site in question or any other of the applicant's sites within the Township's jurisdiction.
- g. **Action against the financial security:** Brockway Township may access financial security for remediation actions if any of the conditions listed below exist. The Township shall use the security to finance remedial work undertaken by the Township, or a private contractor under contract to the Township, to reimburse the Township for all direct costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.
 - 1) **Abandonment** - The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
 - 2) **Failure to implement the SWPPP** - The applicant fails to conform to the SWPPP as approved by Brockway Township.
 - 3) **Failure to perform** - The techniques utilized under the SWPPP fail within one year of installation.
 - 4) **Failure to reimburse Brockway Township** - The applicant fails to reimburse the Township for corrective action taken.
- h. **Proportional reduction of the financial security:** When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the Township can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, The Township can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the Township.

- i. **Returning the financial security:** The security deposited with Brockway Township for faithful performance of the SWPPP and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures as shown on the SWPPP.

- j. **Emergency action:** If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by Brockway Township, the Township may take emergency preventative action. The Township shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the Township may be recovered from the applicant's financial security.

- k. **Enforcement Actions:** Brockway Township will notify the permit holder of the failure of the permit's measures.
 - a. Initial Contact - The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, forty-eight (48) hours after notification by Brockway Township or seventy-two (72) hours after the failure of erosion and sediment control measures, whichever is less, the Township at its discretion, may begin corrective work. Such notification shall be in writing if after making a good faith effort to notify the responsible party or parties, Brockway Township has been unable to establish contact, the Township may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the Township may take immediate action, and then notify the applicant as soon as possible.
 - b. Erosion Off-site - If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within forty-eight (48) hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from Brockway Township, may more than seven (7) calendar days go by without corrective action being taken. If in the discretion of Brockway Township, the permit holder does not repair the damage caused by the erosion, the Township may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agency to ensure that the work is done properly.
 - c. Erosion into Streets, Wetlands or Water Bodies - If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
 - d. Failure to do Corrective Work - When an applicant fails to conform to any provision of this policy within the time stipulated, Brockway Township may take the following actions:
 - 1) Stop Work Order - Issue a stop work order; withhold the scheduling of inspections, and/or the issuance of a Certificate of Occupancy.

- 2) Permit Revocation - Revoke any permit issued by Brockway Township to the applicant for the site in question or any other of the applicant's sites within the Township's jurisdiction.
 - 3) Correction by Brockway Township - Correct the deficiency or hire a contractor to correct the deficiency.
 - a) The applicant will be required to reimburse Brockway Township for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within thirty (30) days after costs are incurred by the Township, payment will be made from the applicant's financial securities as described in Section 8 above.
 - b) If there is an insufficient financial amount in the applicant's financial securities as described in Section 8 above, Brockway Township may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the Township, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of Minnesota Statute 429.081 to challenge the amount or validity of assessment.
- I. Severability:** The provisions of this ordinance are severable, and if any provision of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance would not be affected.

ADOPTION OF ORDINANCE NO. 12

Motion by Supervisor Fiedler, seconded by Supervisor Warzecha to adopt an Ordinance to meet construction site erosion and sediment control and post-construction stormwater management regulatory requirements for Brockway Township's MS4 General Permit MNR0-400000.

The motion was passed/failed on the following vote:

Ayes: 3
Nays: 0
Abstain: 0
Absent: 0

Motion was passed and the Ordinance to meet MS4 requirements was adopted and the Clerk was instructed to publish the Adoption Summary and file said Ordinance in the Brockway Town Office.

Adopted on the 13th day of November, 2018.

ATTEST:

BROCKWAY TOWNSHIP

Connie A. Pesta

Connie Pesta, Clerk

[Signature]
George Fiedler, Chair

