

Outagamie County Drainage Board

Stormwater Runoff Management Guidance

Overview

The Outagamie County Drainage Board (the “Board”) is responsible for operating district drains. State law grants the Board the authority to undertake certain actions regarding district drains pursuant to Wis. Stat. ch. 88 and Wis. Admin. Code ch. ATCP 48. This includes the authority to regulate, through a variety of mechanisms, the conveyance of runoff from properties inside and outside of the district into district drains.

Particularly in the recent years, the Board has experienced challenges regarding the volume of stormwater runoff entering district drains for a variety of reasons, including development in and around the drainage district boundaries. The Board is creating this Stormwater Runoff Management Guidance to aid area landowners and developers in understanding the Board’s authority over stormwater runoff management. This Guidance provides an overview of the Board’s authority to regulate stormwater runoff entering district drains and guidance to landowners and developers as to what kinds of information the Board may need to review when determining what action to take on an application for connection to the district drain. This Guidance was not intended to, nor does it limit the authority of the Drainage Board to take any action authorized under Wis. Stat. ch. 88 and Wis. Admin. Code ch. ATCP 48. The Board may revise this Guidance from time to time as it becomes aware of additional information that could be useful to the Board and to landowners and developers seeking to use the district drain for management of stormwater runoff.

Board Authority

The Outagamie County Drainage Board manages drainage districts in Outagamie County pursuant to its authority under Wis. Stat. ch. 88 and Wis. Admin. Code § ATCP 48. The Board is responsible for operating and maintaining district drains, levying assessments against landowners who benefit from drainage, and inspecting district drains and corridors, among other responsibilities. The Board has the authority to adopt rules and issue orders to ensure compliance with Wis. Stat. ch. 88 and Wis. Admin. Code ch. ATCP 48. Wis. Stat. § 88.21(12). This can include the issuance of orders requiring landowners to take certain action on private drains that cause harm to district drains.

With respect to the connection of drains to district drains, a person cannot connect a drain to a district drain without first receiving approval of written plans and specifications by the Board. Wis. Stat. § 88.92(1). The Board may impose conditions upon any such connection. *Id.* If a connection is undertaken absent Board approval, the Board may issue an order directing removal or modification of the drain, and the person responsible for the illegal connection may be liable for damages. Wis. Stat. § 88.92(1), (2).

The Board must obtain written approval from the Department of Agriculture, Trade, and Consumer Protection (“DATCP”) for any connection of a drain to a district drain. Wis. Admin. Code § ATCP 48.34(1)(c). In order to obtain approval, the Board must follow the procedures outlined in § ATCP 48.36, including holding a public hearing and comment period on the proposed connection. *See* § ATCP 48.36(2).

The Board is also responsible for “minimizing soil erosion and the movement of suspended solids into district drains.” Wis. Admin. Code § ATCP 48.30(1). Any private drains that “transport water to district drains” from agricultural or nonagricultural lands must “be designed, constructed and maintained to prevent soil erosion, and to minimize the movement of suspended solids into district drains.” § ATCP 48.30(5)(a). The Board may require that drains that will be connected to a district drain be “designed according to a stormwater management plan, and equipped with facilities such as settling ponds or detention basins to minimize excessive discharges of water or suspended solids into district drains.” *Id*; *see generally* Wis. Stat. § 88.92(1) (prohibiting connections except under written plans and specifications approved by the board and authorizing the Board to impose conditions on the connection to a district drain). And, the Board may require the owner of land in a drainage district to implement erosion control practices on that land that are recommended by the United States department of agriculture natural resources conservation service, the county land conservation department, or the Board’s engineer. § ATCP 48.30(6)(a).

If a landowner refuses to comply with Board requirements, the Board may: refuse to permit a connection with the district drain; order landowner compliance; order disconnection; or assess the owner for construction costs incurred by the Board due to the landowner’s noncompliance with Board requirements. Wis. Admin. Code § ATCP 48.30(5)(b), (6)(b); *see also* § ATCP 48.02(4); Wis. Stat. § 88.92(1).

In addition to regulation of lands within the drainage district, the Board may also take actions against landowners outside of the district, including any of the following:

- Refuse to permit the connection of a private drain to a district drain ...;
- Initiate an action to recover damages sustained by the district as a result of an action or omission by the owner of land outside of the district;
- Enter into an agreement with a person for compensation for costs incurred by the drainage district due to the connection of that person’s private drain to a district drain;
- Order the annexation to the district of the lands outside of the district that benefit from the operation of any district drain (pursuant to Wis. Stat. §§ 88.78, 88.405, and 88.875).

Wis. Admin. Code § ATCP 48.04(1).

The Board also has the authority to assess municipalities with territory upstream of a district drain “for any costs of enlarging or maintaining the drain that are attributable to increased water flow from land within the municipality.” Wis. Stat. § 88.64(2). A municipal assessment made under this statutory authority must follow a statutorily prescribed procedure. *Id*.

District Guidance on Stormwater Runoff Management

Pursuant to its statutory and regulatory authority, the Board will require all persons seeking to connect a private drain to a district drain to request Board approval for such action. The “connection” of a drain to a district drain includes any manner of draining or directing stormwater runoff from a property into a drainage district drain. The Board will evaluate each request for connection and determine the appropriate action to take, including requesting additional information, approval, approval with

conditions, or denial. The Board may assess developers and/or landowners for construction costs incurred by the district, including due to noncompliance with Board requirements.

Board approval is required for all sites with proposed actions that will result in one acre or more of land disturbance. Land disturbances of less than one acre may require Board approval on a case-by-case basis if the disturbances are part of a common plan of development which will result in one acre or more of total land disturbance. Board approval may be required on a case-by-case basis for proposed actions of less than one acre of land disturbance if the site is directly adjacent to a legal drain and will have impacts to the legal drain. *(revised 9-5-23)*

In a request for Board approval, the person seeking connection should provide the Board with the following information for review:

- The name of the persons seeking Board approval;
- A statement of the proposed action;
- The objectives of the proposed action;
- The estimated cost of the proposed action;
- A map showing the location of the proposed action and the location of lands and waters affected by the proposed action;
- A stormwater management plan that includes the following:
 - The design specifications for the proposed action, including:
 - Plans and specifications for all facilities that will be used to minimize excessive flows and suspended solids and control erosion into any district drain and for compliance with state;
 - Plans and specifications for meeting county requirements regarding infiltration for developments with low, moderate, and high imperviousness. Exemptions to infiltration requirements for high groundwater and bedrock will be reviewed on a case-by-case basis. Geotechnical borings or test pit documentation shall be provided to confirm elevations and locations of high groundwater or bedrock on the site. These plans and specifications shall include provisions for pretreatment as necessary.
 - Low imperviousness. For development up to 40 percent connected imperviousness (parks, cemeteries, and low density residential), infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. A minimum 1% of drainage area to be set aside for infiltration. *(revised 9-5-23)*
 - Moderate imperviousness. For development with more than 40 percent and up to 80 percent connected imperviousness (medium and high density residential, multifamily development, industrial and institutional & office parks), infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. A minimum 2% of drainage area to be set aside for infiltration. *(revised 9-5-23)*
 - High imperviousness. For development with more than 80 percent connected imperviousness (commercial strip malls, shopping centers, and

commercial downtowns). Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. A minimum 2% of drainage area to be set aside for infiltration. *(revised 9-5-23)*

- A hydrology analysis, which should include the following analysis:
A description of how stormwater will be managed to conform to the development or property's proportionate share of the 10-year, 24-hour discharge identified in the drain to which the connection will be made. For the 10-year, 24-hour event (3.8" per Wis. Admin. Code ch. ATCP 48), the discharge from a development may not exceed the requirements of Outagamie Co. Ordinance 48 or its proportionate share of the 10-year, 24-hour discharge identified in the nearest legal drainage branch. For example, if the nearest legal drain branch has a flow rate of 50 cfs and drains 500 acres for the 10-year event, and the development is 25 acres they can discharge 2.5 cfs (25acres/500acres*50cfs=2.5cfs).
- If a proposed site drains to multiple legal drainage branches or laterals, stormwater from the site shall be managed to meet the requirements of the legal drainage branch with the lowest 10-year, 24-hour discharge rate. This requirement will be evaluated by the Board on a case-by-case basis. *(revised 9-5-23)*
- A description of how storm water will be managed to control storm water quantity volume so that 90 percent of the difference between the Pre-Development runoff volume for the site and the Post-Development runoff volume for the site is retained on the site during a 10 Year-24 hour rainfall event.
- A construction plan, including, as applicable, plans for controlling construction site erosion and the deposition of material that will be removed.

The person requesting approval shall submit the "Legal Drain Connection (Direct or In-Direct) Application" form. The costs associated with the request, including the review of submitted plans by the Drainage Board's engineer and administrative costs of the District, shall be assessed to the person requesting approval. *See Wis. Stat. § 88.23(1).*

After reviewing the request for Board approval, the Board may request additional information as necessary. The Board will hold a public hearing and comment period on any request for approval of a connection pursuant to Wis. Admin. Code § ATCP 48.36(2). The Board will then issue an order regarding the request for approval, which order will be published and served upon the person requesting approval. Wis. Admin. Code § ATCP 88.21(12). If the Board's order grants permission for the connection, the Board will apply to DATCP for approval for this action pursuant to Wis. Admin. Code §§ ATCP 48.34(1)(c) and 48.36.

MAINTENANCE AGREEMENT. A maintenance agreement may be required for all stormwater management practices. It shall be an agreement between the administering authority and the Owner to provide for on-site inspection of construction allowed by the permit both during and after construction, and to inspect and enforce maintenance of stormwater practices beyond the construction duration period.

The agreement or recordable document shall be recorded with the Outagamie County Register of Deeds so that it is binding upon all subsequent owners of land served by the stormwater management practices. The maintenance agreement shall be between the Owner and the municipality, if the administering municipality or governing entity requires a maintenance agreement. If the municipality or governing entity does not require a maintenance agreement, then the Owner shall enter into a Maintenance Agreement with the Outagamie County Drainage Board. A Maintenance Agreement template is available from the Outagamie County Drainage Board by request.

Revised: 12-02-21
 09-06-22
 09-05-23

Subchapter V — Construction Projects and Drainage Alterations; Department Approval

ATCP 48.34 Construction projects and drainage alterations; department approval required.

(1) Requirement. Except as provided in sub. (2), a county drainage board may not do any of the following without the department's written approval:

- (a) Construct or modify any district drain, or authorize any person to construct or modify a district drain.
- (b) Install or modify any structure in a district drain, or authorize any person to install or modify any structure in a district drain.
- (c) Authorize any person to connect a private drain to a district drain.
- (d) Take any action under s. ATCP 48.20 or 48.21 that changes the formally established cross-section, grade profile or alignment of a district drain, regardless of whether that action involves any physical alteration to a district drain or structure.

(2) Exemptions. Subsection (1) does not apply to any of the following:

- (a) Actions, such as routine maintenance or repair projects, that do not cause or aggravate any deviation from the formally established cross-section, grade profile or alignment of a district drain. An action is rebuttably presumed to cause or aggravate a deviation from a formally established grade profile if it raises the water level in a district drain or slows the runoff of water from lands in the drainage district.

(b) Restoration projects.

Note: A restoration project is exempt under par. (b) only to the extent that it is confined within the formally established cross-section, grade profile and alignment of a district drain, and does not go beyond those formally established specifications. See definition of "restoration project" under s. ATCP 48.01 (21).

(c) Temporary structures or modifications that a county drainage board installs or approves in compliance with s. ATCP 48.33 (2).

Note: A county drainage board should consult with the department to determine whether a particular county drainage board action requires department approval under this section. A county drainage board may seek the department's advice or assistance regarding any proposed construction, repair, restoration or maintenance action, regardless of whether the action requires the department's approval under this section. A county drainage board should consult with the department at the early planning stage to facilitate timely assistance and, if necessary, timely approval. A county drainage board may not deviate from approved project specifications without the department's approval.

A person may need to obtain a permit from the state of Wisconsin department of natural resources before undertaking a construction or restoration project in a district drain which has a navigable stream history.

See ss. 30.12, 30.18 (2), 30.20, 31.02, 88.31 and 88.62 (3), Stats. See also ch. 31, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr. Register, August, 1999, No. 524, eff. 9-1-99.

ATCP 48.36 Applying for approval.

(1) Application required. A county drainage board shall apply in writing for department approval of a proposed action under s. ATCP 48.34. The application shall include all of the following information, in detail commensurate with the proposed action:

- (a) District name or number. The name or number, or proposed name or number, of the drainage district.
- (b) Proposed action. A statement describing the proposed action.
- (c) Objectives. The objectives which the county drainage board expects to achieve by taking the proposed action. If the county drainage board expects to improve drainage, the county drainage board shall express its drainage objectives in terms of drainage volume, thoroughness of drainage, geographic scope of drainage, or other pertinent drainage measures.
- (d) Persons requesting action. The persons, if any, who are asking the county drainage board to take the proposed action.
- (e) Estimated cost. The estimated cost of the proposed action, including any damage awards to landowners who will be adversely affected.
- (f) Design specifications. Design specifications for the proposed action, prepared by an engineer who is qualified under s. 88.21 (5), Stats. The design specifications shall comply with applicable standards under subch. IV. The

engineer preparing the design specifications shall state whether, in the engineer's judgment, the proposed action as designed will be effective in achieving the county drainage board's stated objectives.

(g) Lands and waters affected. A map showing the location of the proposed action, and the location of the lands and waters affected by the proposed action. The map shall indicate all of the following if relevant:

1. The current and proposed use of the affected lands.
2. The topography of the affected lands.
3. The location of any affected wetlands.
4. The identity and location of any affected navigable waterway, stormwater management district, lake district, priority watershed or lake under s. 281.65, Stats., or wellhead protection area under ch. NR 811.
5. The identity and location of any affected building, transportation corridor or utility easement.

(h) Hydrology analysis. A hydrology analysis, prepared by an engineer who is qualified under s. 88.21 (5), Stats. The hydrology analysis shall analyze the effect of the proposed action, if any, on all of the following:

1. Water surface elevations in district drains at base flow. The hydrology analysis shall use a method described in ch. ATCP 48 Appendix A, or another method approved by the department, to estimate water surface elevations at base flow.

2. Peak water surface elevations in district drains in the event of a 10-year 24-hour storm event. The hydrology analysis shall use the method described in ch. ATCP 48 Appendix A, or another method approved by the department, to estimate peak water surface elevations in the event of a 10-year 24-hour storm event.

3. Peak water surface elevations in district drains in the event of a 25-year 24-hour storm event. The hydrology analysis shall use the method described in ch. ATCP 48 Appendix A, or another method approved by the department, to estimate peak water surface elevations in the event of a 25-year 24-hour storm event.

(i) Construction plan. A construction plan, if applicable, including all of the following:

1. A plan for controlling construction site erosion.
2. The estimated amount of material, if any, that will be removed.
3. A plan for depositing removed material, if any, including the location and configuration of any deposits.

(j) Notice and public hearing. A statement that the county drainage board has complied with the notice and public hearing requirement under sub. (2).

(k) Formal changes to cross-section, grade profile or alignment. All of the following information if the county drainage board proposes to change the formally established cross-section, grade profile or alignment of a district drain:

1. The cross-section, grade profile or alignment which the county drainage board proposes to change.
2. The new cross-section, grade profile or alignment proposed by the county drainage board. The new specifications shall be prepared by an engineer who is qualified under s. 88.21 (5), Stats.
3. If the county drainage board proposes to change a formally established alignment, a statement that the county drainage board has complied with s. ATCP 48.21 (4) (a) 1.
4. If the county drainage board proposes to change a formally established grade profile, a statement that the county drainage board has complied with s. ATCP 48.21 (5) (a) 1. and 2.

(L) Assessment of benefits to landowners. A statement explaining how the proposed action will affect the assessment of benefits to landowners under s. ATCP 48.06, if at all.

Note: See s. ATCP 48.06 (2) (a) and s. 88.46, Stats.

(m) Financing plan. The drainage board's plan for financing the proposed action, including any proposed cost assessments to lands in the drainage district.

Note: See s. ATCP 48.02.

(n) Environmental effects. An assessment of how the proposed action may affect the human and natural environment, including effects on all of the following:

1. Lands and land uses identified under par. (g).
2. Surface water levels, quality and temperature.
3. Groundwater levels and quality.

(o) Alternatives. An assessment of alternatives to the proposed action, including the alternative of doing nothing. The assessment shall discuss the relative benefits, costs and environmental effects of the alternatives.

(2) County drainage board; notice and hearing on proposed action. Before a county drainage board submits an application to the department under sub. (1), it shall do all of the following:

(a) Publish a hearing notice and hold a public hearing on the proposed action. The notice and hearing shall comply with applicable requirements under s. 88.05 and 88.065, Stats. The hearing notice shall clearly describe the proposed action.

(b) Give members of the public at least 30 days, following the public hearing under par. (a), to comment on the proposed action.

(3) Copies filed with other agencies. Whenever a county drainage board files an application with the department under sub. (1), the county drainage board shall simultaneously file copies of the application with all of the following:

(a) The Wisconsin department of natural resources.

(b) The United States army corps of engineers.

(c) The county zoning administrator.

(d) The county land conservation committee.

(e) Every municipality affected by the proposed action.

(f) The county highway committee if the proposed action may affect a public highway.

(4) Additional information. The department may require a county drainage board to file additional information, as necessary, before approving or disapproving an application under sub. (1).

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr. Register, August, 1999, No. 524, eff. 9-1-99; correction in (1) (g) 4. made under s. 13.93 (2m) (b) 7., Stats., Register January, 2002 No. 553; corrections in (1) (h) 1. to 3. made under s. 13.92 (4) (b) 7., Stats., Register April 2013 No. 688.

ATCP 48.38 Department approval or disapproval.

(1) Approving drainage alterations. The department may approve, disapprove, or conditionally approve an action under s. ATCP 48.34. The department may not approve any action under s. ATCP 48.34 that causes the cross-section, grade profile or alignment of a district drain to deviate from the cross-section, grade profile or alignment formally established for that drain, but may do any of the following based on the county drainage board's application under s. ATCP 48.36:

(a) Approve an action that formally reestablishes the cross-section of a district drain.

(b) Approve an action that formally reestablishes the alignment of a district drain if the department finds that the county drainage board has complied with applicable requirements under s. ATCP 48.21 (4) (a) 1.

(c) Approve an action that formally reestablishes the grade profile of a district drain if the department finds that the county drainage board has complied with s. ATCP 48.21 (5) (a) 1. and 2.

(2) Deadline for approval or disapproval. Within 45 days after a county drainage board files a complete application under s. ATCP 48.36, including any additional information which the department requests under s. ATCP 48.36 (4), the department shall issue a written notice approving or disapproving the county drainage board's proposed action under s. ATCP 48.34. The department may, for good cause, extend the deadline to a date specified by the department.

Note: See also ss. 88.32 (3m) and 88.35 (7), Stats.

(3) Conditional approval. The department may approve a proposed action under s. ATCP 48.34 subject to conditions specified by the department.

(4) Reasons for disapproval. If the department disapproves a proposed action under s. ATCP 48.34, the department shall give the county drainage board written notice of the reasons. The department may disapprove a proposed action for any of the following reasons:

(a) The county drainage board has failed to provide information required under s. ATCP 48.36.

(b) The proposed action would violate this chapter or ch. 88, Stats.

(c) The requested approval would violate this chapter or ch. 88, Stats.

(d) The proposed action is not technically feasible, is not technically sound, or is not adequately designed to achieve the county drainage board's stated objectives.

(e) The proposed action will have a substantial adverse effect on water quality, or on the human or natural environment.

(5) Environmental assessment. The department shall prepare an environmental assessment under s. ATCP 3.02 before it approves a proposed action under s. ATCP 48.34 if any of the following apply:

(a) The proposed action will drain more than 200 acres of land not previously drained, or will substantially alter drainage from more than 200 acres of land.

(b) The proposed action will drain more than 5 acres of wetlands.

(c) The proposed action involves the construction or modification of a dam in a drain with a navigable stream history.

(d) The proposed action involves a cold water fishery in a district drain with a navigable stream history.

(e) The proposed action will substantially affect the base flow in surface waters of the state.

(f) The department determines that an environmental assessment is needed to determine whether an environmental impact statement is required under s. ATCP 3.03.

(6) Environmental impact statement. The department shall prepare an environmental impact statement under s. ATCP 3.03 before approving a proposed action under s. ATCP 48.34 only if the department determines that an environmental impact statement is required under s. ATCP 3.03.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr. Register, August, 1999, No. 524, eff. 9-1-99.

Subchapter VI — Landowner Rights and Responsibilities

ATCP 48.40 Notice of landowner actions affecting drainage district.

(1) Requirement. A landowner under sub. (2), including the state of Wisconsin or any county, town, village or city, shall notify the county drainage board before undertaking any action, including any change in land use, that will do any of the following:

(a) Alter the flow of water into or from a district drain.

(b) Increase the amount of soil erosion, or the movement of suspended solids to a district drain.

(c) Affect the operation of the drainage district, or the costs incurred by the drainage district.

2) Application. Subsection (1) applies to an owner of land that receives water from or discharges water to a drainage district, regardless of whether the land is included in the drainage district.

Note: A county drainage board may take various actions in response to landowner actions that adversely affect a drainage district. For example, see ss. ATCP 48.02 (5), 48.04, 48.06 (2), 48.30 and 48.44 (3). See also ss. 88.89 to 88.92, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr. Register, August, 1999, No. 524, eff. 9-1-99.

-95.

OUTAGAMIE COUNTY DRAINAGE BOARD
LEGAL DRAIN CONNECTION (DIRECT AND IN-DIRECT) APPLICATION

(Page 1 of this form completed by applicant)

DRAINAGE DISTRICT # & NAME _____

APPLICATION DATE: _____ PARCEL #: _____ MUNICIPALITY: _____

SITE ADDRESS: _____

PROJECT DESCRIPTION _____

AREA OF PARCEL: _____ acres/sf DISTURBED AREA: _____ sf COST OF PROJECT: \$ _____

PARCEL OWNER NAME: _____ TELEPHONE: _____

EMAIL: _____ MAILING ADDRESS: _____
STREET _____ CITY, STATE, ZIP CODE _____

ENGINEER/NAME: _____
(must be qualified under 88.21(5))

TELEPHONE: _____ EMAIL: _____

The undersigned agrees to conduct the above described activities in accordance with the Outagamie County Drainage Board policies, and in compliance with all the standards in the drainage rule (Ch. ATCP 48, WI Admin Code) and statute (Ch. 88, WI Statutes) and to grant permission for reasonable inspections as a condition of this approval.

OWNER'S STATEMENT: I request that plans be reviewed for compliance with Outagamie County Drainage Board Storm-water Management Guidance and applicable State codes. I am also responsible for compliance with all code requirements and any conditions of plan approval.

1. Owner is responsible for the costs for review of the submitted plans by the Drainage Board's consultant/engineer on a time/material charge and all administrative costs associated with this request.
2. Application filing fee of \$400.00. ***Fee must be paid prior to scheduling of a public hearing date.*** Allow a minimum of 60 to 90 days for Drainage Board/DATCP approval and public hearings. Make check payable to: Outagamie County Drainage Board. Mail to: Outagamie County Drainage Board, 320 S Walnut Street, Appleton WI 54911.

Owner's Printed Name

Owner's Signature

Date

ENGINEER'S STATEMENT: I attest that: The design specifications for the proposed action were prepared by myself as a qualified engineer under s. 88.21(5), Stats. The design specifications comply with applicable standards under ATCP 48, Subchapter IV, District Maps, Drains and Corridors and Subchapter V, Construction Projects and Drainage Alterations; Department Approval. As project engineer, in my judgement, the proposed action as designed will be effective in achieving the county drainage board's objectives.

Engineer's Printed Name

Engineer's Signature

Date