

Chapter 13 Response to Comments

This document summarizes comments received after the August 2, 2018, Technical Advisory Team meeting and during the public comment period, which started on December 9, 2018, and ended January 18, 2019. Comments are presented by rule section. The rule-making record includes complete copies of the comments.

Commenter Summary

Date	Who
August 7, 2018	Tom Grisa, City of Brookfield
August 10, 2018	Glen Morrow, City of Franklin
September 12, 2018	David De Angelis, Village of Elm Grove
September 13, 2018	Jeff Katz, City of Greenfield
January 14, 2019	Michael Martin, Village of Hales Corners
January 17, 2019 (hearing) January 18, 2019 (written)	Cheryl Nenn, Milwaukee Riverkeeper
January 17, 2019 (hearing) January 18, 2019 (written)	Pamela Ritger, Clean Wisconsin

Comments and Responses

Section	Subject	Commenter
	Reorganization	
Comment:	The reorganization and clarification are good	T. Grisa
Response:	No response needed.	

Section	Subject	Commenter
	Plan review cost recovery	
Comment:	The District should recover plan review costs from municipalities as they request plan review.	D. De Angelis
Response:	The District does not intend to implement the suggested cost recovery program because it has a potential to be complex and difficult to administer.	

Section	Subject	Commenter
	BMP Maintenance Agreement	
Comment:	The District should publish a model BMP maintenance agreement.	D. De Angelis
Response:	The District will publish one or more model maintenance agreements.	

Section	Subject	Commenter
Former 13.11(8)	Credit for impervious surface removal	
Comment:	Continue allowing projects to use credits for removed impervious surface	T. Grisa
Response:	Credits for removed impervious surface continue to be allowed as part of a watershed plan discussed in sec. 13.302(5).	

Section	Subject	Commenter
13.103(4)	Definition of “development”	
Comment:	Clarify that development occurs on vacant parcels	T. Grisa
Comment:	Identify all the types of development could be affected by the District’s runoff management requirements	M. Martin
Response:	The District does not intend to change the current definition because it has been in use since 2001 and has not caused problems and is consistent with definitions used by others.	

Section	Subject	Commenter
13.103(7)	Definition of “impervious surface”	
Comment:	Exempt all public projects that create less than one-half acre of new impervious surface	M. Martin
Response:	Section 13.301 addresses the applicability of the runoff management requirements. Section 13.301(7) is modified to require runoff management requirements only when public road and sidewalk construction create one-half acre or more of new impervious surface.	

Section	Subject	Commenter
13.103(10)	Definition of “recreational trail”	
Comment:	Exempt all public projects that create less than one-half acre of new impervious surface	M. Martin
Response:	Section 13.301 addresses the applicability of the runoff management requirements. Existing sec. 13.301(5) generally exempts recreational trails from runoff management requirements.	

Section	Subject	Commenter
13.103(11)	Definition of “redevelopment”	
Comment:	Clarify how “redevelopment” relates to “development”	T. Grisa
Comment:	Identify all the types of development that the District’s runoff management requirements could affect.	M. Martin
Response:	The District does not intend to change the current definition because it has been in use since 2001 and has not caused problems and is consistent with definitions used by others.	

Section	Subject	Commenter
13.301(2)(c)1	Lowering the threshold for stormwater management	
Comment:	The District has not established a sufficient basis to extend runoff management requirements to smaller parcels.	G. Morrow
Response:	The proposed requirements are necessary to reduce the risk of flood losses, reduce peak flows in the sewerage system, mitigate the effects of combined sewer overflows, comply with the District’s WPDES permit requirements, and maintain the effectiveness of District watercourse projects.	
Comment:	By increasing development costs, the lower threshold will reduce redevelopment and drive development to locations with less stringent requirements.	D. De Angelis
Response:	Many factors determine where redevelopment occurs. While green infrastructure may increase development costs, it may also add property value.	
Comment:	This change increases municipal plan review costs.	J. Katz D. De Angelis
Response:	The District recognizes and appreciates the additional effort that will be needed to review additional plans.	
Comment:	This change makes District requirements inconsistent with the requirements of the Department of Natural Resources (DNR).	J. Katz
Response:	Going beyond the requirements established by DNR is appropriate when needed to achieve local goals.	
Comment:	By lowering the threshold for stormwater management, the proposed amendments will support: achievement of total maximum daily loads, reduction of water quality impairments, and climate change adaptation.	C. Nenn P. Ritger
Response:	The District agrees with the comment.	

Section	Subject	Commenter
13.301(2)(c)1	Impervious surface applicability	
Comment:	Clarify that the impervious surface criterion applies on a net basis	T. Grisa M. Martin
Response:	<p>The text is amended to indicate that it applies on a net basis.</p> <p>1. The development or redevelopment involves an <u>net</u> increase of 5,000 square feet or more of impervious surface;</p>	

Section	Subject	Commenter
13.301(5)	Sidewalks	
Comment:	The rules should handle sidewalks the same as recreational trails	J. Katz
Response:	<p>Section 13.301(7) is amended to indicate that sidewalks are considered the same as public roads: One-half acre of new impervious surface is necessary to trigger runoff management requirements.</p> <p>(7) Public road <u>and sidewalk</u> construction</p> <p>If the construction or reconstruction of a public road <u>or sidewalk</u> will increase impervious surface by one-half acre or more, then runoff management is necessary for the net increase in impervious surface. The requirements of sec. 13.302(3)(a) shall apply. Runoff management is not required for the reconstruction of public roads <u>or sidewalks</u> when the area of impervious surface is not changing.</p>	

Section	Subject	Commenter
13.301(6)(b)	Residential infill applicability	
Comment:	Limit this provision to buildings with no more than four units	T. Grisa
Response:	<p>This provision is already highly restrictive. The District has not encountered any developments that satisfy this provision's criteria for exemption from runoff management requirements. Therefore, the District does not intend to amend this provision.</p>	

Section	Subject	Commenter
13.301(7)	Road applicability	
Comment:	Clarify whether "road" includes "alley"	T. Grisa
Response:	The District will consider a public alley to be a public road.	
Comment:	Clarify how this requirement applies to private roads	J. Katz
Response:	In contrast to public roads, private roads are handled like any other impervious surface.	
Comment:	Do not lower the threshold to 5,000 square feet	T. Grisa

		J. Katz
Response	The District will keep the threshold at one-half acre for public roads.	
Comment:	Clarify that the requirements apply on a project basis, not cumulatively by road	T. Grisa
Response:	For roads, the District will continue to apply runoff management requirements on a per-project basis and not based upon the entire length of the road.	

Section	Subject	Commenter
13.301(8)	Parking lots	
Comment:	Clarify the requirements for parking lots that are reconstructed but do not add impervious surface	D. De Angelis
Response:	This subsection is already sufficient to indicate that a reconstruction project will not trigger the requirements of Chapter 13 if it does not add impervious surface or change the configuration or contours.	

Section	Subject	Commenter
13.302(1)(c)	Definition of “green infrastructure”	
Comment:	Include wet ponds	T. Grisa
Response:	<p>The text is revised to include wet ponds, if project-specific modeling shows sufficient detention volume.</p> <p>(c) “Green infrastructure” means any combination of landscaping, facilities, or equipment that captures rain at or near the site where it falls by infiltration into the soil, evapotranspiration by plants, or storage for beneficial use or delayed discharge. Green infrastructure includes, but is not limited to: rain gardens; wetlands; green roofs; bioswales, including dry ponds or other detention facilities designed to increase infiltration; permeable surfacing; landscaping with deeply rooted plants; cisterns; rain barrels; trees; soil amendments; <u>wet ponds, when project-specific modeling shows sufficient detention volume</u>; and removal of structures or pavement to allow revegetation and infiltration.</p>	

Section	Subject	Commenter
13.302(2)	Promotion of green infrastructure	
Comment:	Do not require the promotion of green infrastructure as preferable to other stormwater management techniques	J. Katz
	Define “promote”	
Response:	The District has eliminated this requirement.	

Section	Subject	Commenter
13.302(3)	Stormwater management requirements	
Comment:	Confirm that green infrastructure is required only for sites between 5,000 square feet and one-half acre.	D. De Angelis
Response:	A development adding more than one-half acre of impervious surface may use any runoff management technique that achieves compliance with the applicable requirements.	
Comment:	Indicate that developments may provide more runoff management than required.	M. Martin
Response:	The District welcomes any efforts to reduce the quantity or improve the quality of runoff more than the District requires. These requirements establish a minimum, not a maximum, and no change is necessary.	

Section	Subject	Commenter
13.302(3)(c)	Green infrastructure	
Comment:	Allow the use of any appropriate stormwater management technique, rather than only green infrastructure	T. Grisa
Response:	Green infrastructure is likely to be the best approach for managing runoff from smaller areas of impervious surface. Green infrastructure includes a wide variety of options. Therefore, the District will continue to require green infrastructure for new impervious surface less than one-half acre.	
Comment:	Provide more detail for evaluating and tracking trades	J. Katz
Response:	The District cannot foresee how trading markets will develop, if any. Different situations may require different types of arrangements. The District wants to support creativity and flexibility. Therefore, prescriptive standards are not appropriate now.	
Comment:	"Trade" should replace "sell"	T. Grisa
Response:	<p>The text is revised to replace "sell" with "trade."</p> <p>2. A development or redevelopment project owner may trade green infrastructure retention volume to another development or redevelopment project owner to achieve compliance with this section on a net basis. If a development or redevelopment project owner has implemented more green infrastructure detention volume at a particular project than required by this section, then that development or redevelopment owner may sell<u>trade</u> this detention volume to another development or redevelopment project owner, who may proportionally reduce its detention volume. A development or redevelopment project owner may use trading to comply with this subsection only if the District has reviewed the trade and approved the trade in writing.</p>	

Comment:	Confirm that green infrastructure is required only for sites between 5,000 square feet and one-half acre.	D. De Angelis
Response:	A development adding more than one-half acre of impervious surface may use any runoff management technique that achieves compliance with the applicable requirements.	
Comment:	Tracking incremental additions of impervious surfaces will be challenging, especially for residential development	J. Katz M. Martin
Response:	<p>The District recognizes that small increases to impervious surface at residences may be numerous and difficult to track as features such as driveways, patios, and sheds change. Plus, the marginal benefits of additional runoff management may be small where residential subdivisions already have an approved stormwater runoff management system. In response to these conditions, the District will not require green infrastructure in this situation, as indicated by new par. 3.</p> <p><u>3. If the new impervious surface is within a residential subdivision for which the District has approved a stormwater runoff management plan, then no additional stormwater runoff management is required.</u></p>	
Comment:	By promoting green infrastructure, the proposed amendments support achievement of total maximum daily loads, a reduction of water quality impairments, and climate change adaptation.	C. Nenn R. Ritger
Response:	No response needed.	

Section	Subject	Commenter
13.302(4)	Conditions when less runoff management is required	
Comment:	Consider these factors for small road projects, if the rule will apply to road projects of less than one-half acre.	T. Grisa
Response:	The District will keep the threshold at one-half acre for road projects.	
Comment:	Add adverse groundwater effects, poorly drained soils, and hydric soils.	T. Grisa
Response:	When evaluating site constraints, the existing text is already flexible enough to allow consideration of groundwater effects, poorly drained soils, and hydric soils.	
Comment:	Define what “unreasonable” means.	J. Katz D. De Angelis
Response:	An evaluation of site constraints is highly fact-specific. Issues will vary from project to project. These characteristics make detailed universal criteria impossible. Project owners, municipalities, and the District will need to apply their professional judgement to the facts to obtain a mutually acceptable result.	
Comment:	Define the review process, the decision-making criteria, and the decision maker.	J. Katz D. De Angelis

Response:	District decision making will start with the Project Engineer and the Manager of Engineering Planning at the time of plan review. If a mutually acceptable result is not achieved, then any adversely affected person may request that the Director of Planning, Research and Sustainability review the decision. An appeal to an administrative law judge may follow. For the review of District decisions, general procedures are in MMSD Rules, Chapter 6.
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Section	Subject	Commenter
13.302(5)	Watershed Plans	
Comment:	Clarify how the District will handle approved plans that did not use 2035 conditions	T. Grisa
Response:	<p>To maintain their effectiveness, governmental units should update their plans when the original planning date is reached. For example, if a plan was based upon 2020 land use, then in 2021 the municipality should update the plan for future conditions, as defined by the District. The District has added language to sec. 13.302(5) regarding the need to update plans.</p> <p>(5) Watershed stormwater management plans</p> <p>Governmental units may prepare a watershed or sub-watershed stormwater management plan or a local stormwater management plan for multiple sites considered together. These analyses shall show how runoff volume is distributed over the critical time of the watershed sufficient to comply with this section. Governmental units shall analyze runoff and determine the critical time according to guidance provided by the District. When evaluating how a development will affect the watercourses, governmental units shall use models and conditions approved by the District. Governmental units shall use 2035 or later land use conditions. Governmental units shall use pre-project channel conditions. Governmental units shall submit these plans and analyses to the District for review and approval. <u>Governmental units shall update their plans for future conditions, as defined by the District, after the original planning year is reached.</u></p>	

Section	Subject	Commenter
13.302(9)	Maintenance of stormwater management systems	
Comment:	Lowering the threshold to 5,000 square feet will increase monitoring and enforcement costs, when monitoring and enforcement are already challenging	J. Katz
Response:	<p>The District recognizes the additional effort needed to comply with the new requirements. However, the District also recognizes the need to improve runoff management to reduce the risk of flood losses, mitigate the effects of combined sewer overflows, and comply with the District's WPDES permit. The District will continue to collaborate with municipalities to minimize the additional effort needed and to maximize opportunities to coordinate and harmonize the efforts</p>	

	needed to comply with Chapter 13 with efforts needed to comply with state stormwater permit requirements or other requirements. Finally, green infrastructure can add value to property, giving owners an incentive to maintain it in the absence of strict surveillance.	
Comment:	Indicate whether the District will fund green infrastructure maintenance	J. Katz
Response:	Owners are responsible for maintenance. Currently, the District does not intend to fund green infrastructure maintenance.	
Comment:	To confirm the continuing effectiveness of the required green infrastructure, indicate whether visual inspections are sufficient or more intensive evaluation is required	M. Martin
Response:	<p>The techniques, schedules, or reporting a governmental unit uses to confirm the continuing effectiveness of green infrastructure are within the discretion of the governmental unit and are not specified by Chapter 13. District requirements are limited to the submission of one-post installation photograph as part of the annual Chapter 13 report.</p> <p>The District encourages governmental units to develop, adopt, implement, and enforce best management practices for green infrastructure maintenance. For almost all green infrastructure, visual inspections are likely to be enough. For porous pavement, reviewing pavement cleaning records would be useful.</p>	
Comment:	Indicate what should happen if an invasive disease decimates trees or vegetation	M. Martin
Response:	Vegetation is an essential element of many green infrastructure options. If the vegetation dies from invasive disease or any other reason, the owner should replace it.	

Section	Subject	Commenter
13.303(4)	Green infrastructure plans	
Comment:	Indicate whether a professional engineer must prepare green infrastructure plans	M. Martin
Response:	Preparation by a professional engineer is not required because green infrastructure plans are simpler than site development stormwater runoff management plans.	
Comment:	Indicate whether the District will fund preparation of green infrastructure plans	M. Martin
Response:	Generally, the owner or developer is responsible for preparation of green infrastructure plans. However, the District will continue to provide information to facilitate green infrastructure implementation, on web sites such as www.freshcoastguardians.com and in person at the Fresh Coast Resource Center. Resources available from the District will include a sizing tool and model planting plans. Also, to the extent funding is available and on a competitive basis, the District will continue to offer support to non-profit entities to prepare green infrastructure plans	

Comment:	Indicate whether native landscaping and trees can be combined	M. Martin
Response:	If native landscaping is combined with trees, then both may be counted towards detention capacity requirements.	

Section	Subject	Commenter
13.303(4)(b)2	Green infrastructure sizing options	
Comment:	Correct the spelling of the referenced web page	T. Grisa
Response:	The spelling is corrected.	

Section	Subject	Commenter
13.303(4)(d)	Green infrastructure location	
Comment:	Allow an equivalent area to drain to the green infrastructure if serving the new impervious surface is not the best location	T. Grisa J. Katz
Response:	<p>The text is modified as requested.</p> <p>(d) The new impervious surface <u>or an equivalent impervious area</u> shall drain to the green infrastructure installed to comply with sec. 13.302(3)(c).</p>	

Section	Subject	Commenter
13.303(5)	Phased development	
Comment:	Clarify what “phased development” means	T. Grisa
Response:	<p>In practice, the District has not identified problems related to identifying phased development. Therefore, the District does not intend to create a definition now.</p> <p>For Chapter 13, “phased development” includes both planned phases, such as a subdivision developed in successive stages, and unplanned phases, such as incremental additions to parking areas. The cumulative area of impervious surface determines when the requirements of Chapter 13 apply. For requirements related to a net increase of ½ acre or more of impervious surface, the District will count impervious areas added after September 24, 2001. For requirements related to a net increase of 5,000 square feet to ½ acre of impervious surface, the District will count impervious area added after March 25, 2019.</p>	

Section	Subject	Commenter
13.303(10)	Credits for low impact development	
Comment:	Eliminate this provision because it is obsolete.	T. Grisa
Response:	The District has eliminated this provision.	

Section	Subject	Commenter
13.401	Annual reports	
Comment:	The proposed changes are good.	T. Grisa
Response:	No response needed.	