



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Scott Hassett, Secretary  
Gloria L. McCutcheon, Regional Director

Sturtevant Service Center  
9531 Rayne Rd Ste 4  
Sturtevant, Wisconsin 53177  
Telephone 262-884-2300  
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June 2, 2006

IP-SE-2005-410821-827, 857, 882-883

Tom Chapman  
Milwaukee Metropolitan Sewerage District  
260 W. Seeboth St  
Milwaukee, WI 53204

Dear Mr. Chapman:

We have reviewed your application for the Milwaukee County Grounds Flood Protection Project including wetland water quality certification, culverts on an unnamed tributary to the Menomonee River, rehabilitation of Underwood Creek, a diversion of water from Underwood Creek and an inlet on Underwood Creek. The project is located in the City of Wauwatosa, Milwaukee County. You will be pleased to know your application is approved with a few limitations.

I am attaching a copy of your permit which lists the conditions which must be followed. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction of each portion of the project covered under this project. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to provide the additional submittals required prior to starting work. Please note that there are several submittals required. On all correspondence please reference permit number: IP-SE-2005-410821-827, 857, 882-883.

If you have any questions about your permit, please contact me at 262-884-2356 or Jennifer.Jerich@dnr.state.wi.us.

Sincerely,

Jennifer Jerich

Water Management Specialist

cc: Rebecca Gruber, Project Manager, Waukesha, WI, U.S. Army Corps of Engineers  
Milwaukee County Zoning Administrator  
Conservation Warden Myles  
State Senator Reynolds  
Friends of Milwaukee Rivers  
City of Wauwatosa  
Ted Bosch, Sharon Gayan, Mike Thompson, Don Tills, Andy Galvin - DNR

**STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES**

**PERMIT**  
IP-SE-2005-410821-827, 857, 882-883

Milwaukee Metropolitan Sewerage District is hereby granted under Section 30.12(1), 30.123(8), 30.18, 30.20, 281.15, 281.36, 401 CWA, Wisconsin Statutes, a permit to place a structure on the bed of Underwood Creek, to place culverts on the bed of an unnamed tributary to the Menomonee River, a water quality certification for isolated and federal wetlands, and a permit to divert water from Underwood Creek. This permit also includes a second phase of the project that will rehabilitate Underwood Creek and grants a permit to install riprap and other shore protection measures (bioengineering) on the shoreline of Underwood Creek, and to remove materials from the bed of Underwood Creek. All work under this permit will be completed on Underwood Creek, an unnamed tributary to the Menomonee River and wetlands located in the City of Wauwatosa, Milwaukee County, also described as Sections 20 and 21, T7N, R21E, subject to the following conditions:

**PERMIT**

1. You must notify Jennifer Jerich at phone 262-884-2356 at least 7 days before starting construction on each component of the project, as defined in permit condition number 4, of the project authorized under this permit and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before July 30, 2009. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. *Please note that under Chapter 30.2095 you may only receive one extension for a maximum of 2 years.* Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans dated February 2006 for the bid package 1, dated May 2006 for 50% complete plans for the berm and inlet structure and Environmental Assessment dated May 2006, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. This permit authorizes activities that will be completed in phases. For purposes of this permit you shall refer to the permit docket number IP-SE-2005-410821-827, 857, 882-883 and the portion of the work that the correspondence to. This permit divides the authorized work into the following portions for reporting purposes:
  - **Inlet structure on Underwood Creek.** Authorized under 30.12(1) for placement of a structure below the Ordinary High Water Mark of a navigable waterway.
  - **The Berm.** Authorization under 30.123 for placement of a culvert on a navigable waterway.
  - **Diversion from Underwood Creek.** Authorization under 30.18 for diversion of water from a navigable waterway, Underwood Creek.
  - **Wetland Fill for Federal and Isolated Wetlands.** Authorization under Wis. Statutes 281.15, 281.36, 401 CWA.
  - **Rehabilitation of Underwood Creek.** Authorizations under 30.12(1), 30.20, and 281.15, 281.36, 401 CWA. This portion of the project is approved under this permit as a second phase and you are not authorized to begin work until submittal,

review and approval of the project plans, and you receive written authorization from the Department.

5. You are responsible for obtaining any permit or approval that may be required for your project by other Department of Natural Resources Programs, state agencies, local zoning ordinances or by the U.S. Army Corps of Engineers before starting your project.
6. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
7. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of each portion of the project (as defined in permit condition number 4) authorized under this permit. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
11. You must post a copy of this permit at a conspicuous location on the MMSD web site for at least five days prior to construction, during construction and remaining at least five days after construction. You must also post a copy of the permit and keep approved plan available at the project site at all times until the project is complete. **All employees, consultants and contractors who are working on the project must be made aware of the permit and its conditions and all appropriate managers and supervisors in charge of or working on construction or compliance must be provided with copies of the permit.**

**Other Department of Natural Resources Programs:**

12. You must follow field protocols for activities in proximity to landfills or areas known to contain contaminated material and any solid waste encountered shall be disposed of in accordance with Wis. Admin. Code Ch. NR 500 or as required by any authorizations issued by the Department. All fill materials utilized during construction of authorized structures shall not consist of material which is considered solid waste under Wis. Admin. Code ch. NR 500.
13. This site contains habitat for and the confirmed presence of the state-threatened Butler gartersnake (*Thamnophis butleri*) and authorization of this permit is not valid without all required authorizations and approvals from the Bureau of Endangered Resources. You shall comply with all requirements of the Department's incidental take authorization for the Butler's gartersnake and you shall implement the DNR-approved Butler's Gartersnake Conservation Plan.

14. Development in conjunction with this project shall conform to Wisconsin Administrative Code NR 116 as well as local zoning regulations. You are responsible for ensuring compliance with all floodplain regulations under NR 116 and Dam regulations under Chapter 31.
15. You shall comply with all requirements of Wis. Admin. Code NR 700. You are responsible for ensuring compliance with this code for those areas that are authorized under this permit.

**Erosion Control:**

16. Prior to beginning any phase of the project (as defined in condition #4), you shall provide to the Department, in writing, the company name, project responsibility, contact name and contact telephone of all contractors associated with this project.
17. You shall provide to the Department a detailed construction sequencing that covers when each of the activities authorized under this permit is proposed to start, temporarily stabilized and permanent stabilization. This plan shall include approximate dates for each activity (project portions as described in permit condition number 4). You shall notify the Department if the timeline changes by more than one month for any activity. You shall provide an “executive summary” narrative for each portion of the project.
18. You shall hold a pre-construction meeting before the project begins in which all contractors, sub-contractors, the County, the MMSD project manager, the Department, resident engineer and project engineer attend. **You shall coordinate this meeting with Department staff to ensure that Department staff are able to attend.**
19. **You shall hold additional pre-construction meeting at the beginning of each portion of the project as described in permit condition number 4 of this permit. This meeting shall have the Water Management Specialist or designee in attendance. These meetings shall take place prior to any work on these phases beginning and the Department shall receive at least 15 day notice prior to the anticipated meeting date.**
20. All Construction authorized under this permit shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and as specified in the plans and procedures that are part of or approved pursuant to this permit. All erosion control measures must meet or exceed the approved Stormwater Construction Technical Standards found on the Department’s Runoff Management Website <http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code Ch. NR 151.31.
21. A minimum of 30 days prior to beginning each phase, as described in condition #4, of the project, you shall provide to the Department an overall construction schedule and erosion control plan. Within 30-days of beginning each phase of the schedule, you shall provide to the Department a detailed construction sequence and erosion control plan for review and approval (see specific conditions below for more detail). These specific sequences shall be approved in writing by the Department prior to implementation. You shall provide an “executive summary” narrative for each portion of the project.
22. The only portions of the project within bid package 1 that are authorized under this permit is the wetland impacts due to the basins. These impacts do not directly require erosion control. Therefore you may begin work on bid package 1 as long as all other Department, local and federal authorizations have been received.

23. You shall install orange snow fencing or similar fencing such as cyclone fence around all wetlands that are not authorized to be filled and that are adjacent to earth working and/or construction activities. This fence shall be installed prior to beginning earthmoving activities and shall be maintained until there is no work or equipment operation within 200 feet of the wetland.
24. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to Department personal upon request and must remain on the project site at all times work is being performed.
25. Other than site stabilization and erosion control activities, construction activities within navigable (inland) waterways shall be conducted during low flow periods and shall not be conducted during precipitation events exceeding ½ inch, or when excessive precipitation is anticipated within 12 hours.

**Diversion (Bypass via Underwood Creek Inlet)**

26. You are hereby authorized to construct and maintain a partial diversion of Underwood Creek in accordance with the approved plans and environmental assessment referenced in permit condition #3. You shall only begin diverting water at storm events described in your permit application and in the Environmental Assessment dated May 2006.
27. A minimum of 15 days prior to opening the inlet to divert water and pass flow from Underwood Creek, you shall provide to the Department photos of the completed inlet structure, as-built drawings and other documentation that the inlet is constructed according to the approved plans and will only divert the authorized amount of water. You shall also include a narrative of the erosion control methods and/or site stabilization that is in place to ensure that the diversion will not result in erosion down stream. You shall not allow the inlet to pass flow from Underwood Creek without written approval of the Department. You shall provide an “executive summary” narrative for each portion of the project.

**Underwood Creek Rehabilitation:**

28. You are not authorized to do any work in Underwood Creek without written approval from the Department of plans listed in the conditions below for the removal of the concrete and rehabilitation of Underwood Creek.
29. You shall submit plans throughout the planning process at the 70%, 90% and complete stages.
30. A minimum of 30 days prior to beginning this phase of the project, you shall provide to the Department a detail sheet for the stream rehabilitation portion of the project. The detail sheet shall be designed and stamped by a professional engineer licensed in the State of Wisconsin. The detail sheet shall provide details of the cofferdams, pumping method, bank stabilization and pools. You shall provide a minimum of four cross-sections, including a cross-section of a pool, a riffle, a run, typical bank treatments, and upstream and downstream channel transitions. The pool and run plan should include the low flow effective water depth. Any bank and channel stabilization method other than bioengineered systems, properly sized rock or riprap shall require justification through an engineered analysis. The details shall be approved in writing by the Department prior to commencing this phase of the project. You shall provide an “executive summary” narrative for each portion of the project.

31. A minimum of 30 days prior to beginning stream rehabilitation portion of the project, you shall provide to the Department a construction sequence, materials management plan, dewatering plan, all aspects of the Big 4 document for the stream rehabilitation. This sequence shall include all aspects of the restoration, including initial placement of erosion control measures and placement of cofferdams and pumps to final stabilization and opening up channel to stream flow. The sequence shall reflect that you shall only disturb an area that can be temporarily stabilized (i.e. matted) by the end of the same working day with a maximum length of 100-feet. Cofferdams or other flow control measures shall be in place prior to any channel disturbance, including concrete removal. Stream rehabilitation shall be done during low water periods. The Department may also limit time of year of construction. The construction sequence shall be approved in writing by the Department prior to commencing this phase of the project. You shall provide an “executive summary” narrative for each portion of the project.

**Inlet Structure:**

32. You are not authorized to do any work on the inlet on Underwood Creek without written approval of complete plans.
33. You shall submit plans throughout the planning process at the 70%, 90% and complete stages.
34. A minimum of 30 days prior to beginning this phase of the project, you shall provide to the Department a construction sequence, erosion control plan and materials management plan for the construction of the inlet. The submittal shall include all aspects of site disturbance associated with the inlet construction, including initial placement of erosion control, construction disturbance area, placement of diversion berms, placement of temporary and permanent outlet structures, phasing of site disturbance, dewatering measures, temporary and final stabilization. The submittal shall include discussion any work to be done below the OHWM of Underwood Creek or any equipment proposed to be operated or staged on the bed of Underwood Creek. You are not authorized to start construction on the inlet structure without written authorization from the Department. You shall provide an “executive summary” narrative for each portion of the project.
35. You shall not do work during high flow conditions on Underwood Creek.
36. You shall complete all work under dry conditions and you shall not open flow to the inlet until all areas adjacent to the inlet are stabilized and the area downstream of the inlet is adequately stabilized or implemented proper erosion control methods are in place.
37. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project site without unreasonable harm to vegetative cover or fish and wildlife habitat.

**Dewatering Associated with a Chapter 30 authorized activity**

38. You shall receive all required permits prior to dewatering including the removal of groundwater, surface water or the dewatering of dredged materials. This permit does not authorize any dewatering associated with the permitted activities.
39. Any water pumped from pits, trenches or ponds shall be treated using a BMP found in the technical standards developed by the Department. The type of Dewatering Practice utilized at this site shall be a suitable practice listed for “Fine to Very Fine Particles” in the Dewatering Practice

Selection Matrix found in the Dewatering Technical Standard. The Dewatering technical standard is found in the Stormwater Construction Technical Standards found on the Department's Runoff Management Website <http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code chs. NR 151.31.

40. If at any time you notice the accumulation of sediment into a wetland or waterway as a result of dewatering, or if water pumped from pits, trenches or ponds begins to discharge excess amounts of sediment to a wetland or waterway you shall immediately stop dewatering and contact the Department to determine an adequate dewatering method.

**Wetland Fill:**

41. You are hereby authorized to impact 4.69 acres of wetlands on the site. There is 2.67 acre of federal wetland and 2.02 acre of SWANCC isolated wetland. These total wetland impacts include impacts for the berm that includes 0.17 acre of permanent impact and an additional 0.18 acre of temporary impact. All wetland impacts shall be limited to impacts included in the approved plans and environmental assessment. No additional wetland impacts, including temporary impacts are authorized. Temporary impacts include but are not limited to operation of equipment, sediment accumulation due to dewatering or site erosion, and storage of equipment and/or materials. You shall provide an "executive summary" narrative for each portion of the project.
42. The Army Corps of Engineers authorized impacts to Federal wetlands under permit number 2006-10-RMG.
43. No wetlands or environmental corridors may be disturbed other than where specifically authorized in the plans approved by the Department. In areas where you will be working within or adjacent to wetlands or environmental corridors, you shall install silt fence and snow fence along the construction boundaries to prevent accidental disturbance to areas outside of the construction boundaries.
44. Prior to undertaking any construction, you shall submit a plan acceptable to the Department to minimize secondary detrimental impacts to wetland areas on the subject parcel. This plan shall include but not be limited to reducing siltation and sedimentation, preventing invasive exotic species from entering into wetland areas, and maintaining the existing hydrology and habitat values to the extent practicable during construction and operation of the proposed facilities. You shall take all reasonable steps to preserve valuable habitat in areas directly contiguous to remaining wetlands. Special care should be taken to preserve state-threatened species in remaining wetland areas and directly contiguous upland areas.
45. Construction site runoff and stormwater runoff shall be treated by an approved BMP for the removal of pollutants prior to discharge to any waterway or wetland.

**Flood Protection Berm:**

46. You are not authorized to do any work on the berm including any wetland impact for the berm without written approval of complete plans.
47. You shall submit plans throughout the planning process at the 70%, 90% and complete stages.

48. A minimum of 30 days prior to beginning this phase of the project, you shall provide to the Department a construction plans, construction sequence, erosion control plan and materials management plan for the construction of the berm and culverts. The construction plans shall include detailed top and cross section view of the berm and culvert(s), engineering calculations of the culvert size, construction methods and construction sequencing. The submittal shall include all aspects of site disturbance associated, including initial placement of erosion control, construction disturbance area including any temporary disturbance, placement of diversion berms, placement of temporary and permanent culvert structures, phasing of site disturbance, dewatering measures, temporary and final stabilization. The submittal shall include discussion any work to be done below the OHWM of the unnamed tributary to the Menomonee River. You are not authorized to start construction on the berm structure without written authorization from the Department. You shall provide an “executive summary” narrative for each portion of the project.

#### FINDINGS OF FACT

1. Milwaukee Metropolitan Sewerage District has filed an application 30.12(1), 30.123(8), 30.18, 30.20, 281.15, 281.36, 401 CWA, Wisconsin Statutes, a permit to place a structure on the bed of Underwood Creek, to place a culvert on the bed of an unnamed tributary to the Menomonee River, a water quality certification for isolated and federal wetlands, and a permit to divert water from Underwood Creek. This permit also includes a second phase of the project that will rehabilitate Underwood Creek and grants a permit to install riprap and other shore protection measures (bioengineering) on the shoreline of Underwood Creek, to remove materials from the bed of Underwood Creek. All work under this permit will be on an unnamed tributary to the Menomonee River, Underwood Creek, or wetlands, located in the City of Wauwatosa, Milwaukee County, also described Section 20 and 21, Township 7 North, Range 21 East. The project is located in the area known as the Milwaukee County Grounds and the rehabilitation of Underwood Creek will include the reach from STH 100 to the confluence with the Menomonee River.
2. The project will consist of State Statute Chapter 30 regulated activities: placement of an inlet structure below the ordinary high water mark on Underwood Creek, placing culverts on two unnamed tributaries to the Menomonee River for creation of a berm, diverting water from Underwood Creek, removing the concrete liner and naturalizing a portion of Underwood Creek, and placing riprap and bioengineering on the bed and bank of Underwood Creek. The project includes 2.67 acres of permanent federal wetland impact and 2.02 acres of permanent isolated wetlands in total. The creation of a berm will also result in the permanent impact of .17 acre wetland and an additional .18 acre of temporary wetland impacts for during construction, these impacts are included in the totals above. The Army Corps of Engineers is requiring mitigation associated with this project. No additional wetland impacts are authorized by this permit to accommodate mitigation activities for wetland or Butler gartersnakes. The purpose of the project is to alleviate flooding associated with the 100-year flood event along the Menomonee River by capturing and storing a portion of the flow from Underwood Creek that would otherwise contribute to high water levels along the Menomonee River and areas downstream of the Milwaukee County Grounds site. The Department has not received complete plans for the inlet, berm or rehabilitation of Underwood Creek. These portions of the project are authorized under this permit with the condition that the Department must approve complete plans and will provide additional conditions upon review of complete plans.
3. The Department held a public informational hearing on May 1, 2006. There was approximately 125-150 people who attended. The Department received oral testimony during the hearing, discussed the project with those attended the open house prior to the hearing and received written comments throughout the public notice period. A majority of these comments discussed issues outside those activities regulated by this permit. The Department completed a summary of the comments received during the public notice period and the hearing as part of the NR150, Environmental Assessment

process. This summary and responses is attached to this permit and was sent to each individual who provided comments.

4. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
5. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
6. The proposed project will impact wetlands if constructed in accordance with this permit.
7. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 30.12(1), 30.18, 30.123(8), 30.20, 281.15, 281.36, 401 CWA, Wisconsin Statutes and Chapters NR 102, 103, 150, 299 345, 320, 328, and 329 of the Wisconsin Administrative Code.

#### CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and

3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted, and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Sturtevant Service Center, Wisconsin on June 2, 2006.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By

  
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Jennifer Jerich  
Water Management Specialist