

## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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January 24, 2002

Mr. John Genskow P.E.  
City of Eau Claire  
PO Box 5148  
Eau Claire, WI 54702-5148

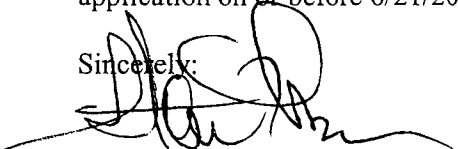
Subject: Stormwater Cooperative Agreement: City & UWEC

Dear Mr. Genskow:

This letter is in response to the WPDES Municipal Stormwater Cooperative Agreement between the City and the University of Wisconsin-Eau Claire submitted on 12/4/2001. With the submission of this document the deadline for submission of the combined group permit application can be considered as 6/21/2002. Please note that the provisions of Wisconsin Administrative Code NR 216.03 and NR 216.05 call for the formation of a group during the Preapplication stage of the permitting process. The city and UWEC did not form a group at that time. The submission of this cooperative agreement on 12/4/2001 is considered as satisfactory in meeting the conditions that will allow for an extended application under NR 216.04(6).

Thank you for your cooperation in this matter. I look forward to the receipt of your completed application on or before 6/21/2002. Please feel free to contact me with any questions or comments.

Sincerely:



Steve Thon PE  
Environmental Engineer  
Lower Chippewa Basin  
(715) 839-3776

cc:

E. Rortvedt--WT/2  
Sharon Thibado, City of EC  
Terry Classen PE, UWEC, PO Box 4004 EC WI 54702

**COOPERATIVE AGREEMENT  
TO SUBMIT A GROUP APPLICATION FOR A STORM WATER DISCHARGE PERMIT  
UNDER CHAPTER NR 216 OF THE WISCONSIN ADMINISTRATIVE CODE**

**THIS COOPERATIVE AGREEMENT**, hereinafter referred to as the "Agreement," entered into by and between the City of Eau Claire (City) and the University of Wisconsin – Eau Claire (UWEC); hereinafter referred to as the "Municipalities".

**WITNESSETH:**

**WHEREAS**, the Municipalities concerned must, pursuant to Chapter NR 216 of the Wisconsin Administrative Code, obtain storm water discharge permits enabling them to discharge storm water to receiving streams and watercourses from all portions of their municipal separate storm sewer systems;

**WHEREAS**, under the authority of Section NR 216.03(1) of the Wisconsin Administrative Code, municipal corporations and "municipalities" may prepare and submit group applications to the Wisconsin Department of Natural Resources for the required permits to discharge storm water to receiving streams and watercourses;

**WHEREAS**, both the City and the University of Wisconsin – Eau Claire are Municipalities located within the Chippewa River watershed and has a common interest in storm water management;

**WHEREAS**, there are certain mutual advantages to a group permit application procedure, including potential coordinated storm water management and cost savings, as compared to an individual community permit application procedure;

**WHEREAS**, Municipalities are authorized by Wisconsin Statutes 66.0301 and 36.11 to exercise the powers implicit herein;

**WHEREAS**, both Municipalities agree to participate in the overall coordination of the group permit application preparation under the lead of the City of Eau Claire;

**WHEREAS**, the City of Eau Claire and the University of Wisconsin-Eau Claire's Group Permit Application is scheduled for submittal by June 28, 2002; and

**WHEREAS**, both of the Municipalities have indicated, by resolution of the appropriate governing body or by action of the Chief Administrative Officer, its intent to prepare a group storm water discharge permit application in fulfillment of the requirements of Chapter NR 216 of the Wisconsin Administrative Code; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, the Municipalities agree as follows:

**1. DEFINITIONS**

For purposes of the Agreement, the meanings of applicable terms shall be as set forth in Section NR 216.02 of the Wisconsin Administrative Code. In addition, for purposes of this Agreement, the term "Municipalities" has also been defined to include the corporate boundaries of the City of Eau Claire and the parcels of land owned by the University of Wisconsin Regents within the corporate boundaries of the City of Eau Claire.

## 2. JURISDICTION

- A. Each of the Municipalities shall have jurisdiction to enforce the terms of the permit within the boundaries of the municipality. Nothing in this Agreement shall be construed to waive or cede any jurisdiction that either of the Municipalities may possess.
- B. In the case of an illicit discharge which originates from either Municipality and which discharges directly to a storm sewer or property under the jurisdiction of the other Municipality, the Municipality discovering the discharge shall notify the affected Municipality.
- C. In the case where an illicit discharge is detected within a storm sewer under the control of either Municipality, but no one is able to positively identify the source of the discharge, the parties to this Agreement shall work cooperatively to determine what actions to take which will best resolve the situation.
- D. Nothing in this Agreement shall create either joint liability or joint and separate exposure to either Municipality for statutory or administrative violations associated with illicit discharges or compliance responsibility. Joint action under this Agreement is strictly limited to the permitting, planning, and other related processes as described herein, unless otherwise agreed.

## 3. SCOPE OF WORK AND DIVISION OF RESPONSIBILITIES

The parties concerned agree to cause to be prepared a group application for a permit to discharge storm water from all portions of their municipal separate storm sewer systems pursuant to Chapter NR 216 of the Wisconsin Administrative Code. The joint permit application shall include all work elements and components required under Section NR 216.06 of the Wisconsin Administrative Code. The basic division of responsibilities for carrying out each work element is described in the following paragraphs.

- A. The Municipalities shall cooperatively carry out the following work elements under the basic framework agreement:
  - 1) Develop recommended minimum standards to serve as a guide for preparation of each of the major permit application components.
  - 2) Hold inter-municipality coordination meetings, on a monthly basis.
  - 3) Develop a schedule to be used as a guide for completion of work elements.
  - 4) Develop an overall sampling strategy and monitoring program for the entire study area.
- B. The Municipalities (individually) shall have the responsibility for carrying out the following work elements under the basic framework agreement.
  - 1) Demonstration of adequate legal authority and ordinance development, as needed.
  - 2) Storm sewer system mapping.

- 3) Description of existing storm water management programs.
  - 4) Identification of industrial sources of discharge to the municipal storm sewer system.
  - 5) Characterization of storm water discharges using existing data.
  - 6) Fiscal analysis of capital and operation and maintenance costs to implement storm water management program.
- C. The City of Eau Claire shall undertake the following work on behalf of all municipalities:
- 1) Preparation of a schedule of estimated pollutant loadings to receiving waters.
  - 2) Preparation of a schedule to develop storm water management program.
  - 3) Coordinate the development of and package all permit application materials.
  - 4) Prepare the storm water discharge permit application submittal, including a summary of documents, watershed-municipality indicator map, and general permit application summary. The findings and recommendations of the work to be conducted shall be assembled and documented in a form acceptable to the Wisconsin Department of Natural Resources as an application for a permit to discharge storm water from all portions of the municipal separate storm sewer systems concerned.

#### 4. COSTS AND COST SHARING

- A. The actual costs for the work required of each Municipality, as noted in Sections 3A and 3B, shall be borne by each of the Municipalities directly. The actual costs for the work required as noted in section 3C shall be borne by the City of Eau Claire.
- B. The cost of the annual permit fee itself shall be borne by the City of Eau Claire.
- C. Each Municipalities' share of the costs of any future joint sampling, or other activities not provided for under this Agreement, or any other costs resulting from this Agreement, shall be allocated according to the mutual agreement of the Municipalities and shall be covered by a separate agreement or a formal amendment to this Agreement, as set forth in Section 8.
- D. Neither Municipality is responsible for the cleanup or remediation costs of illicit discharges to its storm sewer system which occur from or by sewers or lands under the control or within the jurisdictional, boundaries of the other Municipality. Further, each Municipality is individually responsible for cleanup or remediation costs associated with illicit discharges to its system from lands or portions of the sewer system under its control or jurisdictional boundaries. As required under Section 2 (B), each Municipality is responsible for compliance with the notification requirements as set forth in that section.

Nothing in this section shall prevent a Municipality from seeking enforcement of existing liability laws against a co-applicant with respect to damage to the Municipalities sewer system.

**5. PERFORMANCE SCHEDULE**

Work on the preparation of the permit application, required under this Agreement, shall commence immediately upon execution of the Agreement by all parties concerned.

The finished permit application shall be ready for transmittal to the Wisconsin Department of Natural Resources on June 28, 2002, unless an extension has been granted by the Wisconsin Department of Natural Resources.

**6. MEETINGS**

Both parties to this Agreement shall meet monthly during the course of the required work to review and approve schedules, receive work progress reports and discuss issues pertaining to the preparation of the permit. Each party shall designate a representative to attend these meetings. The representative of the City of Eau Claire shall facilitate the conduct of the meetings and provide a record of the proceedings in the form of minutes. The final permit shall be reviewed and approved by the parties at a meeting specifically called for this purpose. The meetings shall be held at times and places determined by both parties. Adequate notices of and agendas for the meetings shall be provided by the facilitator to the designated representative for each Municipality.

**7. BINDING ON PARTIES**

This agreement shall be binding on both parties hereto, their respective assigns and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in written form and signed by the duly authorized agent or agents who executed this Agreement or their legal successors.

**8. AMENDMENTS**

This Agreement may be amended and extended at any time upon the mutual agreement of both parties. Should a formal amendment or extension provide for implementation of all or portions of the storm water management planning program recommended in the permit application, such as storm water management planning, storm water system simulation modeling and monitoring, the parties shall at a joint meeting agree unanimously on the terms of the amendment or extension, on the attendant costs and on the cost allocation. Such amendment will be the subject of any formal approval process required by each Municipality. Alternatively, a separate agreement will be developed for such work activities.

**9. EFFECTIVE DATE**

Upon execution by both parties, this Agreement shall become effective, and shall run concurrently with the Permit to which the Agreement relates.

**10. INDEMNIFICATION**

Each Municipality shall be responsible for injuries, claims, or losses (including costs, damages, and attorneys' fees) arising from or caused by the acts or omissions of its agents, employees, officers, agencies, boards, commissions, or representatives. The obligations of the parties under this section shall survive the expiration or termination of this agreement.

**11. NON DISCRIMINATION**

During the term of this agreement, each municipality, each for itself, agrees to abide by its own Affirmative Action Plan.

**12. SEVERABILITY**

The provisions of this Agreement are severable. If any provision of this agreement is found invalid by a competent court of law or if the application of any provision to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application.

**13. NO WAIVER**

No failure to exercise, and no delay in exercising, any right, power, or remedy hereunder on the part of either participating Municipality shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise of any other right, power, or remedy.

**14. TERMINATION OF AGREEMENT**

In the event that either Municipality, determines that it is in the Municipality's best interest to terminate this cooperative agreement , the Municipality may do so at any time by taking the following action:

- A. The Municipality requesting the termination shall send a written correspondence to the other Municipality and the Wisconsin Department of Natural Resources indicating its desire to be removed from the Group WPDES Storm Water Discharge Permit Application. This correspondence shall include any necessary documentation, resolutions, etc., indicating that the requested action has been authorized by a governmental body possessing the legal authority required to terminate this Agreement, and that the signatories to this correspondence are duly authorized to sign a correspondence terminating an Agreement of this nature.
- B. Upon receipt of this correspondence, the Municipality receiving the written correspondence shall consider the Municipality requesting the termination removed from the Group WPDES Storm Water Discharge Permit Application. Written notice confirming this action shall be provided by the Municipality that received the written correspondence to the WDNR.

It is noted here that there may be regulatory consequences to removing the group applicant status from either municipality. Regulatory consequences may vary and depend on when in the permit process the decision is made to drop group applicant status. It is acknowledged that prior to making a decision with regard to this issue each Municipality has been advised to contact the WDNR to discuss this matter.

**15. PERMORMANCE**

Each party to this Agreement hereby certifies that it possesses the legal authority required to enter into this Agreement, and that the signatories to this Agreement are duly authorized to sign and that its designated representatives are authorized to act in all matters pertaining to this Agreement and to provide all required reports and file data as may be required.

**16. THIRD PARTY RIGHTS**

This agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, or repeal existing rights, benefits or privileges of any third party or parties. Nothing contained herein is intended as a waiver by any party of the defenses and immunities contained within the Wisconsin Statutes, including Sec. 893.80.

**17. EXECUTION IN COUNTERPART**

Each party to this Agreement acknowledges that this Agreement may be executed in counterparts by duly authorized signatories and that the final contract and the cumulative counterpart signature pages shall be considered an original document with the full force and effect as if one copy of the contract was circulated to all parties for signature.

**IN WITNESS WHEREOF**, the City of Eau Claire and the University of Wisconsin – Eau Claire, hereto have caused this Agreement to be executed by their proper officers.

ATTESTING WITNESS

Donna A. Austad

CITY OF EAU CLAIRE

Don Norrell  
Don Norrell, City Manager

ATTESTING WITNESS

Rhonda K. Wolk 11/30/01

UNIVERSITY OF WISCONSIN – EAU CLAIRE

Terry Classen  
Terry Classen, Dir. of Facilities, Planning & Mgmt.