

Chapter 28.01

REGULATIONS FOR CONSTRUCTION SITE DISCHARGES

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28.01.010 Purpose and Findings.

The purpose of this chapter is to provide requirements and criteria to prevent and control water pollution, and to diminish adverse impacts to health, safety, property, and the general welfare of the citizens of the City of Lincoln through regulating stormwater runoff from areas of construction and reconstruction, to the maximum extent practicable as required by the Federal Clean Water Act (33 U.S.C. §1251 *et seq.* as amended to date), the Nebraska Environmental Protection Act (*Neb. Rev. Stat.* §81-1501 *et seq.* as amended to date) and to the rules and regulations promulgated under such Acts.

This chapter will also promote the public welfare by guiding and regulating the design, construction, and maintenance of any area of development or redevelopment or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the City of Lincoln. (Ord. 18949 §1; June 25, 2007).

28.01.020 Authority and Applicability.

(a) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the City.

(b) The regulations set forth herein, or set forth elsewhere in the Lincoln Municipal Code when referred to in this chapter shall be known as the Regulations for Construction Site Discharges.

(c) The regulations shall apply to all construction activity within the corporate limits of the City and within the land outside the corporate limits designated as Tier I in the Lincoln City/Lancaster County Comprehensive Plan.

(d) As provided in the Interlocal Agreement dated March 29, 1996, the City of Lincoln and the Lower Platte South Natural Resources District will cooperate in the administration and enforcement of these regulations. (Ord. 18949 §2; June 25, 2007).

28.01.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

Applicant shall mean any person submitting a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) for authorization to discharge stormwater under the NPDES General Permit.

Authorized Representative shall mean a person designated in writing by the permittee to act as the primary contact for the permittee for such matters as coordinating on-site inspections, discussing initial inspection findings and installing or repairing BMPs when applicable.

Best Management Practices (BMPs) shall mean erosion and sediment controls and water quality and quantity management practices that are either identified in Chapter 9 of the City's Drainage Criteria Manual, meet the requirements set forth in the NPDES General Permit, or are otherwise approved of by the Director.

City shall mean the City of Lincoln, Nebraska.

Common Plan of Development or Sale shall mean a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but are covered under one SWPPP submitted by and under the control of the permittee.

Construction Activity shall mean any land disturbance of one acre or more of total land area and less than one acre of total land area that is part of a common plan of development or sale. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the agricultural use of the land.

Director shall mean the Director of Public Works and Utilities of the City, or his authorized deputy, agent, or representative.

Erosion shall mean the wearing away of land by the action of wind, water, gravity or ice or combination thereof.

Final stabilization shall be defined the same as and meet the requirements established by the NPDES General Permit.

Illicit Discharge shall mean any discharge to the storm drainage system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit.

Land Disturbance shall mean any man-made change of the land surface including, but not limited to, construction activity, tracking, removing vegetative cover, stockpiling, excavating, filling and grading; but not including agricultural land uses such as, planting, growing, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

MS4 Permit shall mean the permit issued to the City by the Nebraska Department of Environmental Quality for the purpose of municipal compliance with the provisions of the National Pollutant Discharge Elimination System (NPDES) program.

Municipal Separate Stormwater Sewer System (MS4) shall mean the storm drainage system owned or operated by the City.

National Pollutant Discharge Elimination System (NPDES) shall mean the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Federal Clean Water Act (Sections 301, 402, 318, and 405); C.F.R. Title 33, Sections 1317, 1328, 1342, and 1345; the Nebraska Environmental Protection Act (*Neb. Rev. Stat. §81-1501 et seq.*); and Nebraska Administrative Code, Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*.

Notice of Intent (NOI) shall mean the application for authorization to discharge under the NPDES General Permit (NER100000) for construction activity that is required to be submitted to the Lower Platte South Natural Resources District by the applicant for review and issuance.

Notice of Termination (NOT) shall mean a notice submitted to the Lower Platte South Natural Resources District by the permittee to terminate the permit.

NPDES General Permit shall mean the NPDES General Permit for Stormwater Discharges from Construction Sites (NER100000) issued pursuant to Nebraska Administrative Code, Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*, which authorizes the discharge of stormwater from construction or development sites.

Owner shall mean the person or party possessing title of the land on which the construction activity occurs.

Permit shall mean a Construction Stormwater Permit which authorizes the permittee to proceed with the work described in the permittee's Notice of Intent (NOI) and is conditioned upon strict compliance with all ordinances, rules and regulations of the City.

Permittee shall mean any person who has applied for and is subsequently issued a permit.

Person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, including their legal representatives, agents, or assigns.

Pollutant shall mean any substance or material which contaminates or impedes the flow of water including, but not limited to, dredged spoil, spoil waste, incinerator residue, filter backwash, domestic or industrial wastewater, septic waste, sewage, garbage, refuse, junk, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, yard waste, industrial or household hazardous waste, hazardous substance, pesticide, fertilizer, concrete truck washout, used oil, antifreeze, litter, and industrial, municipal, or agricultural waste.

Public Right-of-Way shall mean any public street, alley, sidewalk, public way or public ground within the City.

Sediment shall mean any rock, sand, or soil transported or removed from its place of origin as a result of erosion, sedimentation, or human activities.

Sedimentation shall mean the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity, or as a result of human activities.

Stop Work Order shall mean an order by the City to cease any construction activity occurring at or within the development site, whether or not such activity was permitted by this chapter. Upon issuance of a stop work order, no further construction activity may be commenced at the site until the violation or compliance failure is corrected, with the exception of measures to correct the violation.

Storm Drainage System shall mean any conveyance, system of conveyances, or other structure, including but not limited to any roads with drainage systems, public streets, private roadways, sidewalks, catch basins, curbs, gutters, ditches, inlets, piped storm drains, pumping

facilities, natural and man-made or altered drainage channels, reservoirs, or other stormwater storage facilities designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

Stormwater shall mean stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Pollution Prevention Plan (SWPPP) shall mean a plan for the prevention, minimization, and control of soil erosion and sedimentation resulting from any construction activity, and may include without being limited to, any Best Management Practices (BMPs) incorporated into the SWPPP. (Ord. 18949 §3; June 25, 2007).

28.01.040 General Provisions.

(a) **Applicability.** The requirements and standards set forth in this chapter, the City's Design Standards, and the City's Drainage Criteria Manual shall apply to all construction activity within the corporate limits of the City and within the land outside the corporate limits designated as Tier I.

(b) **Exemption.** No permit is immediately required for any emergency activity that is immediately necessary for the protection of life, limb, property, or natural resource. (Ord. 18949 §4; June 25, 2007).

28.01.050 Notification and Discharge Authorization Procedures for Construction Activity.

(a) No person shall engage in any construction activity without a permit.

(b) No person shall be issued a permit without the preparation and submittal of a permit application in the form of a Notice of Intent (NOI) that includes a Stormwater Pollution Prevention Plan (SWPPP) to the Lower Platte South Natural Resources District on behalf of the City.

(c) Each application shall bear the name(s) and address(es) of the applicant, authorized representative, and the designer of the SWPPP retained by the applicant together with the name of the designer's firm.

(d) The Lower Platte South Natural Resources District on behalf of the City will review each application to determine conformance with this chapter. Within seven calendar days of receiving an application, the Lower Platte South Natural Resources District shall:

(1) Issue the permit;

(2) Issue the permit subject to conditions necessary to secure the objectives of this chapter; or

(3) Deny the permit, indicating the reason(s) for denial and the procedure for submitting a revised application.

(e) When a permit is issued, the permittee is responsible to ensure that any construction activity complies with the provisions of this chapter from permit issuance to termination, unless the Lower Platte South Natural Resources District on behalf of the City authorizes a permit transfer.

(f) All information submitted with the NOI, including the SWPPP, shall be considered factual and binding. A failure of the permittee or any agents thereof to provide correct information or failure to conduct the construction activity as described in the permit or SWPPP shall be considered a violation of this chapter and sufficient grounds for the suspension or revocation of the permit.

(g) The permittee shall conspicuously post a notice about the permit and SWPPP near the main entrance of the site prior to engaging in any construction activity. The permit notice must include the following information:

- (1) The project's permit number;
- (2) The name and phone number of a local contact;
- (3) A brief description of the project; and
- (4) The location of the SWPPP, if not kept on site.

(h) The permittee shall comply with all requirements of the permit until final stabilization has been met and a Notice of Termination has been issued by the Lower Platte South Natural Resources District. (Ord. 18949 §5; June 25, 2007).

28.01.060 Requirements for Construction Activity Stormwater Pollution Prevention Plan (SWPPP).

A SWPPP shall be filed with the NOI for construction activity and submitted to the Lower Platte South Natural Resources District, and shall include the following information:

- (a) Project Information.
 - (1) The permittee's name, address and telephone number;
 - (2) The owner's name (if the permittee is not the property owner), home and business address, telephone number(s), and written consent to the construction activity set forth in the NOI;
 - (3) Permittee's legal interest in the land;
 - (4) The geographical location of the property which is to be affected by the construction activity;
 - (5) The legal description with parcel numbers of the property or properties;
 - (6) Certification that the permittee is familiar with and agrees to comply with the terms and conditions provided in the NOI and SWPPP; and
 - (7) Authorization for the City and Lower Platte South Natural Resources District to inspect the property at reasonable times.
- (b) Narrative. The narrative shall describe the BMPs to be implemented to control erosion, sedimentation, and pollutants, both on and off site. Emphasis shall be placed on the prevention of erosion using vegetative or non-structural control measures. The narrative must address all phases of the construction activity (e.g. initial grading, infrastructure, building phase of development, and final stabilization) and include:
 - (1) Start and completion dates;
 - (2) A schedule and sequence of all phases of the construction activity;
 - (3) A list of proposed BMPs;
 - (4) The construction details, application schedule, and procedures for proposed BMPs;
 - (5) The operations and maintenance program for proposed BMPs;
 - (6) The name of the authorized representative or individual responsible for inspecting BMPs, including office address and telephone number(s) for 24-hour-a-day contact;
 - (7) A contingency plan if unforeseen erosion or sedimentation problems arise, including emergency situations caused by storms;
 - (8) A description of procedures to prevent, contain, and respond to illicit discharges and spills that may impact the storm drainage system; and
 - (9) Any features of the site which may be particularly vulnerable to erosion, such as ridge tops, swales, and soil types, and any specific BMPs implemented for these features.
- (c) Site Plan Map.
 - (1) Date prepared and name of preparer;

- (2) Scale of the map. The suggested scale of the map is one inch = 40 feet with two-foot contour intervals, but may be more or less detailed to meet specific site needs;
 - (3) A north arrow;
 - (4) Location or vicinity map;
 - (5) Street name and location of the proposed development and adjacent properties, including all structures on the site and within 25 feet of the construction activity property line, including but not limited to paving, fencing, buildings, and archaeological sites;
 - (6) Existing and proposed topography showing two foot contours, including floodplains, floodprone areas, floodways, minimum corridors, wetlands, watercourses, water bodies, and soil types if pertinent;
 - (7) Identification of surface water flow directions, indicated by arrows showing where stormwater is expected to flow;
 - (8) Proposed alterations including cleared, excavated, filled or graded areas and proposed structures, utilities, roads and, if applicable, new property lines; and
 - (9) Location of all proposed BMPs to be utilized over the period of construction.
- (d) The following statements shall be included in the SWPPP:
- (1) If the SWPPP carries a seal or signature of a “designated designer” it shall include placement of the following statement: “The undersigned certifies that this SWPPP has been designed in accordance with the standards in Chapter 9 of the City’s Drainage Criteria Manual.”
 - (2) “Unless otherwise indicated, all BMPs will be constructed, installed, and maintained according to the minimum standards and specifications set forth in either Chapter 9 of the City’s Drainage Criteria Manual, the NPDES General Permit, or otherwise approved by the Director, and will be in place and in working order prior to any construction activity.”
 - (3) “Following any construction activity, final or temporary stabilization shall be completed as soon as practicable, but in no case more than fourteen days, to the surface of all perimeter controls, topsoil stockpiles, and any other disturbed or graded areas on the project site which are not being used for material storage, or on which actual construction activity is not being performed.”
 - (4) “All BMPs will be inspected by qualified personnel at least once every seven calendar days during active construction and within twenty-four hours after any storm event greater than 0.5 inches during a 24-hour period. Any necessary repairs or clean-up to maintain the effectiveness of the BMPs shall be made prior to the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation will be documented in the SWPPP and alternative BMPs will be implemented as soon as possible.”
- (e) The building phase of development for a common plan of development or sale may be covered under one SWPPP that is submitted by and under the control of the permittee. Any person engaging in construction activity under a common Construction Activity SWPPP must meet the requirements of 28.01.070 of this chapter. (Ord. 18949 §6; June 25, 2007).

28.01.070 Requirements for the Building Phase of Development.

Any person who engages in construction activity is responsible for compliance with this chapter and all applicable terms and conditions of the Permit and SWPPP as it relates to the building phase of development. The following information shall be included on the application for a building permit and be submitted to the Director of Building and Safety:

- (a) The legal description and permit number for the Construction Activity SWPPP;
- (b) The location of the property where the building phase of development is to occur; and

(c) A certification that the building phase of development for the property described on the application for a building permit will be conducted in conformance with Chapter 28.01 and the Construction Activity SWPPP. (Ord. 18949 §7; June 25, 2007).

28.01.080 SWPPP Inspections.

It shall be the duty of the permittee to ensure that routine inspections are conducted and that the BMPs on the site are maintained. The permittee shall secure a right of entry to each site within the boundaries of the permit and conduct routine inspections at least once every seven calendar days during active construction and within twenty-four hours after a rainfall event greater than 0.5 inches during a 24-hour period. Inspections shall be conducted by qualified personnel who are knowledgeable in the principles and practices of erosion and sediment control. Qualified personnel shall possess the skills to assess conditions at the site that could impact stormwater quality and to assess the effectiveness of any BMPs selected to control stormwater discharges. A log of these inspections shall be retained with the SWPPP, along with photographs or other supporting information. Any deficiencies or discrepancies with actual site conditions shall be noted in a report of the inspection and include any action taken to correct the deficiency or discrepancy. Inspection reports and follow-up documentation regarding violations and associated corrective actions shall be submitted to the Director of the Lower Platte South Natural Resources District upon request. The inspection report shall include the following minimum information:

- (a) Inspectors name;
- (b) Date of inspection;
- (c) Observations relative to the effectiveness of the BMPs;
- (d) Actions necessary and taken to correct deficiencies; and
- (e) Signature of the person performing the inspection.

Any delay in the replacement or maintenance of non-functional BMPs beyond the next storm event shall be documented in the SWPPP with sufficient detail explaining the reason for delay, and alternate BMPs must be implemented as soon as possible.

Where more defined areas have been identified in the SWPPP to either have frozen ground conditions and construction has been suspended or have undergone stabilization while work on other portions of the site is ongoing, the permittee may reduce inspections of these areas to once per calendar month as long as the described conditions exist. (Ord. 18949 §8; June 25, 2007).

28.01.090 Notice of Termination.

Compliance with the permit is required for any construction activity until a Notice of Termination (NOT) is submitted to the Lower Platte South Natural Resources District. The City reserves the right to terminate coverage of a permit for any cause.

- (a) A permittee must submit a complete and accurate Notice of Termination (NOT).
- (b) A permittee may only submit a NOT after one or more of the following conditions have been met:
 - (1) Final stabilization has been achieved on all portions of the site covered by the permit;
 - (2) Another permittee has assumed control over all areas of the site that have not been finally stabilized ;
 - (3) Coverage under an individual or alternative general NPDES permit has been obtained;

(4) For residential construction only, temporary stabilization has been established and the homeowner has been informed by the permittee of the need for final stabilization;

(5) For construction activity, the total remaining area of the common plan is less than one acre.

(c) The NOT must be submitted within thirty days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the NOT is submitted. (Ord. 18949 §9; June 25, 2007).

28.01.100 Sediment in Public Right-of-Way or Storm Drainage System; Notice to Remove; Penalty.

In addition to the penalty provided in Section 28.01.120, any person responsible for sediment deposited into or upon any street, alley, sidewalk, public way, storm drainage system, or public ground as a result of tracking, runoff or other erosion and sedimentation from a building or development site, shall remove the same within a reasonable period of time as required by the City or the Lower Platte South Natural Resources District. Whenever the person responsible for sediment deposited into or upon any street, alley, sidewalk, public way, storm drainage system, or public ground refuses or neglects to remove the same, the City may elect to remove the sediment and the expense of such removal shall be recoverable in an action at law.

If the City or the Lower Platte South Natural Resources District determines that the conditions described above constitute an immediate nuisance and hazard to public safety, the City shall issue a written notice to abate and remove such nuisance or hazard within twenty-four hours. If such person responsible shall have failed or refused to abate and remove such nuisance at the expiration of twenty-four hours from delivery of notice, the City may remove such nuisance and the expense of such removal shall be recoverable in an action at law. (Ord. 18949 §10; June 25, 2007).

28.01.110 Right of Entry.

The Director and the Lower Platte South Natural Resources District may perform inspections of the site to verify compliance with this chapter. If the permit, SWPPP, or inspection records do not reflect actual conditions at the site or have been falsified, the Director may take enforcement action as described within this chapter. If BMPs are deemed by the Director to be ineffective or maintained improperly, the Director may take enforcement action as described within this chapter. Whenever the Director has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this chapter, the Director is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this chapter. If entry is refused, the Director shall have recourse to the remedies provided by law to secure entry. (Ord. 18949 §11; June 25, 2007).

28.01.120 Unlawful Acts; Enforcement; Penalty.

It shall be unlawful for any person to:

- (a) Engage in any construction activity without a permit;
- (b) Violate any term or condition of the permit;
- (c) Violate any term or condition of the SWPPP;
- (d) Make any false statement, representation, or certification in any document submitted to or requested by the City or the Lower Platte South Natural Resources District on behalf of the City; or
- (e) Violate any provision of this chapter.

Any person who violates this section shall be guilty of a misdemeanor. Each violation of this section shall subject a person to a penalty of no more than \$500.00 per day. In the case of a continuing violation, each day shall constitute a separate offense.

Any person in violation of this section shall correct such violation within ten working days of receiving a notice of violation from the City. Failure to correct the violations within ten working days shall be cause for an enforcement action by the City, including but not limited to, issuance of a stop work order, assessment of a reinspection fee, suspension or revocation of the permit, or imposition of a penalty.

To verify compliance with a notice of violation, the City shall be notified within the ten-day correction period and may reinspect the site. In lieu of reinspection by the City, it is acceptable to submit to the City dated photographic and written evidence that verifies a return to compliance. A reinspection fee of \$75.00 may be assessed for any site that has not provided such evidence within the ten-day correction period or has provided evidence that does not reflect actual conditions at the site or which have been falsified. Nonpayment of such fee is a violation of this chapter. Whenever a person refuses or neglects to correct the violation, the Director may cause the same to be corrected and the expense shall be recoverable in an action at law. (Ord. 18949 §12; June 25, 2007).

28.01.130 Appeals.

Any person issued a stop work order by the Director, or permit suspension, revocation, or denial under the provisions of this chapter may, within five days of the receipt of written notice of the entry of such order, suspension, revocation, or denial, appeal to the Director for a hearing. The Director will notify the appellant in writing of the date, time, and place of hearing before the Director, which date shall be no later than ten days from the filing of the appeal. The appeal hearing will not be conducted according to the Nebraska Rules of Evidence, but the appellant will have the right to:

- (a) Call, examine, and take sworn testimony of witnesses on any matter relevant to the issues of the hearing;
 - (b) Introduce documentary and physical evidence;
 - (c) Cross examine opposing witnesses on any matter relevant to the issues of the hearing;
- and
- (d) Rebut opposing evidence.

The Director will review all information provided by the appellant. After the appeal hearing the Director will make written findings of fact, and based upon such findings, will sustain, modify or rescind the original order, suspension, revocation, or denial. A written report of the Director's decision will be furnished to the appellant within ten days from the date that the appeal hearing is closed. The decision of the Director will be final and binding upon both the City and the appellant, and may be appealed as provided by state law. However, such decision will not be stayed unless so ordered by the district court. (Ord. 18949 §13; June 25, 2007).

28.01.140 Severability.

Each section or subsection of this chapter is hereby declared to be independent of every other section or subsection of this chapter; and invalidity of any section or subsection of this chapter shall not invalidate any other section or subsection hereof. (Ord. 18949 §14; June 25, 2007).