

CHAPTER 53: EROSION CONTROL AND SEDIMENT CONTROL MEASURES

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§ 53.01 AUTHORITY.

(A) This chapter is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities in KRS Chapters 67 and 100.

(B) This chapter is adopted pursuant to the powers granted and limitations imposed by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.
(Ord. 7, 2005, passed 6-27-05)

§ 53.02 PURPOSE AND SCOPE.

(A) The regulations set forth in this chapter are intended to protect the general health, safety, and welfare of the citizens of the city and more specifically:

(1) To control or eliminate soil erosion and sedimentation resulting from land disturbing activities within the city;

(2) Establish guidelines, conservation practices and planning activities which minimize soil erosion and sedimentation;

(3) Comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth by the Kentucky Pollution Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge Elimination Systems storm water general permit for Phase II communities.

(B) This chapter controls land disturbances, soil storage, and erosion and sedimentation resulting from such activities and establishes procedures for issuance, approval, administration, and enforcement of an Erosion Protection and Sediment Control (EPSC) Permit.
(Ord. 7, 2005, passed 6-27-05)

§ 53.03 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meaning stated below.

APPLICANT. The landowner or developer who submits an application to the city for an EPSC permit pursuant to this chapter.

BEDROCK. In place solid rock.

BENCH. A relatively level step excavated into earth material on which fill is to be placed.

BEST MANAGEMENT PRACTICES (BMP). A technique or series of techniques, which are proven to be effective in controlling runoff, erosion, and sedimentation.

BORROW. Earth material acquired from an off-site location for use in grading on a site.

CLEARING AND GRUBBING. The cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.

CONTRACTOR. A person who contracts with the permittee, landowner, developer, or another contractor (i.e. subcontractor) to undertake any or all the land disturbance activities covered by this chapter.

CO-PERMITTEE. Any person, other than the permittee, including but not limited to a developer or contractor who has or represents financial or operational control over the land disturbing activity.

DETENTION FACILITY. A temporary or permanent natural or man made structure that provides for the temporary storage of storm water runoff.

DEVELOPER. Any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.

ENGINEER. A professional engineer licensed in the Commonwealth of Kentucky to practice in the field of civil works.

EROSION. The wearing away of the ground surface as a result of the movement of wind, water, ice, and/or land disturbance activities.

EPSC (EROSION PROTECTION AND SEDIMENT CONTROL). The prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

EPSC DESIGN MANUAL AND STANDARDS. A compilation of rules, design criteria, guidelines and standards adopted by the City of Frankfort as being proven methods of controlling construction related surface runoff, erosion and sedimentation.

EPSC PLAN. A detailed plan which includes a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a specific development site or parcel of land during the period in which pre-construction and construction related land disturbances, fills, and soil storage occur, and before final improvements are completed, all in accordance with this chapter.

EROSION CONTROL INSPECTOR. A person designated by the issuing authority who has attended a Frankfort-sponsored or approved training course in EPSC.

FLOODPLAIN. The 100-year floodplain which is that area adjoining a watercourse which could be inundated by a flood that has a 1% chance of being equaled or exceeded in any given year and is delineated on the Federal Emergency Management Agency Floodway Maps.

GENERAL PERMIT. A KPDES Storm Water General Permit for storm water discharges related to construction activities that disturb one acre or more. Coverage under this general storm water permit is obtained by filing a Notice of Intent (NOI) with the Kentucky Division of Water.

GRADE. The vertical location of the ground surface.

- (1) Existing grade is the grade prior to grading.
- (2) Rough grade is the stage at which the grade approximately conforms to the approved plan.
- (3) Finish grade is the final grade of the site which conforms to the approved plan.

ISSUING AUTHORITY. The City of Frankfort Public Works Director or City Planning and Building Codes Director and their duly authorized designees.

LAND DISTURBANCE ACTIVITY. Any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the city, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land. Land disturbance activity does not include the following:

(1) Minor land disturbance activities including, but not limited to, underground utility repairs, replacement of existing utilities, home gardens, minor repairs, and maintenance work.

(2) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(3) Emergency work to protect life, limb, or property and emergency repairs. If the land disturbing activity would have required an approved EPSC except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this chapter.

OUTFALL. The point of discharge to any watercourse from a public or private stormwater drainage system.

PERMITTEE. The applicant in whose name a valid EPSC permit is duly issued pursuant to this chapter and his/her agents, employees, and others acting under his/her direction.

PUBLIC WORKS DIRECTOR. The City of Frankfort Public Works Department Director and City Engineer.

RETENTION FACILITY. A temporary or permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.

RUNOFF. Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT. Soils or other surficial materials transported by surface water as a product of erosion.

SEDIMENTATION. The process or action of deposition sediment that is determined to have been caused by erosion.

SITE. The entire area of land on which the land disturbance activity is proposed in the site disturbance permit application.

EPSC PERMIT. A permit required by this chapter for land disturbance activities.

SITE PLAN. A plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of: structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.

SLOPE. The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL. Naturally occurring surficial deposits overlying bedrock.

STRIPPING. Any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.

STRUCTURE. Anything manufactured, constructed or erected which is normally attached to or positioned on land, including buildings, portable structures, earthen structures, roads, parking lots, and paved storage.

TOPSOIL. The upper layer of soil.

UTILITY. The owner/operator of any underground facility including an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.

WATERCOURSE. Any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.

WATERSHED. A region draining to a specific river, river system, or body of water.

WETLANDS. A lowland area such as a marsh, that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.
(Ord. 7, 2005, passed 6-27-05)

§ 53.04 PERMITS.

(A) *Land disturbance activity.*

(1) New construction that requires the disturbance of soil on lots of 5,000 square feet or greater is subject to the provisions of this chapter and shall not take place without an authorized EPSC permit.

(2) Additional construction that requires the disturbance of 5,000 square feet or more of soil that is not associated with new home construction is subject to the provisions of this chapter and shall not take place without an authorized EPSC permit.

(3) Land disturbance activity of less than 5,000 square feet or land disturbance activity on lots less than 5,000 square feet, which the activity is located in or near a sensitive area is subject to the provisions of this chapter and shall not take place without an authorized EPSC permit.

(B) *Exemptions.* The following activities are exempt from the requirement to obtain an EPSC Permit and from the procedures of this chapter:

- (1) Cemetery graves.
- (2) Emergencies posing an immediate danger to life or property, substantial flood or fire hazards.
- (3) Land disturbance activity on lots less than 5,000 square feet, which is not located in or near a sensitive area.
- (4) Land disturbance activity less than 5,000 square feet that is not associated with new home construction, which is not located in or near a sensitive area.
- (5) Agricultural operations required to adopt and implement an individual agriculture water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS Ch. 224).
- (6) Usual and customary site investigations, such as geotechnical explorations, clearing for surveying work, monitoring wells and archaeological explorations, which are undertaken prior to submittal of an application for preliminary subdivision plat.

(C) *Not exclusive.* The issuing authority may, on a project-by-project basis, exempt other land disturbance activities not specifically identified in the division (B) above.

(D) *Not exempt.* Land disturbance activity less than 5,000 square feet on individual lots or parcels that are part of a larger common plan of development that disturbs 5,000 square feet or more of soil is not exempt from this chapter and EPSC Permit. In this situation, the landowner and/or developer of the larger development, and the individual lot owner or homebuilder, will be issued an EPSC permit and will be responsible for complying with the provisions of this chapter. The landowner and/or developer of the larger development will remain dually responsible until 80% sold-out of lots within the development is reached.

(E) *EPSC permit application and form.*

(1) A written application from the landowner and/or developer of the site, or his/her authorized representative, in the form prescribed by this chapter, shall be required for each EPSC permit. The fees to be paid by the applicant for said permit shall be determined by the issuing authority. A licensed engineer shall prepare the EPSC Plan. The issuing authority may waive the preparation or approval and signature by the licensed engineer when it is self-evident that the work is simple, clearly shown, and entails no hazard or nuisance potential to adjacent property or watercourse, and does not include the placement of fill upon which a structure may be erected.

(2) Permit application form. The following information is required on the application:

(a) Name, address, and telephone number of landowner/developer.

(b) Name, address, and telephone number of applicant, if different than landowner/developer.

(c) Name(s), address(es), and telephone number(s) of any and all contractors, subcontractors or persons actually doing the land disturbing or land filling activities and their respective tasks.

(d) Name, address, and telephone number of the person responsible for the preparation of the final plat and site drawings (roadways, grading and drainage, utilities, and the like).

(e) Name, address, and telephone number of the person responsible for the preparation of the EPSC Plan.

(f) Address of site.

(g) Date of the application.

(h) Signature(s) of the landowner(s)/developer(s) of the site or an authorized representative.

(i) The information required for this application may be modified as needed by the issuing authority.

(F) *Fiscal surety.*

(1) The Permittee shall be responsible for the installation, good repair, maintenance and ultimate removal of all temporary and permanent EPSC measures.

(2) The issuing authority may require the Permittee to post a fiscal surety, consisting of a bond, certified check, performance guarantee or other instrument, acceptable to and approved by the issuing authority. Fiscal surety for single-family developments may be exempt as determined by the issuing authority. When a fiscal surety is required, the surety shall be posted prior to the issuance of an EPSC Permit.

(3) The fiscal surety shall be in the amount equal to 125% of the estimated cost of the EPSC measures, as approved by the issuing authority. Whenever feasible, fiscal surety for the EPSC measures may be combined with and posted with other appropriate security instruments, such as those required for final plat approval (Article 6.9.2 of the Subdivision Regulations) or other building approvals.

(4) Following the period allowed to the Permittee to complete the installation of the EPSC measures, the issuing authority finds the required temporary or permanent improvements or control

measures have not been installed or maintained properly or are not in good repair or functioning properly, then the issuing authority may declare the Permittee to be in default if it does not appear that the improvements or controls will be completed or repaired within a reasonable time. Upon declaration of default, the issuing authority shall demand such amounts from the surety as required to remedy the default.

(5) Request for release of surety may be made after the issuing authority makes an inspection of the property and determines that site construction is finished; final stabilization has been established; the required improvements and controls are properly installed and temporary controls have been removed.

(G) *General permit.* Complying with the provisions of this chapter and issued EPSC permit does not exempt the Permittee from obtaining coverage from the Kentucky Pollution Division of Water under the KPDES storm water general permit for storm discharges related to construction activities that disturb one acre or more. The Permittee shall provide a copy of the Notice of Intent filed with the Kentucky Division of Water to the issuing authority.

(H) *Relation to other laws.* Neither this chapter nor any administrative decision made under it exempts the Permittee or any other person from procuring other required local, state, or federal permits or complying with the requirements and conditions of such other permit(s), or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the Permittee or any other person arising from the activity regulated by this chapter.
(Ord. 7, 2005, passed 6-27-05)

§ 53.05 REVIEW AND APPROVAL.

(A) The issuing authority will review each application for a EPSC permit to determine its conformance with the provisions of this chapter. Within 30 calendar days after receiving a complete application and EPSC plan, the issuing authority shall, in writing:

(1) Approve the application and EPSC plan and issue the EPSC permit;

(2) Approve the application and EPSC plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this chapter, and issue the EPSC permit subject to these conditions; or

(3) Disapprove the permit application and EPSC plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

(B) Failure of the issuing authority to act on an original or revised application within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the EPSC plans filed and this

chapter, provided all other local, state and federal permits have been obtained, unless such time is extended by agreement between the applicant and issuing authority. Pending preparation and approval of a revised EPSC plan, development activities shall be allowed to proceed in accordance with conditions established by the issuing authority. The time period for the issuing authority to review the application shall start anew with each resubmittal.

(Ord. 7, 2005, passed 6-27-05)

§ 53.06 EROSION PROTECTION AND SEDIMENT CONTROL PLAN.

(A) Land disturbance activities, which involve the disturbance of soil on:

(1) A lot less than 5,000 square feet where such lot is located in or near a sensitive area;

(2) A land disturbance activity of less than 5,000 square feet where such activity is located in or near a sensitive area;

(3) Lots of 5,000 square feet or greater;

(4) A land disturbance activity of 5,000 square feet or more, require an EPSC Plan approved by the issuing authority. These plans shall be prepared by a licensed professional engineer, drawn to an appropriate scale and shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and measures proposed to minimize soil erosion and off-site sedimentation. The owner/developer/contractor shall perform all clearing, grading, drainage, construction, and development in strict accordance with the approved plan and this chapter.

(B) The EPSC Plan shall include the following:

(1) A letter of transmittal, which includes a project narrative.

(2) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies, sinkholes and other significant geographic features, and roads and other significant structures.

(3) An indication of the scale used.

(4) The name, address, and telephone number of the owner and/or developer and the contractor of the property where the land disturbing activity is proposed.

(5) Ground contours, minimum two feet intervals, for the existing and proposed topography.

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(6) The proposed grading or land disturbance activity including: the surface area involved, excess spoil material, use of borrow material, and specific limits of disturbance.

(7) A clear and definite delineation of any areas of vegetation or trees to be saved.

(8) A clear and definite delineation of any wetlands, sinkholes, natural or artificial water storage detention areas, and drainage ditches on the site.

(9) A clear and definite delineation of any 100-year floodplain on or near the site.

(10) Storm drainage system, including quantities of flow and site conditions around all points of surface water discharge from the site.

(11) Standard details for storm water facilities and EPSC measures.

(12) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation, including provisions to preserve topsoil and limit disturbance.

(13) Design details for both temporary and permanent erosion control structures.

(14) Details of temporary and permanent stabilization measures.

(15) A chronological construction schedule and time frame including, as a minimum, the following construction activities:

(a) Clearing and grubbing.

(b) Construction of erosion control devices.

(c) Installation of permanent and temporary stabilization measures.

(d) Grading.

(e) Utility installation.

(f) Building, parking lot, and site construction.

(g) Final grading, landscaping or stabilization.

(h) Implementation and maintenance of final erosion control structures.

(i) Removal of temporary erosion control devices.

(16) A signed statement on the plan by the owner, developer, and contractor that any clearing, grading, construction, or development, or all of these, will be done pursuant to the approved EPSC plan and this chapter.

(C) The applicant may propose the use of any erosion protection and sediment control techniques in a Final EPSC Plan, provided such techniques are proven to be as or more effective than the equivalent best management practices as contained in the EPSC Design Manual and Standards.

(D) A site development construction project shall be considered in conformance with this chapter if soils have been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse.

(Ord. 7, 2005, passed 6-27-05)

§ 53.07 DESIGN REQUIREMENTS.

(A) The design, testing, installation, and maintenance of erosion protection and sediment control operations and facilities shall adhere to the criteria, standards and specifications as set forth in the most recent version of the EPSC Design Manual and Standards, as adopted by the city.

(B) At a minimum, the following requirements shall be met:

(1) Cut and fill slopes shall be no greater than 2H:1V, unless approved by the issuing authority.

(2) Clearing and grading, except that necessary to establish sediment control devices, shall not commence until sediment control devices have been installed.

(3) Erosion control methods shall include the following:

(a) Phasing of clearing and grading operations for all sites greater than 30 acres;

(b) Soil stabilization by seeding/mulching within 15 days of mass grading operations for borrow (excavation) and fill areas;

(c) Stabilizing soil stockpiles at the end of each workday; and

(d) Installing diversion ditches or other techniques where upland runoff occurs past disturbed areas.

(4) Sediment control methods shall include installing retention facilities, sedimentation basins and traps, other similar facilities at the most downstream runoff location within the site.

(5) Waterway (creeks, ditches, and the like) protection shall include the installation of a temporary stream crossing, on-site storm water drainage system and stabilized outlets at all pipes, where applicable.

(6) Prevention of mud and debris onto public roadways by construction equipment and vehicles shall include the installation of crushed stone construction entrances or an on-site tire washing station at the point of ingress and egress to the public roadway.

(7) Maintenance schedule during and after construction of graded surfaces, EPSC facilities, and drainage structures.

(Ord. 7, 2005, passed 6-27-05)

§ 53.08 INSPECTION.

(A) The issuing authority or its duly authorized representatives shall make inspections of land disturbing activities subject to this chapter. Inspections may be provided by officers and staff of the Planning and Building Codes Department; Sewer Department; Public Works Department; or any other city agency deemed necessary.

(B) To ensure compliance with the approved EPSC Plan and to examine field practices to determine if control measures are adequate, authorized inspectors of the issuing authority shall have the power to inspect any land disturbing activity and to review the records of all inspections, repairs and modifications made by the permittee.

(C) Prior to commencing construction activities the permittee shall attend a pre-construction conference if scheduled by the issuing authority. The Technical Review Team meeting for the development may serve as a substitute for the pre-construction conference.

(D) The permittee shall notify the issuing authority 24 hours in advance of conducting inspections.

(1) At a minimum, the permittee shall conduct a self-inspection at the following stages:

- (a) Completion of perimeter erosion and sediment controls.
- (b) Completion of clearing and grading.
- (c) Installation of temporary erosion controls.
- (d) Completion of final grading and ground stabilization.
- (e) Prior to the fiscal security release.

- (f) Monthly after areas have been temporarily or permanently stabilized.
- (g) Within 24 hours of a rain event 0.5 inches or greater.

(2) The issuing authority may increase or decrease the number of required inspections as deemed necessary to ensure an effective EPSC Plan and shall have the right to enter the property of the permittee without notice.

(E) The permittee shall prepare an inspection report after each self-inspection and shall keep copies at the job site at all times, and may be required to fax the inspection report to the issuing authority, if deemed necessary. At a minimum the inspection report shall include the date, time of day, name of the person conducting the inspection, company represented, scope of the inspection, major observations relating to the EPSC Plan and BMPs installed, and subsequent changes. The issuing authority has the right to make regular inspections to ensure the validity of the inspection reports.

(F) The permittee shall be self-policing and shall correct or remedy any EPSC measures that are not effective or functioning properly at all times during the various phases of construction.
(Ord. 7, 2005, passed 6-27-05)

§ 53.09 ENFORCEMENT.

(A) The issuing authority shall be responsible for the enforcement of this chapter. A stop-work order may be posted for the entire project or any specified part thereof if any of the following conditions exist:

- (1) Any land disturbance activity regulated under this chapter is being undertaken without a permit.
- (2) The Erosion and Sediment Control Plan is not being fully implemented.
- (3) Any of the conditions of the EPSC permit are not being met.

(B) For the purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is an EPSC Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as the landowner of the property.

(C) If the permittee does not cease the activity or comply with the Erosion and Sediment Control Plan or EPSC permit conditions within five calendar days, the issuing authority may revoke the permit.

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(D) If the landowner or developer where no EPSC Permit has been issued does not cease the land disturbance activity, the issuing authority may request the City Attorney to seek to obtain injunctive relief.

(E) The issuing authority may retract the revocation if the EPSC Plan and permit is brought into compliance with this chapter.

(F) Ten calendar days after posting a stop-work order, the issuing authority may issue a notice of intent to the Permittee, landowner, or land user of the issuing authority's intent to perform work necessary to comply with this chapter. The issuing authority may go on the land and commence work after 14 days from issuing the notice of intent. The costs incurred by the issuing authority to perform this work shall be paid by the landowner or permittee out of the fiscal security referred to in this chapter, to the extent that the amount is covered thereby, with the remainder being directly due and owed by the landowner or Permittee. In the event no EPSC permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the issuing authority, plus a reasonable administrative and attorneys fee shall be billed to the owner.

(G) Compliance with the provisions of this chapter may also be enforced by injunction.

(H) The issuing authority is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the issuing authority is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the issuing authority shall be fully reimbursed by the property owner and/or responsible party.

(Ord. 7, 2005, passed 6-27-05)

§ 53.99 PENALTY.

(A) Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than \$100 and not more than \$500, or by imprisonment for not more than 90 days, or both, for each separate offense. Each day there is a violation of any part of this chapter shall constitute a separate offense.

(B) Should the issuing authority or city take legal action to enforce the provisions of this chapter, the issuing authority or city shall be entitled to collect any and all costs in instituting and taking such legal action, including but not limited to its court costs and attorney's fees.

(Ord. 7, 2005, passed 6-27-05)

