

PROPOSED ORDINANCE NO. 2006 - 68

ORDINANCE NO. 5085

AN ORDINANCE AMENDING TITLE 15, CHAPTER 162, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, HENCEFORTH KNOWN AS “EROSION CONTROL and POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, To provide for the health, safety, and general welfare of the public, and in response to the un-funded federal mandate, the City of Mishawaka finds it necessary to adopt standards concerning erosion control, and other provisions related to the regulation of earthmoving, excavation, and storm water discharge and

WHEREAS, This ordinance provides methods for controlling the introduction of pollutants into the *municipal separate storm sewer system* (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

WHEREAS, the City has found that soil erosion resulting from non-agricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers.

WHEREAS, The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported offsite to adjacent public or private lands. The diversity of established development types, character, and size contribute to the quality, flavor, and essence of the City.

WHEREAS, over time, the City has regulated certain tangible items to protect the public health, safety, and welfare.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, finds it necessary and recommends that an additional ordinance be created being henceforth known as the “Erosion Control Ordinance” Title 15, Chapter 162 of the Municipal Code of the City of Mishawaka as contained herein.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The “Erosion Control Ordinance,” Title 15, Chapter 162 of the Municipal Code of the City of Mishawaka is hereby deleted in its entirety and replaced with the “Erosion Control and Post-Construction Stormwater Pollution Prevention Ordinance” as herein attached.

CHAPTER 162: EROSION CONTROL AND POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION ORDINANCE

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162.01 PURPOSE

To provide for the health, safety, and general welfare of the public, and in response to the un-funded federal mandate, the City of Mishawaka finds it necessary to adopt standards concerning erosion control, post-construction stormwater pollution prevention, and other provisions related to the regulation of earthmoving, excavation, and storm water discharge. This ordinance provides methods for controlling the introduction of pollutants into the *municipal separate storm sewer system* (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. Specifically, the City has found that soil erosion resulting from non-agricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. Furthermore, the proper installation and operation of stormwater management measures is necessary to ensure that soil erosion and stormwater quality issues do not arise after the completion of a land disturbing activity. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported offsite to adjacent public or private lands. It will also minimize erosion and stormwater quality issues that arise due to the long-term operation of the site after construction. This ordinance applies to non-agricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal drainage ways, ponds, lakes, and other storm water receivers.
2. To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by storm water discharges by any user.
3. To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.
4. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.
5. To minimize or reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels and to continue to enforce no net increase of stormwater runoff from newly developed sites.
6. To minimize increases in non-point source pollution caused by stormwater runoff from development, which could otherwise degrade local water quality.
7. To reduce soil erosion, and non-point source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained.

162.02 AUTHORITY

This ordinance is adopted under the authority granted by Indiana Code 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this ordinance for controlling soil erosion and other provisions related to the regulation of storm water in the City of Mishawaka. No Statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the City of Mishawaka. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

162.03 APPLICABILITY OF ORDINANCE

The ordinance applies to all non-agricultural land disturbing activities within the incorporated boundaries of the City of Mishawaka. Projects approved by the City of Mishawaka Board of Public Works and Safety funded in part by City tax dollars where performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 162.10.

162.04 CALCULATION OF AREAS AND VOLUMES

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this ordinance, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

162.05 CLASSIFICATION OF LAND DISTURBING ACTIVITIES

This ordinance recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity.

162.06 LIGHT LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities which disturb no more than 2000 square feet of land.
- c. Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- d. Public utility improvements or other public projects that require a performance bond to the City of Mishawaka relative to the satisfactory completion of land disturbing activities.

162.07 MODERATE LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, Institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal to 2000 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities which disturb more than 2000 square feet of land but less than one acre of land.

162.08 SIGNIFICANT LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of more than 2000 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities that disturb equal to or more than one-acre of land.

162.09 DEFINITIONS

- (1) "Administering authority" means the Department of City Planning, as it relates to the issuance of improvement location permits. The Department of City Planning, the Department of Engineering, or any duly authorized representative of Mishawaka Utilities, as it relates to identifying violations and placing stop work orders.
- (2) "Agricultural land use" means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. Further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.

- (3) "Non-agricultural land use" means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduit, alleys, and streets, and other land uses not included under agricultural land use.
- (4) "Best Management Practices (BMPs)"- schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.
- (5) "City Planner" means the City Planner or their designated representative.
- (6) "Department of Engineering" means the City of Mishawaka Department of Engineering as the designated unit of government given the authority to review the performance specifications of this ordinance.
- (7) "Director of Engineering" means the Director of Engineering or their designated representative.
- (8) "Erosion" means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.
- (9) "Erosion control measure" means a practice or a combination of practices to control erosion and resulting sedimentation.
- (10) "Erosion control plan" means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this ordinance as submitted by the applicant for review and approval by the Department of City Planning.
- (11) "Exposed Land Uses" means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Open land uses shall include but shall not be limited to non-surfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other man-made activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this Ordinance, gravel shall not be considered a stable surface when used for vehicular traffic and parking.
- (12) "Land disturbing activity" means any man-made change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this ordinance, it includes only non-agricultural land disturbing activities.
- (13) "Land Users" means those entities, individually and collectively who are performing land-disturbing activities or have caused these activities to occur. These include but are not limited to owners, operators, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.
- (14) "Long Term Operation and Maintenance Agreement" means a written description of the pertinent information concerning the long term maintenance schedule and expectations to ensure that stormwater management BMPs are kept functional. The maintenance agreement

will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

- (15) “Post Construction Stormwater Pollution Prevention Plan” means a written and/or graphic description of pertinent information concerning permanent stormwater pollution prevention measures designed to meet the requirements of this ordinance and submitted for review prior to the issuance of an Improvement Location Permit and approved by the Department of Engineering.
- (16) “Runoff” means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.
- (17) “Site” means the entire area included in the legal description of the land on which land-disturbing activity has been proposed in the permit application or is currently occurring.
- (18) “Stormwater Management System” means the structural or non-structural practices that are designed and constructed to reduce storm water runoff pollutant loads, discharge volumes, and/or establish storage rates on-site.

162.10 NON-AGRICULTURAL LAND DISTURBING ACTIVITY PERFORMANCE REQUIREMENTS

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the City of Mishawaka. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best Management Practices shall be utilized to address the prevention, control, and reduction of storm water pollutants on a site-specific basis.

- (1) Site dewatering/Discharge
Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into existing storm sewer shall not be performed unless previously approved by the City of Mishawaka Department of Engineering, or applicable jurisdictional agency.
- (2) Waste and material disposal:
Wastes or unused building materials, including but not limited to garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) Roadway Protection:
Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.
- (4) Property Protection:
Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.

- (5) Drain inlet protection:
All storm drain inlets, within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets, located outside of land disturbing activity areas, which accepts storm water runoff from a land disturbing activity area, shall also be protected in an identical manner.
- (6) Exposed Land Uses:
Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within the City of Mishawaka Zoning Ordinance. Any exposed land use, either permitted by right or conditional, shall require prior site plan approval pursuant to the requirements identified within Section 159.275 of the City of Mishawaka Zoning Ordinance.
- (7) On-Site erosion control:
The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place.
- a. Storm water runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
 - b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
 - c. With disturbed areas of more than 10 acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. However, if erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
 - d. With disturbed areas of less than or equal to 10 acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side slope and down slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. However, if these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
 - e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

162.11 SIGNIFICANT LAND DISTURBING ACTIVITY POST-CONSTRUCTION PERFORMANCE REQUIREMENTS

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities classified as significant as identified herein, within the incorporated boundaries of the City of Mishawaka. Performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best Management Practices shall be utilized to address the prevention, control, and reduction of storm water pollutants on a site-specific basis. Project completion and release of the performance bond shall not exempt the site owner from the performance activities listed below. The

maintenance and inspection measures contained in this section are permanent measures that apply throughout the life of the site.

- (1) Install and maintain each post construction stormwater management system approved as part of the post-construction stormwater pollution prevention plan. Each measure shall be installed in accordance with the approved plan. As-builts of applicable stormwater management systems will be required and may be field verified prior to the release of the performance bond.
- (2) Maintain all drainage systems and stormwater management facilities in good working order.
- (3) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
- (4) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
- (5) Maintain all drainage channels, swales and basins installed or identified as part of the construction plan so that they do not cause erosion in the receiving channel, the outlet, or basin sideslope reducing the performance of the system. Keep all natural features such as wetlands and bodies of water protected from storm water run off pollutants.
- (6) Inspect all storm water management facilities on a schedule sufficient to ensure compliance with this Ordinance. The inspections shall occur on at least an annual basis.
- (7) Provide for the removal of silt, litter, grass cuttings, vegetation and other debris from all catch basins, inlets and storm water retention/detention areas.
- (8) Maintain records of all maintenance and inspection activities related to the stormwater management measures. Records shall be retained for at least three years and must be made available to City of Mishawaka personnel upon request.

162.12 DESIGN CRITERIA, STANDARDS, AND SPECIFICATIONS FOR EROSION CONTROL MEASURES AND POST CONSTRUCTION STORMWATER MEASURES.

All erosion control and post-construction stormwater management measures including but not limited to those required to comply with this ordinance shall meet the design criteria, standards, and specifications for erosion control and stormwater management measures similar to or the same as those outlined in the *Indiana Stormwater Quality Manual*, or engineering standards as adopted by the City of Mishawaka Board of Works and Safety, as may be amended.

162.13 RESPONSIBILITY

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

162.14 MAINTENANCE OF EROSION CONTROL MEASURES

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this ordinance shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as, other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

162.15 PERMIT REQUIREMENTS

Where required, no land user shall begin a land disturbing activity subject to this ordinance without receiving prior approval of an Improvement Location Permit. Improvement Location Permits shall be issued in accordance with the requirements of the City of Mishawaka Zoning Ordinance as amended. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land-disturbing activity. An Improvement Location Permit shall be required as follows:

- (1) Light Land Disturbing Activity- No Permit Required
- (2) Moderate Land Disturbing Activity- Permit Required
- (3) Significant Land Disturbing Activity- Permit Required

162.16 PENALTY FOR PROCEEDING WITHOUT PERMIT

No land user shall begin a land disturbing activity subject to this ordinance without receiving prior approval of an Improvement Location Permit where required. The fee for Improvement Location Permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land user's notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by the City of Mishawaka Zoning Ordinance as amended.

162.17 BONDING REQUIREMENTS

No land user shall begin a land disturbing activity subject to this ordinance without receiving prior submission of a surety bond or an irrevocable letter of credit where required. Administration of surety bonds or letters of credit shall rest with the Department of Engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an Improvement Location Permit to the Department of Engineering. Surety shall be provided throughout the time of land disturbing activity operations. Surety bonds or an irrevocable letter of credit shall be required as follows:

- (1) Light Land Disturbing Activity- No Surety Required
- (2) Moderate Land Disturbing Activity- No Surety Required
- (3) Substantial Land Disturbing Activity- Surety Required

162.18 DETERMINATION OF REQUIRED SURETY

The required dollar amount of the surety bond or an irrevocable letter of credit where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) Area Calculation:
Up to 5 acres of disturbed land area- \$3,000.00 per acre, for each additional acre of disturbed land area- \$1,500.00 per acre.
- (2) Volume Calculation:
\$0.50 per cubic yard of disturbed material including both cut and fill.

162.19 EROSION CONTROL PLAN REQUIRED

An erosion control plan as identified herein shall be required for all moderate and significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting an erosion control plan. Two copies of the erosion control plan shall be submitted prior to or concurrently with the Improvement Location Permit. Erosion control plans submitted and approved as part of the review of final development plans need not be re-submitted and can merely be referenced on the Improvement Location Permit Application. Although subject to the performance requirements of section 162.10, projects approved by the City or the Soil and Water Conservation Service under Rule 5 prior to the establishment of this ordinance shall not be required to submit an erosion control plan as required herein.

162.20 CONTENT OF EROSION CONTROL PLAN – MODERATE LAND DISTURBING ACTIVITY

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities,
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this ordinance;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this ordinance; and
- (3) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrants clarification identifying that the performance requirements of Section 162.10 (Non-agricultural Land Disturbing Activity Performance Requirements) are met.

162.21 CONTENT OF EROSION CONTROL PLAN – SUBSTANTIAL LAND DISTURBING ACTIVITY

All applications for an improvement location permit for substantial land disturbing activity shall include the following information:

- (1) Existing site map. A map of existing site conditions on a minimum scale of one inch equals 100 feet and adequate to show the site and adjacent areas, including:
- (2) Site boundaries and adjacent lands which accurately identify the site location;
- (3) Lakes, streams, wetlands, channels, ditches, and other water courses on and adjacent to the site;
- (4) One hundred year floodplains, floodway fringes, and floodways;
- (5) Location of predominant soil types, or soil testing report that identifies soil types as identified certified professional soil scientist or licensed engineer;
- (6) Vegetative cover types such as grass, weeds, and trees;
- (7) Location and dimensions of storm water drainage systems and natural drainage patterns on and immediately adjacent to the site;
- (8) Locations and dimension of utilities, structures, roads, highways, and paving;
- (9) Existing site topography at a contour interval not to exceed two feet.
- (10) Proposed site topography at a contour interval not to exceed two feet.
- (11) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities,
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the requirements of this ordinance;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this ordinance; and
 - e. Provisions for maintenance of the erosion control measures during construction.
- (12) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrants clarification identifying that the performance requirements of Section 162.10 (Non-agricultural Land Disturbing Activity Performance Requirements) are met.

162.22 POST-CONSTRUCTION STORMWATER PLAN REQUIRED

A post-construction stormwater pollution prevention plan (SWPPP) as identified herein shall be required for all significant land disturbing activities. No land user shall begin a significant land disturbing activity without submitting a post-construction SWPPP. Two copies of the post-construction SWPPP shall be submitted prior to or concurrently with the Improvement Location Permit Application and erosion control plan. Post-construction SWPPPs submitted and approved as part of the review of final development plans need not be re-submitted and can merely be referenced on the Improvement Location Permit Application. Although subject to the performance requirements of section 162.10, projects approved by the City or the Soil and Water Conservation Service under Rule 5 prior to the establishment of this ordinance shall not be required to submit a post-construction SWPPP as required herein.

162.23 CONTENT OF POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN

The post-construction SWPPP must include the following information, in accordance with 327 IAC 15-5-6.5(a)(8):

- (1) A description of potential pollutant sources from the proposed land use that may reasonably be expected to add a significant amount of pollutants to storm water discharges where applicable.
- (2) Location, dimensions, detailed specifications, and construction details of all post construction storm water quality measures.
- (3) A description of measures that will be installed to control pollutants in storm water that will occur after construction activities have been completed. Such practices include infiltration of run-off, flow reduction by use of open vegetated swales and natural depressions, buffer strip and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and storm water retention and detention ponds.
- (4) A sequence describing when each post construction storm water quality measure will be installed.
- (5) Storm water quality measures that will remove or minimize pollutants from storm water.
- (6) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream and riparian habitat.
- (7) A narrative description of the maintenance guidelines for all post construction storm water quality measures to facilitate their proper long term function. This narrative description shall be made available to future parties who will assume responsibility for the operation and maintenance of the post construction storm water quality measures.

Additionally, the post construction stormwater pollution prevention plan must also include a *Long-Term Operation and Maintenance Agreement* containing maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function.

162.24 LONG TERM OPERATION AND MAINTENANCE AGREEMENT

Long-Term Operation and Maintenance Agreements shall include a maintenance plan for all stormwater quality best management practices (BMPs) for all projects covered under this ordinance that require more than general maintenance (e.g., periodic mowing). The Long-Term Operation and Maintenance Agreements shall be recorded.

The plan will be developed to ensure that the stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner. The Operation and Maintenance requirements shall be in accordance with the Operation and Maintenance procedures and schedules listed in the Indiana Stormwater Quality Manual.

The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.

It is the obligation of the project owners and their successors in interest to provide this agreement to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.

When a stormwater quality BMP serves more than (1) parcel, an owners' association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this article.

Where stormwater detention and/or retention systems are used, care must be taken to ensure that the systems do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the *Long-Term Operation and Maintenance Agreement*.

162.25 EASEMENT REQUIREMENTS

All permanent stormwater management systems identified in the post-construction SWPPP, including detention or retention basins, filter strips, infiltration systems, conveyance systems, and structures located outside of the right-of-way shall be designated as common areas or incorporated into permanent easements. For the purposes of access, monitoring, inspection, and general maintenance activities, an adequate easement width beyond the actual footprint of the stormwater quality management facility as well as a 20-foot wide access easement from a public right-of-way to each BMP shall be provided. The easement requirements noted may be changed by the City of Mishawaka as deemed necessary for specific cases.

162.26 REVIEW OF EROSION CONTROL PLAN, POST-CONSTRUCTION SWPPP, AND LONG TERM OPERATION AND MAINTENANCE AGREEMENT

Upon submission, the City Planner shall review the submission requirements of the erosion control plan, post-construction SWPPP, and long term operation and maintenance agreement. These documents shall not be evaluated by the City Planner in regards to the performance requirements of this ordinance. The City Planner shall promptly forward complete submissions to the Department of Engineering for review of the performance requirements of this ordinance.

For moderate land disturbing activities, the City Planner may issue an improvement location permit prior to the review of the Department of Engineering. For substantial land disturbing activities, the City Planner may not issue an improvement location permit prior to the review of the Department of Engineering. When questions arise or specific unique site circumstances dictate it, the City Planner may also withhold the issuance of any Improvement Location Permit pending the review of the Department of Engineering.

The Department of Engineering shall promptly review erosion control plans, post-construction SWPPPs, and long term operation and maintenance agreements. If the submission is deficient or held for the review of the Department of Engineering, the City Planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the City Planner shall again determine whether the plan meets the submission requirements of this ordinance. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City Planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.

In the case where the City Planner has issued an Improvement Location Permit prior to the review of the Department of Engineering, comments of the Department of Engineering received following the issuance of

an Improvement Location Permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City Planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the City Planner and/or the Department of Engineering shall not be construed as more than meeting the submission requirements of this ordinance. The review and approval of an erosion control plan by the City Planner and/or the Department of Engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this ordinance. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in Section 162.10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to insure compliance with performance requirements on a continual basis.

Approval of the provisions of the erosion control plan and post-construction stormwater pollution prevention plan as allowed by this ordinance shall not be construed as compliance with any other applicable state, federal, or local ordinances.

162.27 INSPECTION

To ensure compliance with the erosion control plan, the City of Mishawaka shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the Department of Planning, the Department of Engineering, or any other representative employed by or contracted with the City for said purpose. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance

The site owner is responsible for implementing a self-monitoring program, as required by 327 IAC 15-5-7(b)(18). The self-monitoring program shall include the following:

- (A) A trained individual shall perform a written evaluation of the project site:
 - (i) by the end of the next business day following each measurable storm event; and
 - (ii) at a minimum of one (1) time per week.
- (B) The evaluation must:
 - (i) address the maintenance of existing storm water quality measures to ensure they are functioning properly; and
 - (ii) identify additional measures necessary to remain in compliance with all applicable statutes and rules.
- (C) Written evaluation reports must include:
 - (i) the name of the individual performing the evaluation;
 - (ii) the date of the evaluation;
 - (iii) problems identified at the project site; and

- (iv) details of corrective actions recommended and completed.

All evaluation reports for the project site must be made available to the City within forty-eight (48) hours of a request.

162.28 RESPONSIBILITY OF THE DEPARTMENT OF ENGINEERING

The administration of this ordinance as identified is the responsibility of the City Planner. However, based on the technical requirements of this ordinance, the Department of Engineering shall be responsible for the review and evaluation of a land disturbing activities compliance with the performance requirements of this ordinance. The City Planner may only pursue the administration of this ordinance relative to performance requirements when the lack of compliance has been documented in writing by the Department of Engineering.

162.29 ENFORCEMENT

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of non-compliance following the inspection and verification of the Department of Planning and/or Department of Engineering.
- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the City Planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The City Planner may also immediately post a stop-work order if-
 - a. Any land disturbing activity requiring an improvement location permit and/or bond under this ordinance is being undertaken without a permit and/or bond;
 - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
 - c. The land disturbing activity does not comply with the performance requirements of this ordinance and poses an imminent negative impact to the public health, safety, and welfare as determined by the Department of Engineering following an on-site inspection.
- (4) Upon correction of the violation(s), land users may appeal to the City of Mishawaka to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the City of Mishawaka may issue a notice of intent to the violator stating the intent of the City of Mishawaka to use draw upon the surety bond, where required, to perform work necessary to provide compliance with this ordinance. All expenses for work, administration, and legal fees associated with providing compliance with this ordinance which exceeds the amount of the surety bond may be billed to the land user. For all other disturbing activities where surety was not required, the City of Mishawaka may perform the work necessary to provide compliance with this ordinance. All expenses for work, administration, and legal fees associated with providing compliance with this ordinance may be billed to the land user.

162.30 PROJECT COMPLETION

Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other Department of Engineering approved means. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating completion and requesting the release of any surety bonds and/or letters of credit.

For significant land disturbing activities, as-builts of permanent stormwater management systems must be submitted prior to or concurrently with the completion notice and request for bond release. The City shall have twenty-eight (28) normal business days to perform an inspection and respond to the request for release. If the City does not respond within the twenty-eight (28) normal business days, the request shall be granted automatic approval.

Upon inspection and verification of satisfactory land disturbing completion, any surety bonds and/or letters of credit shall be released by the Department of Engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.

If the stormwater management systems on site are deemed to be insufficient, not appropriate and/or inconsistent with the post-construction SWPPP or objectives stated in this ordinance, than approval will not be granted.

162.31 AS-BUILT REQUIREMENTS

Prior to final release of the bond provided for in 162.30, the as-built condition of critical stormwater management features must be identified and approved.

The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a Professional Engineer licensed in the State of Indiana. This information shall be provided to the City of Mishawaka in the form of a scaled as-built drawing or other electronic form accepted by the City. The as-built certification shall indicate if final conditions are consistent with, or exceed, the provisions of the post-construction SWPPP.

If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does not meet or exceed the post-construction SWPPP provisions, the City of Mishawaka reserves the right to withhold the final bond until such time as site conditions meet or exceed the plan provisions. Furthermore, other enforcement mechanisms may be applied to the Permittee or persons making certifying statements.

162.32 CORRECTION OF NON-CONFORMING SITUATIONS

Land users who are currently in violation or are out of compliance with the performance standards identified within Section 162.10 (Non-agricultural land disturbing activity performance requirements) shall have 30 calendar days from the receipt of notice of violation identified under Section 162.23 (Enforcement) to apply for the applicable permits or bring the property into compliance with this chapter.

162.33 CORRECTION OF NON-CONFORMING SITUATIONS- GRAVEL DRIVES, PARKING AREAS, AND ALLEYS

Land users who are currently in violation or are out of compliance with the performance standards identified within Section 162.10 (Non-agricultural land disturbing activity performance requirements) due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this Chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under Section 162.23 (Enforcement) to apply for the applicable permits or bring the property into compliance with this chapter.

162.34 NEW OR EXPANDED GRAVEL DRIVES, PARKING AREAS, AND ALLEYS PROHIBITED

New or expanded permanent non-construction related drives, parking areas, alleys shall be hard-surfaced. Gravel or stone surfaces shall not be considered an acceptable stable surface when used for vehicular traffic and parking.

162.35 MAINTENANCE OF PERMANENT MEASURES

All stormwater/erosion control management facilities must be maintained by the property owner to ensure compliance with the requirements of this ordinance and accomplishment of its purposes. Maintenance needs may include; removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City.

162.36 FAILURE TO MAINTAIN PERMANENT MEASURES

The responsible party must ensure that all permanent stormwater management measures are maintained so that they operate according to the approved design. If a responsible party fails or refuses to perform the required maintenance, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the erosion control/stormwater management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the facility in writing. Upon receipt of that notice, the responsible person shall immediately effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner(s) of the facility for the cost of repair work and any penalties.

162.37 APPEALS

Any order, requirement, decision, or determination made by an administrative official or staff member may be appealed in the same manner that any provision of the City of Mishawaka Zoning Ordinance may be appealed. This process is identified in Chapter 159 of the City of Mishawaka Municipal Code, as amended.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and subsequent publication as required by law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this 4th day of December, 2006, at 8:00 o'clock, P.M.

Gregg A. Hixenbaugh /s/
Presiding Officer

ATTEST:

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

PRESENTED by me to the Mayor this 5th day of December, 2006, at 11:31 o'clock, A.M.

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

APPROVED by me this 5th day of December, 2006, at 2:28 o'clock, P .M.

Jeffrey L. Rea /s/
Jeffrey L. Rea, Mayor