

CHAPTER 102

STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL

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102.01 PURPOSE. The purpose of the chapter of this Code of Ordinances pertaining to Stormwater Management and Erosion and Sediment Control is to establish rules and regulation governing stormwater runoff and discharges within the City in order to protect the public health, safety and welfare.

102.02 DEFINITIONS. For use in these chapters, unless the context specifically indicates otherwise, the following terms are defined:

1. "Approval" means formal, written consent by the City Council, or authorized representative of the City.
2. "Best Management Practices (BMPs)" Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. Common BMPs are described in the *Iowa SUDAS Standards and Specifications for Erosion and Sediment Control* and the recommendations provided on the SUDAS website: www.iowasudas.com. Those BMPs covered by SUDAS are not meant to be a comprehensive list of acceptable BMPs. BMPs must be adapted to the site and can be adopted from other sources.
3. "City" means the City of Grimes, Iowa.
4. "City Council" means the City Council of Grimes, Iowa.
5. "Construction Activity" includes but is not limited to construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. part 122.26(b)(15). This includes a disturbance to the land that results in a change to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and

movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating.

6. "Erosion" means the wearing away of land surface by wind or water. Erosion occurs naturally from weather or runoff, but can be intensified by land-clearing practices related to construction.
7. "Excavate or Excavation" means any land disturbing activities, by which organic matter, earth, sand, gravel, rock, trees, vegetation, or other ground cover is cleared, graded, cut into, dug, quarried, uncovered, removed, displaced, relocated or moved and shall include the conditions resulting therefrom.
8. "Final Stabilization" means that either:
 - a. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover as measured by the line transect method for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed;
 - b. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land) final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters and drainage systems and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in (a) above.
9. "National Pollutant Discharge Elimination System (NPDES)" is the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.
10. "Owner" means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease

holder; or the contracting government agency responsible for the construction activity.

11. "Permittee" Means a person or persons, firm or governmental agency or other institution that signs holding a permit which has not expired nor been revoked.

12. "Sediment Control" Means methods employed to prevent sediment from leaving the site. Sediment control practices include but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins.

13. "Stormwater" means storm water runoff, snow melt runoff and surface runoff and drainage. (NOTE: Agricultural storm water runoff is excluded by federal regulation 40 CFR 122.3(e) as amended through June 15, 1992.)

14. "Stormwater Pollution Prevention Plan (SWPPP)" is a plan as defined in the Iowa NPDES stormwater general permits.

15. "Surface Water or Waters" means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses and irrigation systems whether natural or artificial, public or private.

16. "Waters of the State" Iowa Code 455B.381 (10): "Waters of the state" means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the state" includes waters of the United States lying within the state.

102.03 FINDINGS.

1. The United States Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit program (Program) administered by the Iowa Department of Natural Resources (IDNR) requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of Grimes is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's

MS4 Permit is on file at the Grimes City Hall and is available for public inspection during regular office hours.

2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2, City Permits and any other requirement of state or federal law or administrative rule.
3. As a condition of the City's MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting an erosion and sediment control ordinance designed to achieve the following objectives:
 - a. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision ("applicant") required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall also be required to obtain from the City an Erosion and Sediment Control (E&SC) permit in addition to and not in lieu of the State NPDES General Permit #2; and
 - b. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and City Permits.
4. No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.
5. Terms used in this ordinance shall have the meanings specified in the Program.

102.04 APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A CITY EROSION AND SEDIMENT CONTROL (E&SC) PERMIT.

1. All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are required to obtain a City E&SC Permit.
2. Applications for City E&SC Permits shall be made on forms approved

by the City that may be obtained from City Hall. The application shall also include:

- a. A copy of the SWPPP prepared in accordance with this ordinance.
 - b. In the case of transfer of responsibility of the General Permit #2 for the site or a portion of the site, a signed copy of the agreement between the parties involved.
3. The applicant will be held responsible for one hundred percent (100%) of all city staff and consultant costs including but not limited to application, inspection, monitoring and enforcement responsibilities required to administer and enforce the permit program.
4. Failure of the applicant to pay fees associated with this ordinance within thirty (30) days of billing shall constitute a violation of this ordinance.
5. An applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City E&SC Permit:
- a. Applicant's plans, specifications and supporting materials previously submitted to the IDNR in support of applicant's application for the State NPDES General Permit #2;
 - b. Applicant's authorizations issued pursuant to applicant's State NPDES General Permit #2; and
 - c. A Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with this ordinance.
6. Every SWPPP submitted to the City in support of an application for a City Permit:
- a. shall comply with all current minimum mandatory requirements SWPPPS promulgated by the IDNR in connection with issuance of State NPDES General Permit #2; and
 - b. shall, if the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS,

comply with all mandatory minimum requirements pertaining to such application; and

c. shall comply with all other applicable state or federal permit requirements in existence at the time of the application; and

d. shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, or a person credentialed in a manner acceptable to the City.

7. All construction sites shall be furnished with a stabilized construction site entrance to handle the type and frequency of the traffic entering and exiting the site or make use of some other method designed to prevent off site tracking. Any Soils tracked off site shall be cleaned up by the permittee at the end of each day or before sediments enter public storm sewer or waters of the state. Any soils entering public storm sewer or waters of the state will be in violation of this ordinance.

8. Issuance by the City of a City E&SC Permit shall be a condition precedent for the issuance of a City Building Permit or Site Plan approval. Any land disturbing activities initiated without a City E&SC permit will be in violation of this ordinance.

9. For so long as a construction is subject to a State NPDES General Permit #2 or a City E&SC Permit, the applicant shall provide the City with current information as follows:

a. The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City E&SC Permit;

b. The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractor(s) that will implement each erosion and sediment control measure identified in the SWPPP.

c. Applicant's failure to provide current information shall constitute a violation of this ordinance.

10. Developers can transfer State NPDES General Permit #2 and the City E&SC Permit responsibilities to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing,

must agree to fulfill all obligations of the State NPDES General Permit #2 and the City E&SC Permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold.

11. Upon receipt of an application for a City E&SC Permit, the City shall either find that the application complies with this ordinance and issue a City E&SC Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application.

102.05 INSPECTION PROCEDURES FOR CITY E&SC PERMITS.

1. All inspections required under this ordinance shall be conducted by a person credentialed in a manner satisfactory to the city, hereinafter referred to as the "enforcement officer."

2. Applicant shall notify the City when all measures required by applicant's SWPPP have been accomplished on-site, whereupon the City may conduct an initial inspection for the purpose of determining compliance with this ordinance, and may within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance.

3. Construction shall not occur on the site at any time when the City has identified conditions of non-compliance or a stop work has been issued, in accordance to section 102.07.

4. Construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this ordinance.

5. The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

102.06 MONITORING PROCEDURES FOR CITY E&SC PERMITS.

1. Upon issuance of a City Permit, an applicant has a duty to monitor site conditions and to report to the enforcement officer any illegal offsite

discharges.

- a. Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty-four (24) hours of the change of circumstances or site conditions.
 - b. Failure to make a timely report shall constitute a violation of this ordinance.
2. Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of stormwater discharge in a manner inconsistent with the State NPDES General Permit #2 and/or City E&SC Permit.
 3. Upon receiving a report pursuant to the previous subsection, the enforcement officer may conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in Sections 102.07 and 102.08 below.
 4. Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer may conduct at least one unannounced inspection during the course of construction to monitor compliance with the State NPDES General Permit #2 and the City E&SC Permit. If the inspection discloses any significant non-compliance, the enforcement officer shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in Sections 102.07 or 102.08 below.
 5. The City shall not be responsible for the direct or indirect

Consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

102.07 ENFORCEMENT BY STOP WORK ORDER.

1. Whenever the enforcement officer finds any violation of this ordinance, the enforcement officer may issue a stop work order as an alternative to enforcement under SECTION 102.08 below. Such stop work order is subject to the following conditions:

a. The stop work order shall be in writing and shall be given to the applicant or the applicant's agent.

b. Upon issuance of the stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order.

c. The stop work order may be issued for a reasonable period to be determined by the City during which time the applicant will be allowed to correct the identified violations.

d. The applicant may reject the order by notifying the City, in writing, within five (5) business days of receipt of the stop work order. Upon receipt of such written rejection, the stop work order shall be deemed null and void and the City may undertake enforcement pursuant to Section 102.08 below.

2. If the violations cannot be corrected within the time frame determined by the City, applicant may seek an extension of stop work order for such additional period of time as allowed by the enforcement officer.

3. If the applicant does not reject the stop work order and corrects the identified violations within the designated period, the applicant may immediately commence further activity at the site and no further penalties or orders shall issue against the applicant for the violations identified in the previously issued stop work order. Prior to commencing further activity at the site, the applicant shall establish correction of the violations by providing to the office of the enforcement officer, a written statement, signed under oath, that the violations have been corrected with a description, including photographs when appropriate, of the action taken to correct the violations.

4. If the violations are not corrected within the designated period (with extensions), and no rejection notice has been given to the City pursuant

to 1(d) above, the City may commence a legal or administrative action against the applicant as set forth in SECTION 102.08 below.

5. Any person who shall continue any cited work after having been served with a stop work order, except such work as is necessary to correct the cited violations, shall be subject to penalties as stated in this ordinance.

102.08 ENFORCEMENT BY LEGAL OR ADMINISTRATIVE ACTION.

1. Violation of any provision of this ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this ordinance.

2. Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance.

3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

102.09 APPEAL.

1. Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the city council pursuant to the following rules:

a. The appeal must be filed in writing with the city clerk within twenty (20) business days of the decision or enforcement action.

b. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.

c. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.

d. The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

2. The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.