

Department Note: As MS4 Permittees demonstrate compliance differently and MS4 Permittees may have different MS4 permit conditions, the following written program procedure is intended to provide ideas on various formats. Therefore, please note the provided example may not be appropriate, as is, for your community. Additionally, the following is a written program procedure that has been submitted to the Department by a MS4 Permittee. However, the MS4 Permittee name have been removed to keep them anonymous.

City of H₂O's Construction Site Erosion Control Program

Introduction

The City of H₂O is required under its WPDES permit to continue to implement and enforce its program to control erosion and sediment from construction sites and establish measurable goals for its construction site pollutant control program. More specifically, the City's program at a minimum is required to:

- Maintain inspection and enforcement authority.
- Enforce permitting requirements and procedures.
- Review and approve plans that meet or exceed the City's Construction Site Erosion Control Ordinance and the Conservation Practice Standards approved by the Department.
- Update and enforce the City's Construction Site Erosion Control Ordinance to meet or exceed the requirements of NR 151.11 and 151.23 of the Administrative Code.
- Conduct compliance inspections of sites within the City's jurisdiction and to contact the Department if there are significant or repeat violations at a site or if there are threats or impacts to waters of the state.
- Maintain record of site inspections, including follow up necessary on sites out of compliance with their erosion control plans.
- Ensure that all City projects meeting applicability standards obtain permit coverage and comply with applicable standards.
- Enforce construction site erosion control standards on single family and commercial building sites which disturb one or more acres of land.

The purpose of this document is to memorialize the aspects, procedures, forms and records of the City's program to ensure adequate and consistent regulation, inspection and enforcement of the City's ordinance in compliance with the City's WPDES MS4 permit.

Ordinance

The City is granted authority to adopt a construction site erosion control ordinance under §62.234 Wis. Stats. The City Engineer or designee is granted the authority by the Common Council to administer and enforce the provisions of the ordinance. Portions of the ordinance have been revised from time to time to comply with the applicable provisions of NR 216 and NR 151 as required under the City's WPDES MS4 permit.

The purpose and intent of the construction site erosion control ordinance is to establish requirements for land disturbing activity that will minimize the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state and that will diminish the threats to public health, safety, welfare and the aquatic environment.

The ordinance applies to any construction site that has one or more acres of land disturbing construction activity. The construction site erosion control ordinance does not apply to:

- Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
- A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
- Nonpoint discharges from agricultural facilities or practices.
- Nonpoint discharges from silviculture activities.
- Routine maintenance for project sites with less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

Any person or entity wishing to undertake land disturbing construction activity subject to the City's ordinance must submit an application for a permit and an erosion and sediment control plan meeting the requirements of Section XX.XX of the City's Municipal Code. A copy of the of the permit application is contained in **Appendix A** and a copy of the Chapter XX of the Municipal Code (Construction Site Erosion Control, Post-Construction Storm Water Management and Illicit Discharge Ordinance) is contained in **Appendix B**.

Plan Review

Erosion and sediment control plans are subject to review the City's Engineering Staff or Engineering Consultant. Best Management Practices (BMP's) incorporated into the plans are reviewed for conformance with the design criteria, standards and specifications of:

- The design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of NR 151, Wis. Administrative Code.
- Soil loss prediction tools (such as the Universal Soil Loss Equation) when using an appropriate rainfall or runoff factor or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and period of disturbance.
- The City of H2O's Technical Standards (contained in **Appendix C**).

Erosion and sediment control plans shall comply with the with the performance standards identified in Section XXX of the Municipal Code. In general the plan will:

- Employ practices to prevent the movement of sediment and pollutants off site and into waters of the state; employ practices that discharge no more than 5 tons per acre per year from initial disturbance to final stabilization; incorporate preventative measures; locate BMP's to provide treatment of runoff prior to entering waters of the state; and follow an implementation plan and maintenance schedule. The minimum plan requirements are identified in Section XXXX of the Municipal Code.

Submitted sediment and erosion control plans which do meet the minimum plan requirements, performance standards or technical and design criteria shall not be accepted. Plans which are not accepted will be returned to the applicant with a letter documenting the plan deficiencies (see sample letter in **Appendix D**). Plans meeting the requirements of the Municipal Code will be accepted and an erosion control permit and letter issued to the applicant (see sample letter and permit in **Appendix E**).

Permitting and Compliance Inspections

Construction site sediment and erosion control permits require the permittee or responsible party to generally: notify the engineer before starting land disturbing construction activity; install the BMP's at the locations shown on the plans and following the sequence included in the plan; maintain and inspect all of the BMP's installed; allow the City to conduct compliance inspections; repair deficient practices; and to submit proposed changes to the plan to the City Engineer or designee for approval prior to implementing those changes. Permits are generally good for one year, or as long as the building permit, whichever is greater.

Compliance inspections of permitted sites are performed by City Engineering Staff or its consultant on a weekly basis or after every one-half inch of rainfall.

A report will be prepared following each inspection and will serve to document:

- the permittee; the name and location of the construction site; the date and time of day of the inspection; the name of the inspector; the condition of the site and the BMP's installed; any noted deficiencies; and any recommendations or suggested improvements.

Copies of the report will be sent to the City Engineer or designee, to the permit holder and to any other person designated by the permit holder as requiring a copy of the report. An example of a typical report is contained in **Appendix F**.

Deficiencies noted in the reports are required by WDNR NOI to be corrected within 24 hours. Reasonable expectations under the compliance inspections has been that corrections to deficient practices be made by the next compliance

The following written program procedure was submitted to the Wisconsin DNR by a MS4 Permittee. However, the MS4 Permittee name have been removed to keep them anonymous. Uploaded to MS4 BMP Menu January 2025.

inspection unless noted or directed otherwise. Examples of directing the permittee otherwise would be issuing Notices of Noncompliance (NON) or Notices of Violation (NOV); both of which are contained in **Appendix G**.

Enforcement

Construction sites which are not meeting the requirements of the City's sediment and erosion control ordinance are subject to enforcement. Sites subject to enforcement can typically be brought back into compliance through issuing a NON or NOV.

- A NON is generally issued for:
 - Deficiencies noted on the Compliance Inspection Reports are not being adequately addressed in a timely manner; construction activities that are out of sequence with the construction schedule ; a practice or activity which needs immediate attention; a practice or activity that is resulting in sediment laden discharges to an MS4 or waters of the state.
- The NON is typically sent to all those entities receiving a copy of the Compliance Inspection Report and should also include representatives of the WDNR. Hard copy of the NON (and NOV) shall be sent via registered mail and the delivery receipt kept on file. Documents sent via email shall be sent with the delivery and read receipts flags turned on.
- This is required to ensure the responsible party does indeed receive the NON and may be used to establish the day in which the document was received.
- Under the City's WPDES permit the WDNR is to be contacted if there are significant or repeat violations at a site, or if there are threats or impacts to waters of the state. The NON should identify the problem to be resolved (i.e. a practice that needs repair or maintenance or an activity that is resulting in discharges of sediment laden water off site) and a time frame for its resolution. A follow up inspection will be performed either when the responsible party requests the inspection or after the date and time specified in the NON. A report will be completed documenting the inspection and forwarded to each of the designated recipients. If the

problem identified in the NON has been resolved, then no further action is required. If the problem has not been resolved, a NOV will be required.

- Similar to an NON, an NOV identifies the problem(s) to be resolved and provides either an expected time frame for its resolution or informs the responsible party to contact the City when they are ready for an inspection.
 - Unlike an NON, an NOV informs the responsible party that financial penalties are being assessed for each day the problem(s) remain unresolved and identifies the date which fines will begin. Under Chapter XX of the Municipal Code, penalties can range from \$50 per day to \$500 per day; each day a violation exists constituting a separate offense. A report will be created documenting each inspection made and whether the offending issue has been resolved. Documentation is crucial for levying fees. The number of days between the date identified in the NOV and the date the site was determined to be compliant will be used to determine the total dollar amount to be assessed against the responsible party.
- The aforementioned enforcement actions (NON and NOV) are typically all that is required to bring a construction site back into compliance with the accepted plans and the Municipal Code. However, there are times when these types of enforcement actions may not be enough.
 - In such situations a call to the WDNR requesting assistance and site inspection may be appropriate. The WDNR is generally willing to provide assistance to help permitted communities enforce permit requirements.
 - Additionally, many contractors, developers and engineers may have more respect for the WDNR than local communities. Other options provided under Section XXXX of the Municipal code are:
 - Issuing a stop work order on the site; revocation of the permit; or request the City Attorney obtain a cease-and-desist order for the work on the site.
- The Sheriffs Department is the entity responsible for levying fines against a responsible party. Once a site is brought back into compliance after issuing an NOV, the number days the site was in violation of the Municipal code can be determined and a total fine to be levied determined.

- A brief report will need to be prepared for the Sheriff documenting the events leading up to the enforcement action(s), the portions of the Municipal Code violated and the recommended fine to be levied.
- This report is titled Recommended Fines for Notice of Violation of Chapter XX of the City's Municipal Code, a sample of which is contained in **Appendix H**.
- It is a good idea and has been standard practice to attach copies of the supporting or referenced documents for use as evidence by the Sheriff's Department or prosecuting attorney. The completed document should be scanned as a pdf and sent to the Sheriff's Department. A copy of the scanned document shall be saved to the file and the hard copy retained.

Filing, Records Retention and Database

Erosion and sediment control permits are tracked in an access database located at: p:\filing database\CityH2Omaster filing database.accdb.

- The database contains a number of tables and forms to store and enter data. A permit number is given to a project based upon the year the plans were accepted and the number of permits written thus far in that permitting year.
 - Therefore, the third project to receive a sediment and erosion control permit in 2018 would have a permit number **EC-2018-003**. This number would be entered into the General Project Data table and the Construction Site Erosion Control form or table (along with other pertinent data regarding the project and permit holder).
 - The tables are used to catalog and track the number of permits issued in a given year, the date permits are issued and closed, the number and type of enforcement actions taken against the permit and the amount of recommended fines for violations of that permit.
- Enforcement actions are entered using the EC Enforcement Action table or form. Enforcement Actions are numbered based upon the permit number and the number of enforcement actions issued against that permit. For example the fifth action taken against permit number EC-2018-003 would be numbered EA-2018-003.05.

Hard copy and electronic copy of compliance reports, permits, enforcement actions and recommendations of fines are stored in paper files and electronic files on the engineering (or x: drive) portion of the network.

- Records of such data are required to be kept by WPDES MS4 permit for a minimum period of 5 years (presumably starting from the time the permit is closed). It is recommended to retain copies of enforcement actions and fines for as long as the project folder is retained.
- Paper copies of erosion control reports can be destroyed after the 5-year retention period. The electronic copies of the reports may be deleted after the 5-year retention period at the discretion of the City Engineer.

Appendix A

Erosion Control and Storm Water Management Permit Application

APPLICATIONS USED DURING CONSTRUCTION SITE PERMITTING

Appendix B

Chapter XX of the Municipal Code

Erosion Control and Post Construction Storm Water Management Ordinances

Appendix C

City of H₂O's Technical Standards

DOCUMENTS USED FOR REVIEW OF CONSTRUCTION APPLICATIONS

Appendix D

Sample Review Letter

APPLICABLE DOCUMENTATION USED TO COMMUNICATE REVIEW OF PLANS

Appendix E

Sample Erosion Control Permit and Letter

*TEMPLATE PERMIT ISSUED TO PERMITTEE AND ANY OTHER DOCUMENTATION
USED TO ISSUE THE PERMIT*

Appendix F

Sample Compliance Inspection Report

EROSION CONTROL INSPECTION REPORT USED TO DOCUMENT INSPECTIONS

Appendix G

Sample Notice of Noncompliance and Notice of Violation

*LETTER TEMPLATES OR EXAMPLES OF NOTICE OF NONCOMPLIANCE OR NOTICE OF
VIOLATIONS*

Appendix H

Sample Recommended Fines for Violation of Chapter XX of the City's Municipal Code

EXAMPLES OR RESOURCES FOR CERTAIN NONCOMPLIANCE SITUATIONS