

## 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 and all references made herein are 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.

(C) The Approving Agency for this chapter is the City of Frankfort Public Works Department and its duly authorized designees, who are responsible for implementing all the provisions within and referenced by this chapter.

(Ord. 9, 2005, passed 6-27-05; Am. Ord. 2, 2018, passed 2-26-18)

### § 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 with appropriate erosion and sediment control BMPs;

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(2) Establish guidelines, conservation practices and planning activities which minimize adverse impacts to water quality and promote the utilization of Good Housekeeping measures that, at a minimum, are as proactive as Kentucky's General Permit for Stormwater Construction Sites;

(3) Establish procedures for site-plan reviews that, at a minimum, verify compliance with local ordinances and submittal of an eNOI or NOI, and protect High Quality Waters that are being discharged into from construction sites;

(4) Establish procedures for site inspections and enforcement of control measures;

(5) Establish procedures for the receipt and consideration of information submitted by the public;

(6) 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 System (NPDES) 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; Am. Ord. 2, 2018, passed 2-26-18)

### § 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.

**APPROVING AGENCY.** The City of Frankfort Public Works Department and its duly authorized designees, who are responsible for implementing all the provisions within and referenced by 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.

**EPSC (EROSION PROTECTION AND SEDIMENT CONTROL).** The prevention of 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.** The wearing away of the ground surface as a result of the movement of wind, water, ice, and/or land disturbance activities.

**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 (NOD 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.

**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; Am. Ord. 2, 2018, passed 2-26-18)

#### § 53.04 DESIGN AND MAINTENANCE REQUIREMENTS.

The City of Frankfort has adopted a Stormwater Procedures Manual that is a compilation of rules, design criteria, and standards of proven methods for controlling construction related surface runoff, erosion, and sedimentation. The Stormwater Procedures Manual shall be used as a guide during the design and selection of appropriate erosion protection and sediment control (EPSC) measures and required as part of any Land Disturbance Activity in the City of Frankfort. Maintenance of EPSC measures shall also be performed to further minimize adverse impacts on water quality.  
(Ord. 7, 2005, passed 6-27-05; Am. Ord. 2, 2018, passed 2-26-18)

#### § 53.05 PERMITTING PROCESS.

The Stormwater Procedures Manual describes the Land Disturbance permitting process within the City of Frankfort. It includes the types of permits required by the City for land disturbance activities, lists the required submittal materials, and describes the review process for the each application. Complying with the provisions of this chapter and references materials does not exempt the permittee (applicant in whose name a valid Land Disturbance Permit is duly issued”) from obtaining coverage from the Kentucky Division of Water (KDOW) under the KPDES Storm Water General permit for storm discharges related to construction activities. By approving a plan under this chapter, the City of Frankfort does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs.  
(Ord. 2, 2018, passed 2-26-18)

#### § 53.06 INSPECTION.

Any person who takes responsibility for any land development shall ensure that soil erosion, sedimentation, increased pollutant loads, and changes in water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The Approving Agency or its duly authorized representatives shall make inspections of land disturbing activities subject to this chapter, to ensure compliance with the approved Land Disturbance Permit and to examine field practices to determine if control measures are adequate. Authorized inspectors of the Approving Agency 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. 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. All updates to EPSC measures shall be accurately noted in the SWPPP.  
(Ord. 2, 2018, passed 2-26-18)

**§ 53.07 ENFORCEMENT.**

(A) *Enforcement Authority.* The Approving Agency shall be responsible for the enforcement of this chapter. Duly authorized representatives have the authority to issue Notices of Violation (NOV) and Stop Work Orders (SWO).

(B) *Conditions Warranting NOV and/ or SWO.* A NOV and/or SWO 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 SWPPP is not being fully implemented.
- (3) Any of the conditions of the Land Disturbance permit are not being met.

An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a separate offense to be enforced.

(C) *Notice Procedures for NOV and SWO.* For the purposes of this section, a NOV and/or SWO order is validly posted by posting a copy of the NOV and/or SWO 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 NOV and/or SWO, in the case of work for which there is a Land Disturbance 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 NOV and/ or SWO shall be mailed to the person listed as the landowner of the property.

(D) *Notice of Violation Procedures.* An NOV is the first level of enforcement and does not include a monetary fine or penalty. Offenses enforced through a NOV must be corrected within five (5) calendar days of the date of issuance or a Stop Work Order will be issued.

(E) *Stop Work Order Procedures.* An SWO shall be issued if an NOV is not corrected within five (5) calendar days of the date of issuance of the NOV, or for an offense of the same nature as a previous offense, even if previously corrected under an NOV. An SWO may also be issued if the Approving Agency reasonably determines that the violation is so severe as to require proceeding to an SWO without first issuing an NOV to adequately ensure the purposes of this chapter are met. An SWOs shall include a civil penalty, or fine, for each occurrence violating this chapter and shall be paid to the City prior to release. Fines shall be payable by check to the City of Frankfort.

- (1) First SWO = \$250.00 fine.
- (2) Second SWO = \$500.00 fine and permit revocation.

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If the permittee does not comply with the requirements of the SWO and pay the accompanying fine within five (5) calendar days of issuance, the Approving Agency may revoke the permit. If a permittee is issued a second SWO, the permittee must pay the accompanying fine within five (5) calendar days of issuance, and permit revocation is automatic. If the permittee does not pay the civil penalty within the specified time, the penalty may be recovered by the city in a civil action in the nature of debt by filing a petition with the court of appropriate jurisdiction.

(F) *Injunctions*. If the landowner or developer where no Land Disturbance permit has been issued does not cease the land disturbance activity, the Approving Agency may request the City Attorney to seek to obtain injunctive relief.

(G) *Permit Reinstatement*. Upon revocation of permit, the permittee shall bring the site back into compliance prior to re-inspection by the Approving Agency. If the site is found acceptable, and upon receipt of any fines, or penalties, the Approving Agency will reinstate the permit.

(H) *Notice of Intent*. Ten (10) calendar days after posting a stop-work order, the Approving Agency may issue a Notice of Intent to the Permittee, landowner, or land user of the Approving Agency's intent to perform work necessary to comply with this chapter. The Approving Agency may go on the land and commence work after fourteen (14) days from issuing the Notice of Intent. The costs incurred by the Approving Agency to perform this work shall be paid by the landowner, land user or permittee. In the event no EPSC permit was issued or no bond was posted, the cost, plus a reasonable administrative and attorneys fee shall be billed to the land owner.

(I) *Immediate Abatement*. The Approving Agency 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.

(J) *Legal Action and Injunctions*. Should the Approving Agency 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. Compliance with the provisions of this chapter may also be enforced by injunction.  
(Ord. 7. 2005. passed 6-27-05; Am. Ord. 2, 2018, passed 2-26-18)

### § 53.08 COMPATIBILITY WITH OTHER PERMITS AND ORDINANCE REQUIREMENTS.

The requirements of this chapter should be considered minimum requirements, and where any provisions of this chapter impose restrictions different from those imposed by any other applicable ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or



impose higher protective standards for human health or the environment shall be considered to take precedence.

(Ord. 2, 2018, passed 2-26-18)

**§ 53.09 SEVERABILITY.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this chapter.

(Ord. 2, 2018, passed 2-26-18)

**§ 53.10 INCORPORATION BY REFERENCE.**

The “City of Frankfort Stormwater Procedures Manual, 2018 edition”, which is attached to this chapter as Exhibit A, is hereby adopted in its entirety by reference, as if fully set forth in this chapter. A copy of the Manual shall be made a part of the permanent records of the City and shall be maintained on file in the Office of the City Clerk for public inspection.

(Ord. 2, 2018, passed 2-26-18)

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