



TO: Development Community
FROM: Andy Harter – Engineering Assistant/ Stormwater Program Manager
DATE: 11/16/09
RE: NPDES Construction Ordinance Summary

Introduction

Take a look around the City of Kearney and you will see that construction activity can move a lot of soil. Whether the construction project requires mass grading for a new subdivision, excavation for a new residential basement, or installation of new infrastructure, the results of moving sediment can have a negative impact on water quality. The existing and future quality of local waterways is an important part of what makes Kearney such an attractive city to residents and visitors. To protect water quality and to comply with state and federal mandates, the City of Kearney must adopt ordinances that control the discharge of sediment from construction activities. This fact sheet provides an overview of the proposed impacts of new ordinances under consideration.

What is the purpose of a new construction stormwater ordinance?

A review of the existing rules and standards that control construction activity has found them to be insufficient. Although the City has adopted a basic grading ordinance and site inspection procedures within the past few years additional oversight is required. According to the Environmental Protection Agency (EPA) and Nebraska Department of Environmental Quality (NDEQ), municipalities like Kearney must have “adequate enforceable authority” to accomplish three requirements. They must:

- Require a program of **PLAN REVIEW** for all construction activity that disturbs an acre of soil or more. This includes construction on less than an acre if the project is part of a common plan of development or sale.
- Require **INSPECTIONS** of all construction activity that disturbs an acre of soil or more.
- Address construction activity that is in non-compliance with the requirements of the ordinance and locally approved standards with **ENFORCEMENT PROCEDURES**.

How will the new ordinance effect construction in Kearney?

The proposed ordinances have been carefully crafted to make sure the City is in compliance with the minimum requirements of the NDEQ permit. These requirements will cause all construction activity to use Best Management Practices (BMPs) that are approved by Public Works and Development Services. During construction, sediment must be kept in place using BMPs specifically designed for each construction site. If BMPs are not designed, installed and maintained properly sediment and other potential pollutants are likely to leave the construction site and impact local streams, lakes and rivers. New ordinances will require the active management of BMPs to become a required component of all construction activity.

Who will be impacted by the new ordinance?

The requirement for the City to adopt comprehensive ordinances is intended to cause every party involved with the construction industry to take actions that protect water quality. City staff is required to review, approve, and enforce all construction plans and inspect construction sites to make sure stormwater is protected. Developers and home builders are required to ensure appropriate BMPs are selected, installed, and maintained. They may do this themselves or hire a qualified individual to make sure their site is in compliance. Finally, trade contractors, temporary laborers, delivery drivers, utility contractors and anyone else visiting a regulated construction site can also cause pollutants to leave the site. This last group can be difficult to control during construction, but it is in the responsibility of the permitted party for the project to work with them to follow the permit requirements.

What are the financial impacts on development and construction?

The proposed ordinances account for the City's desire to not place an undue financial burden on development and construction. All communities in Nebraska with populations of 10,000 or more have been issued a permit and are required to meet these state and federal requirements. These communities control what are called Municipal Separate Storm Sewer Systems (MS4); which are regulated by a state water quality permit. Non-compliance with the terms of the state issued permit could place the City in substantial risk for fines and expensive consent orders. Furthermore, an effective construction program overseen by the City can help local construction activity comply with state and federal-level construction stormwater requirements.

For developers and contractors, the cost of compliance will be commensurate with the scope of the construction project. For developments larger than one acre, a Stormwater Pollution Prevention Plan (SWPPP) must be prepared and submitted to the City for review and approval. This has been a state requirement since 1997. No additional cost is expected beyond what is already required by the state permit. The local review and approval process will take place within existing development approval processes and no local permit will be required.

For construction sites less than one acre that are part of a larger common plan of development the City will work with contractors at the building permit phase to identify a "Small Lot-SWPPP" that best fits the specific construction site. The Small Lot -SWPPP will include appropriate BMPs that will be installed and maintained as well as inspection and reporting requirements that must be followed. Selection and management of BMPs is site-specific and therefore costs are difficult to estimate, although an estimate of \$500-\$1,500 per lot could be anticipated. In most cases much of this cost is already required under the current City grading ordinance. No fee is proposed for the Small Lot -SWPPP process.

How will the new ordinance be enforced?

The details of an Enforcement Plan will be finalized in 2010 when new ordinances go into effect. It is important to the City that the approved plan be equitable to everyone involved in the construction industry. The City anticipates that when a SWPPP or Small Lot-SWPPP is approved, the responsible party will sign a certification of acknowledgement indicating they agree to follow the terms of the approved plan. From that point until construction is completed the City may use any combination of verbal warnings, compliance orders, stop work orders, permit revocation, fines or civil proceedings. Some MS4s require cash escrow payments upfront as a financial security for non-compliance. At this time the City will not proceed with this enforcement option. All parties involved are encouraged to keep complete and accurate documentation of construction stormwater compliance efforts during the construction activity.

Where can I direct questions and comments?

Please provide feedback to:

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