

## CHAPTER 161: STORMWATER MANAGEMENT AND EROSION CONTROL ACTIVITIES

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### § 161.01 AUTHORIZATION, PURPOSE, SCOPE, AND INTERPRETATION.

#### (A) *Statutory authorization.*

(1) This chapter is adopted pursuant to the authorization and policies contained in M.S. Chapters 103B, 103D, and 462; Minn. Rules, Parts 6120.2500- 6120.3900; and Minn. Rules Chs. 8410 and 8420.

(2) This chapter is intended to meet the construction site erosion and sediment control and post-construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES Permit) as defined in 40 CFR 122.26(b)(14)(x) and (b)(15), respectively.

(3) This chapter is intended to meet the Minimal Impact Design Standards (MIDS) developed under M.S. § 115.03, Subd. 5c.

(B) *Purpose.* The purpose of this chapter is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property and natural resources within the city from construction site erosion and post-construction stormwater runoff. Specifically, the chapter establishes regulatory requirements that:

- (1) Meet MIDS performance standards;
- (2) Assist in meeting NPDES/SDS construction stormwater general permit requirements;
- (3) Assist in meeting total maximum daily load (TMDL) plan wasteload allocations for impaired waters through quantification of load reductions;
- (4) Assist in meeting policies and performance standards of the Middle St. Croix Water Management Organization (MSCWMO);
- (5) Protect life and property from dangers associated with flooding;
- (6) Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion;
- (7) Ensure site design minimizes the generation of stormwater runoff and maximizes previous areas for stormwater treatment

within the context of the allowable use;

(8) Provide a single, consistent set of performance goals that apply to all developments;

(9) Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxins, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants;

(10) Promote infiltration and groundwater recharge;

(11) Provide vegetated corridors (buffers) to protect water resources from development;

(12) Protect functional values of all types of natural waterbodies (e.g., rivers, streams, wetlands, lakes, seasonal ponds); and

(13) Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems.

(C) *Scope.* Land shall not be developed for any use without providing stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from such developments.

(D) *Greater restrictions.*

(1) *Relationship to WD/WMO requirements.* All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the relevant watershed management organization or watershed district. In the case of conflict between provisions of this chapter and other stormwater regulations, the strictest provisions shall apply to land development and/or land disturbing activities.

(2) *Relationship to existing easements, covenants, and deed restrictions.* The provisions of this chapter are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions the provisions of this chapter shall prevail.

(E) *Severability.* The provisions of this chapter are severable, and if any provision of this chapter, or application of any provision of this chapter to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this chapter must not be affected thereby.

(Ord. 7553, passed 3-15-2016)

## **§ 161.02 APPLICABILITY.**

(A) *Stormwater management permit.* Unless otherwise exempted by § 161.03, an approved stormwater management permit shall be required prior to any proposed land development activity that meets any of the criteria in (1) through (5) of this division. All stormwater management permits shall include an erosion and sediment control plan (ESC plan) or a stormwater pollution prevention plan (SWPPP).

(1) Any project that creates or fully reconstruct 6,000 square feet or more of impervious surface.

(2) All major subdivisions or minor subdivisions that are part of a common plan of development.

(3) Projects within the St. Croix Riverway that add 500 square feet of additional impervious surface.

(4) Any project requiring a variance from the current local impervious surface zoning requirements for the property.

(5) Any land development activity, regardless of size, that the city determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

(B) *Erosion and sediment control plan.* Unless otherwise exempted by § 161.03, a grading and filling permit including an erosion and sediment control plan shall be required prior to any proposed land disturbing activity that meets any of the criteria in (1) through (3) of this division.

(1) Any project undertaking grading, filling, or other land alteration activities which involve movement of 100 cubic yards of earth or removal of vegetation on greater than 10,000 square feet of land.

(2) Any project with wetland impacts, grading within public waters, grading within buffers or within 40-feet of the bluff line.

(3) Any land disturbing activity, regardless of size, that the city determines is likely to cause an adverse impact to an

environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this chapter.

(C) *Buffers.*

(1) A buffer of unmowed natural vegetation shall be required upslope of wetlands, lakes and streams prior to any proposed land development that meets any of the criteria below, unless otherwise exempted in § 161.03.

(2) Sites that have been:

(a) Subdivided or split; or

(b) Subject to a new primary use for which a necessary rezoning, special use permit or variance has been approved.

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### § 161.03 EXEMPTIONS.

The following activities shall be exempt from all of the requirements of this chapter:

(A) Emergency work necessary to protect life, limb, or property;

(B) Routine agricultural activity such as tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt including activities such as construction of structures; or

(C) Silvicultural/forestry activity.

(Ord. 7553, passed 3-15-2016)

### § 161.04 DEFINITIONS.

Words or phrases used in this chapter shall have the meanings as defined by Appendix B of the Minnesota Construction Stormwater Permit No: MN R100001 (Construction Permit) available at (<http://www.pca.state.mn.us/wfhy5b>). If not defined in the construction permit, then words or phrases shall be interpreted to have the meaning they have in common usage. Words or phrases shall be interpreted so as to give this chapter its most reasonable application. For the purpose of this chapter, the words **MUST, SHALL, and WILL** are mandatory and not permissive.

**APPLICANT.** The owner of land submitting an application under the provisions of this chapter for a stormwater and/or erosion control permit to be issued by the community.

**ATLAS 14.** The precipitation frequency estimates released by the National Weather Service Hydrometeorological Studies Design Center. Volume 8, released in 2013, provides precipitation frequency estimates for many midwestern states, including Minnesota.

**BEST MANAGEMENT PRACTICES or BMPs.** The most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.

**BETTER SITE DESIGN.** The control and management of stormwater quantity and quality through the application of better site design techniques as outlined in the current version of the Minnesota Stormwater Manual: ([http://stormwater.pca.state.mn.us/index.php/Main\\_Page](http://stormwater.pca.state.mn.us/index.php/Main_Page)). Better site design includes: preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.

**COMMON PLAN OF DEVELOPMENT OR SALE.** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

**CONSTRUCTION ACTIVITY.** Includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction

activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. Rules 709.0080, subp. 4. This includes a disturbance 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. Construction activity includes the disturbance of less than 1 acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more. Construction activity does not include a disturbance to the land of less than 5 acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

**DEVELOPMENT, NEW.** Any development that results in the conversion of land that is currently prairie, agriculture, forest, or meadow and has less than 15% impervious surface. Land that was previously developed, but now razed and vacant, will not be considered new development.

**DEWATERING.** The removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources (DNR) water appropriation permit, and if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.

**ENERGY DISSIPATION.** Methods employed at pipe outlets to prevent erosion caused by the rapid discharge of water scouring soils. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

**EROSION AND SEDIMENT CONTROL PLAN or ESC PLAN.** A plan for projects disturbing less than 1 acre that is in compliance with the minimum requirements of the MSCWMO and VBWD. The plan identifies erosion prevention and sediment control practices, location and timelines for installation. The plan also includes responsible parties and timelines for inspection and maintenance.

**EROSION PREVENTION.** Measures employed to prevent erosion. Examples include but are not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.

**FULLY RECONSTRUCTED IMPERVIOUS SURFACE.** Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects, and pavement rehabilitation projects that do not alter underlying soil material beneath the structure, pavement, or activity are not considered fully reconstructed impervious surfaces. Reusing the entire existing building foundation and re-roofing of an existing building are not considered fully reconstructed.

**GENERAL CONTRACTOR.** The party who signs the construction contract with the owner or operator to construct the project described in the final plans and specifications. Where the construction project involves more than 1 contractor, the general contractor could be the party responsible for managing the project on behalf of the owner or operator. In some cases, the owner or operator may be the general contractor. In these cases, the owner may contract an individual as the operator who would become the co-permittee.

**GREEN INFRASTRUCTURE.** A wide array of practices at multiple scales that manage wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring, or harvesting and using stormwater. On a regional scale, green infrastructure is the preservation or restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On a local scale, green infrastructure consists of site and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.

**IMPERVIOUS SURFACE.** A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

**LAND DISTURBANCE.** Any activity that results in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

**LINEAR PROJECT.** Construction or reconstruction of roads, trails, sidewalks, and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.

**MAJOR SUBDIVISION.** All subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of 4 or more lots, or any size subdivision requiring any new street or extension of an existing street.

**MINOR SUBDIVISION.** Any subdivision containing 3 or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM or NPDES.** The program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (§§ 301, 318, 402, and 405) and CFR Title 33, §§ 1317, 1328, 1342, and 1345.

**NORMAL WETTED PERIMETER.** The area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur from a 2-year 24-hour storm event.

**NOTICE OF TERMINATION.** Notice to terminate coverage under this permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.

**OPERATOR.** The person designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The operator must be named on the permit as the permittee.

**OWNER.** 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, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.

**PERMANENT COVER.** Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, riprap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.

**PERMITTEE.** A person or persons, firm, or governmental agency or other entity that signs the application submitted to the MPCA and is responsible for compliance with the terms and conditions of the construction permit.

**PUBLIC WATERS.** All water basins and watercourses that are described in M.S. § 103G.005 Subd. 15.

**REDEVELOPMENT.** Any development that is not considered new development.

**RETAIN.** Manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.

**ST. CROIX RIVERWAY.** All lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.

**SATURATED SOIL.** The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

**SEDIMENT CONTROL.** Methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.

**SMALL CONSTRUCTION ACTIVITY.** Small construction activity as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than 1 acre and less than 5 acres. Small construction activity includes the disturbance of less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than 1 and less than 5 acres.

**STABILIZED.** Exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90% ground coverage (typically 2 ton/acre).

**STANDARD PLATES.** General drawings showing a common or repeated construction activity or practice.

**STORMWATER.** Defined under Minn. Rules 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

**STORMWATER POLLUTION PREVENTION PLAN or SWPPP.** A plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease

soil erosion on a parcel of land and decrease off-site nonpoint pollution.

***SURFACE WATER*** or ***WATERS***. All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

***TEMPORARY EROSION PROTECTION***. Methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

***UNDERGROUND WATERS*** or ***GROUNDWATER***. Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term ***GROUNDWATER*** shall be synonymous with ***UNDERGROUND WATER***.

***WATERS OF THE STATE***. (As defined in M.S. § 115.01, Subd. 22) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

***WETLAND*** or ***WETLANDS***. Defined in Minn. Rules 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

- (1) A predominance of hydric soils;
- (2) Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
- (3) Under normal circumstances support a prevalence of such vegetation.

(Ord. 7553, passed 3-15-2016)

## **§ 161.05 PERMIT REVIEW PROCESS.**

(A) *Pre-application meeting*. At the discretion of the Zoning Administrator, the city shall facilitate a pre-application meeting with the applicant, city staff (or their authorized representative), and staff of relevant partner agencies (e.g. WCD, MSCWMO, MDNR, etc.). The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of the chapter.

(B) *Application completeness review*. The city shall make a determination regarding the completeness of a permit application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.

(C) *Application review*. The applicant shall not commence any construction activity subject to this chapter until a permit has been authorized by the city.

(D) *Permit authorization*. If the city determines that the application meets the requirements of this chapter, the city will issue approval authorizing the project or activity. The approval shall be valid for 1 year.

(E) *Permit denial*. If the city determines the application does not meet the requirements of this chapter the application must be denied. If the application is denied, the applicant will be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin.

(F) *Plan information requirements*. The minimum information requirements of the application shall be consistent with the requirements in the most recent version of the NPDES/SDS construction stormwater general permit and Middle St. Croix WMO. The application information must also include permanent treatment information showing the proposed project meets the MSCWMO or VBWD performance goals.

(G) *Modification of permitted plans*. The applicant must amend an approved ESC plan or SWPPP to include additional requirements such as additional or modified BMPs designed to correct problems whenever:

(1) There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface water or underground water.

(2) Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface water or underground water or that the discharges are causing water quality standard exceedances.

(3) The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.

(H) *Permit completion.* Before work under the permit is deemed complete, the permittee must submit as-builts, a long term maintenance plan and information demonstrating that the stormwater facilities conform to design specifications.

(Ord. 7553, passed 3-15-2016)

## **§ 161.06 SITE DESIGN AND MIDS CALCULATOR.**

(A) *Better site design.* Whenever possible, development projects shall be designed using the better site design techniques of the current version of the Minnesota Stormwater Manual.

(B) *MIDS calculator.* Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS calculator (or other model that shows the performance goal can be met) and shall meet the performance goals in § 161.07.

(C) *Buffer requirement.* Buffer locations and widths must comply with the State of Minnesota, Minnesota Pollution Control Agency, and Middle St. Croix Watershed Management Organization standards.

(Ord. 7553, passed 3-15-2016)

## **§ 161.07 STORMWATER VOLUME REDUCTION PERFORMANCE STANDARDS.**

Any applicant for a stormwater management permit as defined in § 161.02 must meet all of the following performance goals:

(A) *New development volume control.* For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.

(B) *Redevelopment volume control.* Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.

(C) *Linear development volume control.* Linear projects on sites without restrictions that create new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:

(1) 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site; or

(2) 1.1 inches of runoff from the net increase in impervious area on the site. Mill and overlay and other resurfacing activities are not considered fully reconstructed.

(D) *Flexible treatment alternatives for sites with restrictions.* Applicant shall attempt to comply fully with the appropriate performance standards described above. Alternatives considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site. If full compliance is not possible due to any of the factors listed below, the applicant must document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment alternatives shall be used:

(1) Applicant shall document the flexible treatment alternatives sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below. If Alternative #2 cannot be met then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below. When all of the conditions are fulfilled within an alternative, this sequence is completed.



(2) Volume reduction techniques considered shall include infiltration, reuse and rainwater harvesting, and canopy interception and evapotranspiration and/or additional techniques included in the MIDS calculator and the Minnesota Stormwater Manual.

(3) Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs. Factors to be considered for each alternative will include:

- (a) Karst geology;
- (b) Shallow bedrock;
- (c) High groundwater;
- (d) Hotspots or contaminated soils;
- (e) Drinking water source management areas or within 200 feet of drinking water well;
- (f) Zoning, setbacks or other land use requirements; and
- (g) Poor soils (infiltration rates that are too low or too high, problematic urban soils).

(4) *Alternative #1.* Applicant attempts to comply with the following conditions:

(a) Achieve at least 0.55-inch volume reduction from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment or linear development site;

(b) Remove 75% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site; and

(c) Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

(5) *Alternative #2.* Applicant attempts to comply with the following conditions:

(a) Achieve volume reduction to the maximum extent practicable;

(b) Remove 60% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site; and

(c) Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

(6) *Alternative #3. Off-site treatment.* Mitigation equivalent to the performance of 1.1 inches of volume reduction for new development, linear development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving water body. Off-site treatment shall be achieved in areas selected in the following order of preference:

(a) Locations that yield benefits to the same receiving water that receives runoff from the original construction activity;

(b) Locations within the same Department of Natural Resource (DNR) catchment area (Hydrologic Unit 08) as the original construction activity;

(c) Locations within the next adjacent DNR catchment area upstream; and

(d) Locations anywhere within the city's jurisdiction. The MIDS design sequence flowchart can be found in the Minnesota Stormwater Manual: ([http://stormwater.pca.state.mn.us/index.php/Flexible\\_treatment\\_options](http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options).)

(Ord. 7553, passed 3-15-2016)

## **§ 161.08 STORMWATER MANAGEMENT RATE CONTROL.**

For new development, redevelopment and linear development sites the site design shall provide on-site treatment during construction and post-construction to ensure no increase from existing conditions in offsite peak discharge for the 1-year, 2-year, 10-year, and 100-year, 24-hour storm events based on the standards defined by the MSCWMO or VBWD. For single family residential building lots not part of a common plan of development site, rate control requirements do not apply.



(Ord. 7553, passed 3-15-2016)

### **§ 161.09 OTHER DESIGN STANDARDS.**

(A) *Minnesota Stormwater Manual.* All volume control for water quality and quantity and site design specifications shall conform to the current version of the Minnesota Stormwater Manual.

(B) *NPDES/SDS construction stormwater general permit.* All volume control and water quality and quantity best management practice design specifications shall conform to the current version of the NPDES/SDS construction stormwater general permit.

(C) *Site erosion and sediment control requirements.* All erosion and sediment control requirements shall conform to the current requirements of NPDES/SDS construction stormwater general permit.

(D) *Watershed district/WMO requirements.* All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the watershed districts or watershed management organizations in which the project is located. In case provisions in this chapter and requirements of the watershed district or watershed management organizations overlap or conflict, the strictest provisions shall apply to the activities.

(E) Where applicable, a minimum of 20-feet shall be provided on all sides of all publicly owned stormwater facilities for facility maintenance.

(Ord. 7553, passed 3-15-2016)

### **§ 161.10 INSPECTIONS AND MAINTENANCE.**

(A) *Inspections and record keeping.*

(1) *Applicant responsibilities.* The applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.

(2) *City inspections.* The city reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project.

(B) *Right of entry and inspection; powers.* The issuance of a permit constitutes a right-of-entry for the city or its authorized representative to enter upon the construction site. The applicant shall allow the city and its authorized representatives, upon presentation of credentials, to:

(1) Enter upon the permitted site for the purpose of obtaining information, examining records, and conducting investigations or surveys;

(2) Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations;

(3) Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;

(4) Inspect the stormwater pollution control measures;

(5) Sample and monitor any items or activities pertaining to stormwater pollution control measures; and

(6) Correct deficiencies in stormwater and erosion and sediment control measures.

(C) *Fees.* Fees will be applied per city fee schedule.

(D) *Enforcement tools/stop work orders.* The city reserves the right to issue construction stop work orders when cooperation with inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment.

(1) *Construction stop work order.* The city may issue construction stop work orders until stormwater management measures meet specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the city must follow before the construction project work can resume.

(2) *Other actions to ensure compliance.* The city can take any combination of the following actions in the event of a failure by an applicant to meet the terms of this chapter:

- (a) Withhold inspections or issuance of certificates or approvals;
- (b) Revoke any permit issued by the city to the applicant;
- (c) Conduct remedial or corrective action on the development site or adjacent site affected by the failure;
- (d) Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within 30 days, payment will be made from the applicant's financial securities;
- (e) Bring other actions against the applicant to recover costs of remediation or meeting the terms of this chapter; and
- (f) Any person, firm or corporation failing to comply with or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

(E) *Long term inspection and maintenance of stormwater facilities.*

(1) *Private stormwater facilities.*

(a) *Maintenance plan required.* No private stormwater facilities may be approved unless a maintenance agreement is provided that defines who will conduct the maintenance, the type of maintenance necessary to ensure effective performance, and the maintenance intervals. All private stormwater facilities shall be inspected by the property owner and maintained in proper condition by the owner consistent with the performance goals for which they were originally designed.

(b) *Facility access.* The applicant shall obtain all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the city or authorized representative.

(c) *Removal of settled materials.* All settled materials including settled solids, shall be removed from ponds, sumps, grit chambers, and other devices as necessary and disposed of properly.

(d) *Inspections.* All stormwater facilities within the city shall be inspected by the property owner at a frequency consistent with the maintenance plan. Inspection reports shall be provided to the city upon request.

(2) *Public stormwater facilities.*

(a) *Acceptance of publicly owned facilities.* Before work under the permit is deemed complete; the permittee must submit as-builts and a maintenance plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the city accepts ownership of the stormwater facilities.

(b) *Maintenance.* The city shall perform maintenance of publicly owned stormwater facilities in accordance with their comprehensive stormwater management plan and other regulatory requirements.

(Ord. 7553, passed 3-15-2016)

## **§ 161.11 FINANCIAL SECURITIES.**

(A) *Amount.* At the discretion of the city, the city may require a financial security from the applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by the city.

(B) *Release.* The financial security shall not be released until all permitted and remedial work is completed.

(C) *Use by city.* The financial security may be used by the city to complete work not completed by the applicant.

(D) *Form of security.* The form of the financial security shall be 1 or a combination of the following to be determined by the city:

(1) *Cash deposit.* A financial security for erosion and sediment control, as determined by the city, shall be by cash deposit to the city. The cash will be held by the city in a separate account.

(2) *Security deposit.* Deposit, either with the city, a responsible escrow agent, or trust company, at the option of the city, either:

(a) An irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money, or other instruments of credit from 1 or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment;

(b) Cash in U.S. currency; or

(c) Other forms and securities (e.g., disbursing agreement) as approved by the city.

(E) *City indemnity.* This financial security shall hold the city free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the city.

(F) *Maintaining the financial security.* If at any time during the course of the work the balance of the financial security falls below 50% of the total required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within 7 days after notification by the city that the amount has fallen below 50% of the required amount the city may:

(1) *Withhold inspections.* Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy; or

(2) *Revoke permits.* Revoke any permit issued by the city to the applicant for the site in question or any other of the applicant's sites within the city's jurisdiction.

(G) *Action against the financial security.* The city may access the financial security for remediation actions if any of the conditions listed below exist. The city shall use the financial security to pay for remedial work undertaken by the city, or a private contractor under contract with the city, or to reimburse the city for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.

(1) *Abandonment.* The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.

(2) *Failure to implement the SWPPP or ESC plan.* The applicant fails to conform to the grading plan and/or the SWPPP as approved by the city.

(3) *Failure to perform.* The BMPs utilized on the project fail within 1 year of installation.

(4) *Failure to reimburse city.* The applicant fails to reimburse the city for corrective action taken.

(H) *Proportional reduction of the financial security.* When more than 1/3 of the applicant's maximum exposed soil area achieves final stabilization, the city can reduce the total required amount of the financial security by 1/3. When more than 2/3 of the applicant's maximum exposed soil area achieves final stabilization, the city can reduce the total required amount of the financial security to 2/3 of the initial amount. This reduction in financial security will be determined by the city.

(I) *Returning the financial security.* The security deposited with the city for faithful performance of the SWPPP or the ESC plan and any related remedial work shall be released 1 full year after the completion of the installation of all stormwater pollution control measures, including vegetation establishment, as shown on the SWPPP or ESC plan.

(J) *Emergency action.* If circumstances exist such that noncompliance with this chapter poses an immediate danger to the public health, safety and welfare, as determined by the city, the city may take emergency preventative action. The city shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the city for emergency action may be recovered from the applicant's financial security.

(Ord. 7553, passed 3-15-2016)

## **§ 161.12 ENFORCEMENT ACTIONS.**

(A) *Notification of failure of the permit.* The city shall notify the permit holder of the failure of the permit's measures.

(1) *Initial contact.* The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, 48-hours after notification by the city or 72-hours after the failure of erosion and sediment control measures, whichever is less, the city at its discretion, may begin corrective work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the city has been unable to establish contact, the city may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the city may take immediate action, and then notify the applicant as soon as

possible.

(2) *Erosion off-site.* If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48-hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the city, may more than 7 calendar days go by without corrective action being taken. If in the discretion of the city, the permit holder does not repair the damage caused by the erosion, the city may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agencies to ensure that the work is done properly.

(3) *Erosion into streets, wetlands or water bodies.* If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

(4) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the city may take the following actions:

(a) *Stop work order.* Issue a stop work order, withhold the scheduling of inspections, and/or withhold the issuance of a certificate of occupancy;

(b) *Permit revocation.* Revoke any permit issued by the city to the applicant for the site in question or any other of the applicant's sites within the city's jurisdiction;

(c) *Correction by city.* Correct the deficiency or hire a contractor to correct the deficiency;

1. The applicant will be required to reimburse the city for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within 30 days after costs are incurred by the city, payment will be made from the applicant's financial securities as described in § 161.11; and

2. If there is an insufficient financial amount in the applicant's financial securities as described in § 161.08, the city may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the city, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of M.S. § 429.081 to challenge the amount or validity of assessment.

(B) *Misdemeanor.* Any person, firm or corporation failing to comply with, or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both.

(1) All land use and building permits may be suspended until the applicant has corrected the violation.

(2) Each separate violation shall constitute a separate offense.

(Ord. 7553, passed 3-15-2016)