

## **SECTION 17.1 – STORMWATER MANAGEMENT AND EROSION CONTROL**

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### **Subdivision 1: Purpose**

The purpose of Section 17.1 is to establish standards and specifications for conservation practices and planning activities to minimize soil erosion and sedimentation, and regulate construction site erosion and stormwater runoff to accomplish the following objectives:

1. Promote local stormwater management;
2. Minimize sedimentation; water pollution from nutrients, heavy metals, chemicals, petroleum products and other contaminants; flooding; and thermal impacts to the water resources of Sherburne County;
3. Promote infiltration and groundwater recharge;
4. Protect functional values of natural water courses and wetlands;
5. Provide a single, consistent set of performance standards for Sherburne County; and
6. Protect public and private property from damage resulting from runoff or erosion.

### **Subdivision 2: Scope**

1. This Ordinance shall become effective upon enactment, and shall apply in all unincorporated areas of Sherburne County.
2. Sherburne County hereby adopts, by reference, the standards set forth in the Minnesota

Pollution Control Agency's (MPCA) General Permit-Authorization to discharge stormwater associated with Construction Activity under the National Pollutant Discharge Elimination System Permit Program (Permit No: MN R100001), along with any future amendments.

3. Townships performing work within the Township right-of-way must notify Sherburne County Zoning Department of all Land Disturbing Activities that require a NPDES Construction Stormwater Permit, but are not required to obtain a separate Permit from the County.
4. The Sherburne County Zoning Administrator shall be responsible for administration and enforcement of this Ordinance.
5. Where the standards of this Ordinance differ or conflict with any applicable ordinance, regulation, statute, or rule, the more restrictive standards shall apply.
6. Construction Activity requirements as limited to this Ordinance 17.1 are the same as those put forth in the NPDES Construction Stormwater Permit program as promulgated by the MPCA.

### **Subdivision 3: Definitions**

**Best Management Practices (BMPs):** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly into stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**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 indication that land-disturbing activities may occur.

**Construction Activity:** 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 one 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 one (1) acre or more. Construction Activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a stormwater control facility.

**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 water appropriation permit and, if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.

**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.

**Final Stabilization:** means that all soil disturbing activities on the site or common plan of development have been completed, and that a uniform (evenly distributed, e. g. without large bare areas) perennial vegetative cover with a density of at least seventy (70) percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures have been employed, and that all temporary erosion control devices are removed, including silt fence, temporary sedimentation basins, and temporary standpipes. Simply sowing grass seed and/ or mulch is not considered final stabilization. Final stabilization of a common plan of development includes completion of building or home construction along with final restoration of all yards and adjacent drainage ways.

**Green Infrastructure:** The use of natural hydrologic features to manage water and provide environmental and community benefits.

**Land Disturbing Activity:** Any excavating, grading, clearing, filling, or other disturbances of the soil of one (1) or more acre.

**Permit:** Means the Stormwater and Erosion Control Permit issued by the County pursuant to this Section.

**Project(s)** All Construction Activity that is planned and/or conducted under a Stormwater and Erosion Control Permit issued by the County. The project will occur on the site or sites described in the Permit application, and in the associated plans, specifications and contract documents.

**Redevelopment:** Any Construction Activity where prior to the start of construction the area to be disturbed has 15 percent or more impervious surface.

**Stabilize, Stabilized, Stabilization:** The 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 percent ground coverage (typically 2 ton/acre).

**Sediment Control:** The 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. A floating silt curtain placed in the water is not a sediment control BMP to satisfy perimeter control requirements.

**Steep Slopes:** Slopes that are steeper than 3:1 (V:H) (33.3 percent) or steeper in grade.

**Stormwater:** Precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

**Stormwater Pollution Prevention Plan ( SWPPP):** A plan for stormwater discharge that includes all required content in conformance with this Section and which describes erosion prevention BMPs, sediment control BMPs, construction site/waste 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. The plan as required to be submitted with a permit application under this Section consisting of the information and supporting documentation as set forth herein.

#### **Subdivision 4: Permit Application and Plan**

1. No activity meeting the requirements for a Permit shall occur until a permit is issued by the Sherburne County Zoning Department. A completed Permit application shall be submitted to the Zoning Department, along with all required application fees, prior to the County's consideration of the application. A Permit will be issued only after the Zoning Department determines that the proposed Project meets the requirements of this Section and the Zoning Department has approved the Stormwater Pollution Prevention Plan (SWPPP) for the Project.
2. If the County determines the application does not meet the requirements of this ordinance the application will be denied. If the application is denied, the applicant will be notified of the denial in written or electronic format, including reasons for the denial. An application addressing the reasons for denial may be re-submitted at any time.
3. Any Permit issued pursuant to the requirements of this Section shall expire two years from the date of issuance if significant progress of the work covered by the Permit is not satisfactorily accomplished as determined by the Zoning Department, unless an extension of the permit is requested by the applicant prior to expiration and approved by the Zoning Administrator.
4. Failure to comply with the approved terms and conditions of the Permit or the SWPPP shall be grounds for revocation of the Permit. Written notification of the revocation shall be mailed to the current holder of the Permit at least ten days prior to the revocation.

#### **Subdivision 5: Stormwater Pollution Prevention Plan (SWPPP)**

No permit shall be issued unless a Stormwater Pollution Prevention Plan is submitted to and approved by the Zoning Department. All Stormwater Pollution Prevention Plans shall include the following:

1. The SWPPP shall be prepared by an individual who has received training by an accredited governmental agency, professional organization, or educational institution in erosion prevention, sediment control, permanent stormwater management and the MN NPDES/SDS Construction Stormwater Permit. This individual shall sign the SWPPP with a certification statement that the individual meets the requirement of this clause.
2. Delineation of the subject property, including all public and private easements thereon, the location of existing and proposed buildings, structures and impervious surfaces on the subject property, including quantities of impervious surface for both pre- and post-construction/activity, and the building bench elevations for all existing and proposed buildings.
3. Description of the Construction Activity or Land Disturbing Activity to be performed on the subject property, including the area and volume of earth material to be moved, and proposed Project schedule.
4. Identification of all water bodies located on and within 100 feet of the subject property's boundaries, including identification of any off-site receiving waters for the permit site's runoff.
5. Identification of all wetlands located on the subject property.
6. Identification of existing and proposed site drainage areas, including any contributing runoff from off-site, and show drainage patterns using arrows depicting direction of flow for surrounding properties.
7. Topographical data, including existing (dashed) and proposed (solid) contours at vertical intervals of not more than two feet.
8. Temporary benchmarks shall be established within the boundaries of the project area. All elevations, topography and vertical control data shall be tied to sea level datum, 1929 general adjustments.
9. All erosion and sediment control, construction debris/waste control and stormwater management shall conform to this section and the current requirements of the NPDES Construction Stormwater General Permit issued by the MPCA.
10. Supporting information including designs, calculations/quantification and narrative pertaining to BMPs for erosion and sediment control, construction debris/waste control, temporary and permanent/post-construction stormwater management.
11. Applicant shall identify the party responsible for implementing the SWPPP, and for maintenance and inspection during Land Disturbing Activity.
12. Identification of the party responsible for long-term operation and maintenance of the permanent stormwater management system.
13. Description of BMP inspection schedule by the responsible party, which shall include, at a minimum:

- A. Once every 7 days on exposed soil areas
  - B. Within 24 hours after a ½ inch rain event over 24 hours
  - C. Once every 30 days on stabilized areas.
  - D. As soon as runoff occurs or prior to resuming construction on frozen ground.
14. Description of BMP maintenance schedule by the responsible party, which shall include, at a minimum:
- A. When sediment reaches 1/3 the height of the BMP on perimeter control devices, sediment must be removed within 24 hours.
  - B. If the perimeter control device is not functional it must be repaired or replaced within 24 hours.
  - C. Temporary sediment basins shall be maintained when sediment reaches 1/2 the outlet height or 1/2 the basin storage volume. Basin must be drained or sediment removed within 72 hours.
  - D. Sediment tracked from construction site vehicle entrance and exit locations must be removed from paved surfaces within 24 hours of discovery.
15. Before a Permit is issued, the applicant must submit to the Zoning Department a copy of the applicant's NPDES Construction Stormwater Permit issued by the MPCA and any other supporting documentation.

**Subdivision 6: Compliance with Plan**

1. Compliance required. The applicant shall implement and comply with the Stormwater Pollution Prevention Plan (SWPPP) prior to and during any Construction Activity and Land Disturbing Activity to which the Permit and this Section applies. All erosion and sedimentation control and tree preservation measures required under the SWPPP shall be properly installed and remain in place until all Construction Activity and Land Disturbing Activity is completed and final stabilization has occurred, or until a written request for removal of the protection measures provided for in the SWPPP is made to and approved by the Zoning Department. Permanent erosion control and stormwater management devices identified in the SWPPP shall remain in place after construction, and shall be under a long-term maintenance agreement which must be signed by the applicant before a Permit is issued. The applicant/owner shall be responsible for inspections and maintenance of temporary and permanent BMPs related to the Project. Failure to comply with the approved terms and conditions of an SWPPP shall constitute a violation of the Permit and this Section. To remain in compliance, the applicant must amend the SWPPP as necessary to include additional or modified BMPs designed to correct problems identified or to address erosion, sedimentation and/ or construction debris/waste control issues, and shall keep all site plans (and Stormwater Management Plan documentation) up to date with regard to stormwater runoff controls, and shall provide such plans and documents to the Zoning Department.

2. In the event the Zoning Department determines that the permit holder is not in compliance with the Permit and the SWPPP, the County may order the suspension of any Land Disturbing Activity or Construction Activity on the subject property until compliance with the SWPPP has occurred. The stop-work Order will be provided to the project manager and/or operator either in person or by U.S. mail, with a copy provided by electronic mail or U.S. mail to the property owner. The permit holder shall immediately comply with such order until notified by the Zoning Department that the subject property is in compliance and that Land Disturbing Activities and Construction Activities may resume.

#### **Subdivision 7: Financial Guarantee**

Once a Stormwater Pollution Prevention Plan (SWPPP) is approved, a financial guarantee in the form of a letter of credit, cash deposit or bond in favor of the County equal to one hundred twenty-five (125) percent of site grading and erosion/sediment control costs shall be submitted to the County. This guarantee is necessary to ensure the satisfactory installation, completion and maintenance of the measures as required in the SWPPP. The Permit and all other associated land use approvals, including final plat approval or issuance of a conditional or interim use permit, shall not be granted until a financial guarantee has been submitted to the County. Release of any portion of the financial guarantee is contingent on approval from a professional engineer that as built conditions meet original design specifications and a site visit by County staff is conducted to evaluate the condition of erosion and sediment control measures.

#### **Subdivision 8: Permit Transfer/Modification**

Where the responsible party under the Permit changes, such as when ownership of the property changes, or when an original developer sells portions of the property to various homebuilders, or when the project manager or operator changes, the new permittee must submit a Subdivision Registration or Permit Transfer/Modification form to the Zoning Department.

#### **Subdivision 9: Termination of Coverage**

Permittees wishing to terminate coverage under the Permit must submit to the Zoning Department a copy of the Notice of Termination that the permittee must provide to the MPCA in connection with the permittee's NPDES permit. Compliance with the Permit is required until a Notice of Termination is submitted.

#### **Subdivision 10: Post-Construction Stormwater Management**

The following volume control standards shall be required for all Construction Activities where one acre or more new impervious surfaces is created and/or redeveloped, and for all Land Disturbing Activities of one (1) acre.

1. All new development projects shall retain on-site a runoff volume equal to 1 inch from the proposed increase of impervious surfaces. No net increase from pre project conditions (on an annual average basis)of:
  - A. Stormwater discharge volume, unless precluded by the Stormwater Management limitation in (6) below.
  - B. Stormwater discharge of Total Suspended Solids (TSS)
  - C. Stormwater discharge of Total Phosphorus (TP)
  
2. Redevelopment projects. A net reduction from pre-project conditions (on an annual average basis) of:
  - A. Stormwater discharge volume. Unless precluded by the stormwater management limitations in 6) below.
  - B. Stormwater discharges of TSS
  - C. Stormwater discharges of TP
  
3. Green Infrastructure techniques and practices shall be given preference as design consistent with zoning and subdivision and planned unit development requirements.
  
4. Infiltration prohibited. The use of infiltration techniques are prohibited when the following infiltration structural stormwater BMP will receive discharges from, or be constructed in the following areas:
  - A. Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit.
  - B. Where vehicles fueling and maintenance occur.
  - C. With less than (3) thee feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock.
  - D. Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating of stormwater.
  
5. Infiltration restricted. The use of infiltration techniques will be restricted when the infiltration device will be constructed in the following areas:
  - A. With predominately Hydrologic Soil Group D (clay) soils
  - B. Within 1,000 feet up-gradient, or 100ft down-gradient of active karsk features.
  - C. Within a Drinking Water Supply Management Area as Defined in MN Rule 4720.5100 Subp 13.
  - D. Where soil infiltration rates are more than 8.3 inches per hour.  
In these restricted areas, a higher level of engineering reviews required. The County may require additional engineering and or testing to ensure that infiltration basins will perform properly and ground water is adequately protected.



6. Linear project. A reasonable attempt must be made to obtain right-of-way precludes the installation of volume control practices. For Linear projects where the lack of right-of-way precludes the installation of volume control practices, exceptions as described in 7) below can be applied.
7. Exemptions. A lesser volume control standard on the site of existing development may be applied at the discretion of the County under the following circumstances:
  - A. The owner and/or the operator of a Project is precluded from infiltrating stormwater thorough a designed system due to limitations under 4, 5 or 6 above, and
  - B. The owner and/or operator of the Project implements volume reduction techniques, other than infiltration, on the site of the original Construction Activity that reduces stormwater discharge volume but may not meet the requirements of post-construction stormwater management.
8. Mitigation. If the owner and/or operator of a Project believe that the requirements for TP and/or TSS cannot be met on the site of the original Construction Activity. The owners and/or operator must provide appropriate documentation to the Zoning Department as support. Stormwater discharges that do not meet the TP and/or TSS standards on the site of the original Construction Activity must be met through mitigation. At the Zoning Administrator's discretion, off site mitigation may be allowed. The owner and operator of a Construction Activity must identify location where mitigation projects can be completed. The proposed mitigation must meet the following standards:
  - A. Mitigation project areas should be selected in the following order of preference and in consultation and with approval by the county:
    - i. Locations that yield benefits to the same receiving water that receives runoff from the original Construction Activity
    - ii. Location within the same Department of the Natural Resources (DNR) catchment area as the original Construction Activity.
    - iii. Locations in the next adjacent DNR catchment area up-stream
    - iv. Locations anywhere within Sherburne County.
9. Maintenance of private structural BMPs. Any structural BMP that the County determines to be private shall meet the following requirements:
  - A. The County may require that a permanent public easement be provided to the County for access for inspection and/or maintenance purposes. Cost incurred by the County for any maintenance of private systems will be billed and/or assessed to the owner/operator.

- B. Recorded inspection and maintenance agreements that define inspection and maintenance responsibilities are required. A minimum annual inspection for private systems shall be required. These requirements are transferrable to any party that becomes the owner/Operator of the site.
- C. If site configurations or structural stormwater BMPs change, causing decreased structural stormwater BMP effectiveness, new or improved structural stormwater BMPs must be implemented to meet the requirements of this section.

### **Subdivision 11: Enforcement**

For violations of this Ordinance, the County may take any of the actions provided for in this Section. These actions shall not be deemed cumulative and the County may use any or all of the actions in its discretion.

1. **Warning Notice.** The Zoning Department may issue a warning notice to any person, landowner, Project operator and/or permittee alleged to have committed a violation of this Ordinance. A warning notice shall serve to place the person on notice that compliance with specified Ordinance requirements shall occur to avoid additional enforcement actions. A warning notice may be served in person or by certified mail. The Zoning Department is not required to issue a warning notice before the County proceeds with other enforcement action.
2. **Notice of Violation (NOV).** The Zoning Department may issue a notice of violation (NOV) as defined in this Ordinance to any person, landowner, Project operator and/or permittee alleged to have committed a violation of this Ordinance. A NOV shall serve to place the landowner and the person alleged to have committed a violation on notice that compliance with specified Ordinance requirements shall occur to avoid additional enforcement actions. The NOV may be served in person or by certified mail. The Department is not required to issue a NOV before the County proceeds with other enforcement action.
3. **Misdemeanor Citation.** Any person within the County who violates this Ordinance, or who shall permit such a violation to exist on the premises under his control, or who shall fail to take action to abate the existence of the violation, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished therefore, as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. The County, MPCA, Law Enforcement Officers, or their designees, may issue citations for violations of this Ordinance. The citation shall be issued to the person charged with the violation, or in the case of a corporation or municipality, to the supervisor at the site of the violation or any officer or MPCA expressly implied authorized to accept such issuance.
4. **Commencement of a Civil Court Action.** In the event of a violation or a threat of violation of this Ordinance, the County Attorney may also institute other appropriate civil actions or proceedings in any court of competent jurisdiction, including requesting injunctive relief, to prevent, restrain, correct or abate such violations or threatened violations. The County may recover all costs, including reasonable attorney's fees, incurred for enforcement of this Ordinance through a civil action. If a property owner

does not complete the corrective actions within the timelines in a court order, the County may correct the violations and the County has the authority to enter the property and perform the corrective actions.

**Subdivision12: Permit Fees**

The fees for the Permit required by this Ordinance will be established by the Sherburne County Board of Commissioners as part of the County Fee Schedule.