

Chapter 12.18 Construction Site and Erosion Control

12.18.010 Findings.

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (Program) administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of Sioux City, Iowa (City) is subject to the Program and is required to obtain, and has obtained, an MS4 Permit. The City's MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.
2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2 and any other requirement of state or federal law or administrative rule.
3. As a condition of the City's MS4 Permit, the City is obliged to undertake responsibility for inspections, monitoring and enforcement of the Program by adopting a "Construction Site Erosion and Sediment Control Ordinance" (COSESCO) designed to achieve the following objectives:
 - a. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision ("applicant") required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall be subject to the terms of the COSESCO; and
 - b. The City shall have responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2.
4. No state or federal funds have been made available to assist the City with inspections, monitoring and/or enforcing the Program. Accordingly, the City shall fund its inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.
5. Terms used in this ordinance shall have the meanings specified in the Program. (Ord. 2005-0712)

12.18.020 Procedure for COSESCO compliance.

1. All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are subject to the terms of this ordinance and are required to comply with the requirements of the State NPDES General Permit #2.
2. Prior to the issuance of any permits by the City for construction activities on the site, an applicant shall:
 - a. Submit to the City a site plan which shows best management practices (BMP) control measures and a Storm Water Pollution Prevention Plan (SWPPP) applicable to the site and shall receive approval of the site plan and SWPPP;
 - b. Submit to the City a Plan Review Fee. The fee shall be the same as required for a grading permit. If applicant has paid a grading permit fee no fee shall be required for the site plan submittal; and
 - c. Notify the City that it has submitted all necessary information to the State for coverage under General Permit #2 for the site.
3. The City shall have fifteen (15) days from the date of the receipt of the applicant's site plan and SWPPP to review and approve or reject the site plan and SWPPP:
 - a. If the City approves the site plan and SWPPP, the City shall notify the applicant of such approval immediately, but in all events no later than fifteen (15) days after submittal of the site plan and SWPPP to the City;
 - b. If the City takes no action within fifteen (15) days, the site plan and SWPPP will be deemed approved by operation of law to the extent that the site plan and SWPPP are in compliance with the requirements of General Permit #2;
 - c. If the City rejects the site plan and SWPPP, the City shall inform the applicant, in writing and with specificity, of all reasons for the rejection;
 - i. Applicant may attempt to correct the deficiencies itemized by the City and resubmit the site plan and SWPPP to the City for review. The City shall have fifteen (15) days from the date of the re-submittal to review and approve or reject the revisions to the site plan and/or SWPPP. If the City approves the revisions, the City shall immediately notify the applicant of such approval, but in all events no later than fifteen (15) days after re-submittal by the applicant. If the City takes no action within fifteen (15) days, the site plan and/or SWPPP will be deemed approved to the extent that the site plan and SWPPP are in compliance with the requirements of General Permit #2. If the City rejects the revisions to the site plan and/or SWPPP, the City shall inform the applicant, in writing and

with specificity, of all reasons for the rejection and applicant may, again, attempt to correct the deficiencies in the manner set out above.

ii. Applicant may challenge the City's rejection of site plan and SWPPP approval by appealing to the Grading Appeals Board.

4. Every SWPPP submitted to the City for review:

a. Shall comply with all existing requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit #2; and

b. Shall, if the applicant is required by law to file a Joint Application Form PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applicants; and

c. Shall comply with all other applicable state or federal permit requirements in existence at the time of application including, but not limited to, waste at construction sites that may cause adverse impact to water quality such as building materials, concrete truck washout, chemicals, solid waste and sanitary waste. (Ord. 2005-0712)

12.18.030 Inspection procedures for COSESCO.

1. All inspections required under this ordinance shall be conducted by the city manager or the city manager's designee, hereinafter referred to as the "enforcement officer."

2. Any applicant that is subject to the terms of COSESCO shall allow the City or an authorized representative of the City, upon the presentation of credentials and other documentation as may be required by law, to enter upon applicant's private property for inspection purposes.

3. The City may conduct inspections at any time.

a. In any calendar year, the City must inspect the site once each quarter and upon the receipt of a complaint and the city may charge to the applicant the actual costs to the City to conduct the inspection

b. In addition to the inspections set out in subsection 3 above the City may conduct additional inspections at the City's own expense.

4. In the event an inspection identifies an area or incident of non-compliance, the City may, at its discretion, provide applicant with a bill of particulars that identifies the area or incident of non-compliance. In the event an enforcement action is taken, a bill of particulars must first be provided to applicant. (Ord. 2005-0712)

12.18.040 Monitoring procedures for COSESCO.

It shall be applicant's duty to notify the City of any changes, alterations, transfers of coverage or sales of any property in the same manner, to the same extent and at the same time as such notification is provided to the Iowa Department of Natural Resources pursuant to the requirements of the state NPDES General Permit No. 2. (Ord. 2005-0712)

12.18.050 Enforcement by legal or administrative action and penalties.

1. Violation of any provision of this ordinance may be enforced by legal (civil) action including an action for injunctive relief.

2. Any person who violates any of the provisions of this chapter is guilty of a municipal infraction and shall upon conviction, be punished as provided in section 1.04.100 of this municipal code. Alternatively, any person who violates any of the provisions of this chapter is guilty of a misdemeanor and shall upon conviction be punished as provided in section 1.04.100 of this code. A peace officer may issue a criminal citation for such violations. No person shall be charged with both a municipal infraction and a misdemeanor for the same violation.

3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the city attorney. (Ord. 2006-0068; 2005-0712)

12.18.060 Enforcement by order to terminate further activities.

1. As an alternative to enforcement by legal or administrative action, an enforcement officer may issue an order to terminate further activities at the site under the following conditions:

a. The order to terminate may be issued only for failure to implement or maintain pollution control BMPs;

b. The order may be issued for a period not to exceed 30 days during which time the applicant will be allowed to correct the identified deficiency; provided however a shorter period of time may be ordered in an emergency situation;

c. The applicant may reject the order by notifying the City, in writing. Upon receipt of such written notice, the order to terminate shall be deemed null and void and the City may undertake enforcement pursuant to Section

12.18.050 herein.

2. If the applicant does not reject the order to terminate and corrects the identified deficiency within the designated period, the applicant may immediately commence further activity at the site and no further penalties or orders shall be issued against the applicant for the identified deficiencies. Prior to commencing further activity at the site, the applicant shall establish correction of the deficiency by providing to the office of the enforcement officer, a written statement, signed under oath, that the deficiency has been corrected with a description, including photographs when appropriate, of the action taken to correct the deficiency.

3. If the deficiency cannot be corrected within thirty days or such shorter period as may have been ordered, applicant may seek an extension of the order to terminate for such additional period of time as allowed by the enforcement officer.

4. If the deficiency is not corrected within the designated period (with extensions), the City may commence a legal or administrative action against the applicant as set forth in Section 12.18.050 above. (Ord. 2005-0712)

12.18.070 Appeal.

1. Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the grading appeals board pursuant to code section 20.30.110. (Ord. 2005-0712)