

CHAPTER 5A

CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 5A.1. 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 Ames 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 a City COSESCO Permit 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 primary responsibility for administration and enforcement of the Program by adopting a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) ordinance 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 also be required to obtain from the City a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL permit (City COSESCO Permit) in addition to and not in lieu of the State NPDES General Permit #2; and

(b) The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and City COSESCO Permits.

(4) No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, 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.

Sec. 5A.2. APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A CITY CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) PERMIT

(1) All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are required to obtain a City COSESCO Permit.

(2) Applications for City COSESCO Permits shall be made on forms approved by the City which may be obtained from the office of Public Works.

(3) An applicant for a City COSESCO Permit shall pay fees as follows:

(a) An application fee at the time of application in the amount set from time to time by City Council resolution.

(b) For each inspection required by this ordinance, the applicant shall pay an inspection fee in the amount set from time to time, by resolution of City Council.

(c) Failure of the applicant to pay an inspection fee within thirty (30) days of billing shall constitute a violation of this ordinance.

(4) By submission of a City COSESCO Permit application, the applicant agrees to defend, indemnify and hold the City harmless from any and all claims, damages or suits arising directly or indirectly out of any act of commission or omission by the applicant, or any employee, agent, assign or contractor or subcontractor of the applicant, in connection with applicant's State NPDES General Permit #2 and/or City COSESCO Permit.

(5) An applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City COSESCO Permit:

(a) applicant's plans, specifications and supporting materials in support of applicant's application for

the State NPDES General Permit #2;

- (b) applicant's authorizations issued pursuant to applicant's State NPDES General Permit #2; and
- (c) a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with this ordinance.

(6) Every SWPPP submitted to the City in support of an application for a City COSESCO Permit:

(a) shall comply with all current minimum mandatory 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 applications; and

(c) shall comply with all other applicable state or federal permit requirements in existence at the time of application; and

(d) shall be prepared by a licensed professional engineer or landscape architect or a certified professional in erosion and sediment control, credentialed in a manner acceptable to the City; and

(e) shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this ordinance.

(7) In addition to the SWPPP requirements stated in subparagraph 2.5 immediately above which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the city in support of an application for a City COSESCO Permit shall comply with Statewide Urban Design and Specifications (SUDAS) standard design criteria, and the City of Ames Supplemental Specifications, including but not limited to design, location, and phased implementation of effective, practicable stormwater pollution prevention measures, and shall also:

(a) assure that stockpiles of soil or other materials subject to erosion by wind or water are covered, vegetated, or otherwise effectively protected from erosion and sedimentation in accordance with the amount of time the material will be on site and the manner of its proposed use; no stockpiling is allowed in the street; and

(b) identify measures and procedures to reasonably minimize site soil compaction and provide soil quality restoration, in areas to be vegetated, as specified; and

(c) assure that all temporary erosion and sediment control measures shall not be removed until the site has been permanently stabilized; and

(d) assure that all disturbed sites be permanently stabilized with 70% perennial cover as measured by the USDA line transect method; and

(e) identify methods to prevent sediment damage to adjacent properties and sensitive environmental areas such as water bodies, plant communities, rare, threatened and/or endangered species habitat, wildlife corridors, greenways, etc.; and

(f) provide for design and construction methods to stabilize steep or long continuous slopes; and,

(g) provide for stabilization of all waterways and outlets; and,

(h) protect storm sewer infrastructure from sediment loading/plugging; and

(i) specify precautions to be taken to contain sediment when working in or crossing water bodies; and

(j) streets; and

(k) provide for proper disposal of collected sediment and floating debris; and

(l) assure that when working near sensitive waters, the specific practices itemized immediately below are utilized:

(i) buffer zone: provide for the maintenance at all times of an undisturbed buffer zone consisting of not less than 100 linear feet from the sensitive water (not including intermittent waters); exceptions from this for areas, such as water crossings or limited water access, are allowed if the applicant fully documents in the SWPPP the circumstances and reasons that the buffer encroachment is necessary; all potential water quality, scenic and other environmental impacts of these exceptions should be minimized and documented in the SWPPP for the project; and

(ii) enhanced temperature controls: design the permanent stormwater management system such that the discharge from the project will minimize any increase in the temperature.

a. minimize new impervious surfaces; and/or

b. other methods that will minimize any increase in the temperature of the sensitive

waters.

(8) Issuance by the City of a City COSESCO Permit shall be a condition precedent for the issuance of a City building permit or site plan approval.

(9) For so long as a construction site is subject to a State NPDES General Permit #2 or a City COSESCO Permit, the applicant shall provide the City with current information as follows:

(a) The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City COSESCO Permit;

(b) The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractors(s) that will implement each erosion and sediment control measure identified in the SWPPP.

(c) Applicant's failure to provide current information shall constitute a violation of this ordinance.

(10) Developers can transfer coverage under the State NPDES General Permit #2 and the City COSESCO Permit responsibility to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing, must agree to fulfill all obligations of the SWPPP, the State NPDES General Permit #2 and the City COSESCO Permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold.

(11) Upon receipt of an application for a City COSESCO Permit, the City shall either find that the application complies with this ordinance and issue a City COSESCO Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application.

Sec. 5A.3. INSPECTION PROCEDURES FOR CITY COSESCO PERMITS.

(1) All inspections required under this ordinance shall be conducted by the building inspector, hereinafter referred to as the "enforcement officer."

(2) Applicant shall notify the City when all measures required by applicant's SWPPP have been accomplished on-site. Should non-compliance be determined by the City, the applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance.

(3) Construction, except corrective action, shall not occur on the site at any area where the City has identified conditions of non-compliance.

(4) The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

Sec. 5A.4. MONITORING PROCEDURES FOR CITY COSESCO PERMITS

(1) Upon issuance of a City COSESCO Permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of off-site stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.

(a) Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty four (24) hours of the change of circumstances or site conditions.

(b) Failure to make a timely report shall constitute a violation of this ordinance.

(2) Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of off-site stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.

(3) Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.

(4) Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer shall conduct at least two inspections per calendar year to monitor compliance with the State NPDES General Permit #2 and the City COSESCO Permit. If the inspection discloses any significant non-compliance, the enforcement officer shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within forty-eight (48) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.

(5) The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

(6) **Inspection Access.** The city employee authorized to enforce this section shall be permitted to enter and inspect facilities subject to regulation under this section as often as is necessary to determine compliance with this section. If a discharger has security measures that require identification and clearance before entry to its premises, the discharger shall make the necessary arrangements to allow access to the city employee authorized to enforce this section.

Sec. 5A.5. ENFORCEMENT

(1) Violation of any provision of this ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this ordinance.

(2) Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance. The penalty for a first violation shall be \$500. The penalty for each repeat violation shall be \$750.

(3) Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

Sec. 5A.6. PERFORMANCE BOND OR CASH SECURITY

(1) Along with the application for a City COSESCO Permit, the applicant shall post security for compliance with all requirements imposed by the State NPDES General Permit #2 and the City COSESCO Permit as well as necessary remedial work resulting from violation of any provision of this ordinance in an amount of \$500 per acre of disturbed area for sites above five acres. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project's construction.

(2) Acceptable forms of Performance Security include the following:

- (a) Performance Bonds;
- (b) Surety Bonds;
- (c) Letters of Credit;
- (d) Cash Deposit.

Sec. 5A.7. APPEAL

(1) Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the city council pursuant to the following rules:

(a) The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.

(b) The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.

(c) The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.

(d) The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

(2) The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.