

FACTSHEET

TITLE: MISCELLANEOUS NO. 07004, requested by the Director of Public Works & Utilities and the Lower Platte South Natural Resources District, to amend Title 26 of the Lincoln Municipal Code to provide requirements and criteria to prevent and control water pollution from construction site discharges and diminish adverse impacts to health, safety, property and the general welfare of the citizens of the City of Lincoln.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/25/07
Administrative Action: 04/25/07

RECOMMENDATION: Approval (9-0: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand, Esseks. Larson and Carlson voting 'yes').

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUEST: Change of Zone No. 07015 (07-79), Miscellaneous No. 07005 (07R-102) and Title 28 (07-80).

FINDINGS OF FACT:

1. This proposed text amendment to Title 26, the Land Subdivision Ordinance, was heard before the Planning Commission in association with proposed amendments to Title 27, the Zoning Ordinance, and the City of Lincoln Design Standards. (The proposed new Title 28, Stormwater Quality and Erosion and Sediment Control, does not require action by the Planning Commission). The full version of these proposed text amendments, the new Title 28 and the Drainage Criteria Manual may be found on the internet at <lincoln.ne.gov> (Keyword: "E&SC").
2. These proposed text amendments address the requirements of the National Pollution Discharge Elimination System (NPDES) as enforced by the Environmental Protection Agency and the Nebraska Department of Environmental Quality, and have been developed through a cooperative process involving the building community.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4-6, concluding that the proposed ordinance and design standard revisions reflect several months of work by the City of Lincoln/NRD partnership and Sediment and Erosion Control Working Group to develop policy recommendations for stormwater quality and quantity issues in Lincoln. These are important requirements which will address Lincoln's federally mandated NPDES requirements and the City's flooding, erosion and sediment control problems which have been documented over the years. The Drainage Criteria Manual provides important guidance in meeting the design standards and changes to Chapter 9 should be adopted by reference to the proposed "Stormwater Drainage Design Standards" for consistency in preparation and review of applications.
4. The staff presentation and discussion with the Commission is found on p.8-11 and p.14-17. The memorandum of Nicole Fleck-Tooze submitted on April 24, 2007, setting forth amendments which have been incorporated into the proposal, is found on p.34.
5. Other testimony in support by Fred Hoke, Government Affairs Director of the Home Builders Association of Lincoln, is found on p.11-12, who attested to the community involvement process. The record also consists of a letter in support from the Board of Directors of the Lower Platte South Natural Resources District (p.24) and an e-mail communication in support which was received after the Planning Commission hearing and action (p.32-33).
6. Testimony in opposition is found on p.12-14, the concern being ample opportunity for education prior to adopting these regulations. The additional documentation referred to by Peter Katt in his testimony in opposition (p.12-13) is found on p.25-31.
7. On April 25, 2007, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of Change of Zone No. 07015, Miscellaneous No. 07004 and Miscellaneous No. 07005.

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
W44
FOR APRIL 25, 2007, PLANNING COMMISSION MEETING

PROJECT # Miscellaneous #07004
Change of Zone #07015
Miscellaneous #07005

April 11, 2007

Note: This is a combined staff report for three related text changes. This report contains a single background and analysis section for all items. However, proposed text changes for the Subdivision Ordinance, the Zoning Ordinance, and the Design Standards are listed individually at the end of the report.

PROPOSAL: Application by the Director of Planning at the request of the Director of Public Works and Utilities and the Lower Platte South Natural Resources District to revise the regulations and design standards relating to stormwater quality and quantity by amending the Lincoln Subdivision Ordinance, the Zoning Ordinance, and the Design Standards as follows:

CONCLUSION: The proposed text changes address the requirements of the National Pollution Discharge Elimination System (NPDES) as enforced by the Environmental Protection Agency and the Nebraska Department of Environmental Quality and have been developed through a cooperative process involving the building community and therefor should be adopted.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

MISCELLANEOUS NO. 07004, amending Title 26 of the Lincoln Municipal Code relating to Land Subdivision to provide requirements and criteria to prevent and control water pollution from construction site discharges and diminish adverse impacts to health, safety, property, and the general welfare of the citizens of the City of Lincoln by adding new sections numbered 26.07.085, 26.07.123, 26.07.125.05, 26.07.137, 26.07.138, 26.07.164, 26.07.166, 26.07.167 and 26.07.168 to provide definitions for “construction activity,” “individual site construction,” “mini-SWPPP,” “permit in conformance with Chapter 28.01,” “person,” “stop work order,” “storm drainage system,” “stormwater,” and “stormwater pollution prevention plan (SWPPP)”, respectively; by amending Sections 26.11.038, 26.23.190, and 26.27.060 to require compliance with Chapter 28.01 for construction activity and individual site construction; by amending Section 26.31.040 to allow enforcement action and removal authority by the City in the event sediment is deposited in a storm drainage system; and repealing Sections 26.11.038, 26.23.190, 26.27.060, and 26.31.040 of the Lincoln Municipal Code as hitherto existing.

HISTORY:
1972, National Pollution Discharge Elimination System (NPDES) established to issue permits regulating discharges from a point source into any navigable water.

1990, Phase I of NPDES stormwater program addressing, among other things, discharges from large construction activities disturbing 5 acres or more of land, including smaller construction activities if they are part of a larger common plan of development or sale.

1994, Mayor's Stormwater Task Force develops recommendations for stormwater handling and sediment and erosion control.

1997 - 1999 Mayor's Stormwater Advisory Committee formed to study, among other things, the preparation of revised criteria for stormwater management and best management procedures for construction and development. Results in five policy recommendations, one of which is NPDES construction site recommendations.

2000, Amendments to Zoning Ordinance, Subdivision Ordinance, and Design Standards (with Drainage Criteria Manual by reference) that address the recommendations of the Mayor's Stormwater Advisory Committee and the requirements of NPDES are adopted. Updates to these ordinances and standards follow.

2003, Phase II of NPDES stormwater program addressing, among other things, discharges from small construction activities on 1 to 5 acres, including individual construction sites if they are part of a larger common plan of development or sale.

December, 2005, City and NRD meet with a variety of interest groups including developers, builders, neighborhoods and environmental groups to get input on structuring Lincoln's program to meet erosion and sediment control requirements.

Early 2006, the City receives some additional guidance from the Nebraska Department of Environmental Quality (NDEQ) and continues the dialogue with builders and developers, including a large group meeting in June of 2006.

June 2006, at this meeting, an Erosion and Sediment Control Working Group was formed to develop recommendations for Lincoln's Program, particularly as it relates to requirements for small building sites.

Participation in the Working Group was encouraged and open to all interested parties. It was comprised of individuals representing builder, developer, and contractor interests, and staffed by the City, NRD and NDEQ. Fred Hoke, Government Affairs Director for the Homebuilders Association of Lincoln, chaired the Working Group.

July - December, 2006, The Working Group holds three meetings and provides guidance and recommendations to City and NRD staff on the program.

March, 2007, Two drafts are provided for review and comment to the Working Group and NDEQ, and the enclosed proposed version reflects changes made in response to their comments.

Comprehensive Plan Specifications

- From Guiding Principles for The Urban Environment: *“Streams, trees, open space, and other environmentally sensitive features should be preserved within new development as design standards allow. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance.” (pp. 9 - 10)*
- From Guiding Principles for Watershed Management:

“Watershed planning will continue in order to be proactive and integrate stewardship principles for land conservation, stream and wetland buffers, better site design, Best Management Practices (BMP), and erosion and sediment control. The natural drainage system can serve multiple benefits, including wildlife habitat and recreation.”

“The community should encourage site designs that are compatible with the natural characteristics of the site, clustering development, minimizing grading and impervious cover, and preserving site hydrology to the maximum extent possible. Naturalized or bioengineered solutions to drainage issues should be used wherever possible.” (p. 76)
- From Strategies for Watershed Management:

“Utilize naturalized or bio-engineered solutions to drainage issues wherever possible.”

“Future master planning efforts for largely undeveloped basins will rely more heavily on proactive better management practice (BMP) measures and the conservation of existing natural drainage features to most effectively manage stormwater and floodplains. Designs of human-made features should seek to utilize bioengineering and other naturalized techniques, incorporating trail systems and other linear park features where possible.”(p. 80)

ANALYSIS:

Overview of Proposed Revisions

Proposed Ordinance Revisions

1. Text changes to both Zoning and Subdivision Ordinances will address the requirement of Stormwater Pollution Prevention Plans (SWPPP) in the case of any construction activity, or Mini-SWPPPs in the case of any individual site construction, in conformance with the proposed Title 28. Title 28, “Stormwater Quality and Erosion and Sediment Control” and a new Chapter 28.01, “Regulations for Construction Site Discharges” is a newly proposed Title to the Lincoln Municipal Code that will be forwarded to the City Council in conjunction with these applications.

Subdivision Ordinance Changes

To add new sections as follows:

26.07.085 to define “Construction Activity” as land disturbance of one acre or more, not including maintenance and agricultural activity.

26.07.123 to define “Individual Site Construction” as disturbance of land less than one acre that is part of a larger common plan of development or redevelopment or sale associated with large construction activity.

26.07.125.05 to define “Mini-SWPPP” as a Stormwater Pollution Prevention Plan that is required for individual site construction.

26.07.137 to define “Permit in Conformance with Chapter 28.01” as a Construction Stormwater Permit authorizing permittee to proceed with work.

26.07.138 to define “Person” as individual, partnership, co-partnership, firm...including their legal representatives, agents, or assigns.

26.07.164 to define “Stop Work Order” as an order by the City to cease any land disturbance

26.07.166 to define “Storm Drainage System” as a conveyance, system of conveyance, or other structure used for collecting or conveying stormwater.

26.07.167 to define “Stormwater” as stormwater runoff, snow melt runoff, and surface runoff and drainage.

26.07.168 to define “Stormwater Pollution Prevention Plan (SWPPP)” as a plan for prevention, minimization, and control of soil erosion and sedimentation resulting from land disturbance.

And to amend the following sections

26.11.038 to substitute new terminology listed above, establish the requirement of permits and/or Mini-SWPPPs conforming with Chapter 28.01, and the need for proper sediment and erosion control measures to be in place before construction begins.

26.23.190 to change section name from “Land Grading” to “Construction Activity”, substitute new terminology as defined previously, and establish the requirement of conformance with provisions of Chapter 28.01.

26.27.060 to substitute new terminology as defined previously, and establish the requirement of conformance with provisions of Chapter 28.01.

26.31.040 to clarify applicable area as within the corporate limits of the City, or within the three-mile ETJ, and clarify procedures for notice of removal of sediment in the public right-of-way.

Basis for Stormwater Policy Recommendations

2. These updates are required for the City to comply with the federal Clean Water Act through the regulations of the National Pollution Discharge Elimination System (NPDES). The City of Lincoln is required to meet state and federal regulations relating to erosion and sediment control (E&SC).

3. Responsibility for the development and management of Lincoln’s stormwater system is shared between the City of Lincoln and the Lower Platte South Natural Resources District, with the NRD generally assuming responsibility of the major channels and the City having greater responsibility for local collection. However, both the City and NRD address issues related to flooding, water quality, and erosion and sediment control, and

cooperation among these agencies has been, and continues to be, of great importance in ensuring effective flood control.

4. Throughout the process of development of the above text changes, public input has been actively sought. The Erosion and Sediment Control Working Group was established to evaluate options for addressing the required changes. The Working Group played an active part in the review and recommendation of changes to the text. Their recommendations are reflected in the application materials.
5. Communication from Nebraska Department of Environmental Quality (NDEQ) (see email correspondence from Donna Garden, Unit Supervisor, NPDES Permitting, NDEQ) indicates that Lincoln may already be in violation of its NPDES permit. If found to be in violation, this violation would be considered serious in nature and relatively inexpensive to resolve. If the EPA were to use dollar penalties these could be up to \$32,000 per day, per violation. If the EPA were to audit the City, NDEQ would likely also take action. Violations to NPDES permits in Nebraska could result in penalties up to \$10,000 per day.
6. Sediment and erosion are significant contributors to siltation of detention facilities. Sediment from construction activity, if unchecked, deposits in these structures and reduces their capacity to store stormwater. Removal of silt from these structures presents a considerable expense to the public and to private property owners.

CONCLUSION:

The proposed ordinance and design standard revisions reflect several months of work by the City of Lincoln/NRD partnership and Sediment and Erosion Control Working Group to develop policy recommendations for stormwater quality and quantity issues in Lincoln. These are important requirements which will address Lincoln's federally mandated NPDES requirements and the City's flooding, erosion and sediment control problems which have been documented over the years. The Drainage Criteria Manual provides important guidance in meeting the design standards and changes to Chapter 9 should be adopted by reference to the proposed "Stormwater Drainage Design Standards" for consistency in preparation and review of applications.

STAFF RECOMMENDATION: Approval of the attached text changes to the Land Subdivision Ordinance, the Zoning Ordinance, and the Design Standards for Subdivision Regulations.

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**CHANGE OF ZONE NO. 07015 (TITLE 27);
MISCELLANEOUS NO. 07004 (TITLE 26);
and
MISCELLANEOUS NO. 07005
(CITY OF LINCOLN DESIGN STANDARDS),**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 25, 2007

Members present: Cornelius, Larson, Sunderman, Taylor, Esseks, Krieser, Carroll, Strand and Carlson.

Staff recommendation: Approval.

Ex Parte Communications: None.

Additional information for the record: **JB Dixon**, Stormwater Specialist with **Lower Platte South NRD**, submitted a memorandum from Nicole Fleck-Tooze clarifying some of the most recent minor language changes made to the new Title 28 and the Drainage Criteria Manual, and a letter in support from the Board of Directors of the Lower Platte South NRD.

Staff presentation:

1. **JB Dixon** provided some background information on the proposed legislation. The existing program has been in place since 2000. Sites that are over one acre are the ones that are currently regulated. One of the pieces missing from the current standards is the piece with regard to regulation of individual sites less than one acre but which are part of the larger development plan.

These regulations all stem from the EPA and the Clean Water Act of 1972, the goal being fishable, drinkable, swimmable waters nationwide. Out of that came the NPDES, which began in earnest in 1990 for municipalities greater than 100,000 in population. DEQ oversees the program which contains six main elements, one of which is construction site runoff.

Lincoln received its stormwater permit in 2002. Phase I of NPDES was in 1990, and nationwide that regulated construction sites greater than 5 acres in total land disturbance. In 2003, NPDES Phase II was enacted, which took the construction site threshold down to one acre in total land disturbance. Lincoln set their permitting standards at any land disturbance greater than 2 acres.

Lincoln started formal assessment of the program in 2005. This proposal relates to the the pollutant source being sediment (uncontrolled construction site discharges). EPA believes that the water quality impact from small construction sites is as high or higher than the impact from large construction sites on a per acre basis. Aside from water quality aspects, the detriments from sediment can lead to some safety issues. Another component of the NPDES program

includes solid waste as one of the potential contaminants to be regulated as well as hazardous materials and chemical storage.

2. Rock Krzycki of Public Works & Utilities, Watershed Management, discussed the results of the program assessment. The current program does not have provisions for permitting, inspecting and enforcement of these sites. The city is obligated to address individual building sites. If we chose not to comply, the EPA fines are \$32,500 per day per violation and DEQ fines are \$10,000 per day. These same fines would apply to a private developer.

Krzycki then explained the term, "larger common plan of development or sale". The Stormwater Pollution Prevention Plan (SWPPP) is already required for sites greater than one acre. This is simply an 8.5 x 11 plan submitted with the building permit that shows where control measures would be located on the site. Individual sites must also have some type of controls in place to control sediment during construction.

Krzycki explained the various public meetings that were held on this proposal. They invited groups from the City, Home Builders Association, developers, design firms, environmental groups, homeowners associations and NDEQ. Attempts were made to respond to some of the issues raised by the interest groups, including the Home Builders Association, developers, designers, general contractors, and NDEQ, and they corresponded with EPA throughout this process. On June 9, 2006, the interested parties were brought together to provide additional input and formed a working group led by Fred Hoke of the Home Builders Association of Lincoln. In addition, there was a list of over 70 stakeholder contacts that were kept informed as the drafts were completed.

Here is what people said: Developers wanted to do regularly scheduled inspections of the individual sites and work with the builders to achieve compliance. The staff responded to the issues they heard and make changes. This permit has no fee.

This proposal includes the adoption of new Title 28 of the Lincoln Municipal Code for erosion and sediment control (Title 28 does not require any action by the Planning Commission) and updates to Chapter 9 of the Drainage Criteria Manual to provide more options for erosion control measures and how to maintain the measures.

This is a clean water issue that is part of a federal program. Over 5,200 communities nationwide have addressed this same issue. Krzycki explained that the City is updating its standards to come into compliance with the state and federal regulations. The standards are clear and consolidated, fair and reasonable and address the small sites being required to be addressed. This proposal has been taken through a very inclusive process.

Strand inquired whether the state is working on updating their requirements at this time. **Donna Garden of NDEQ**, who supervises the NPDES unit, explained that the state regulations were updated in 2005, including all of the Phase I and Phase II information on stormwater. The state's construction stormwater permit is being updated right now.

Esseks inquired whether the state's 2005 regulations specify anything about the enforcement process such as the frequency of inspections. Garden explained that Phase I and Phase II have been consolidated and that all requirements for Phase II also apply to Phase I. Those restrictions are in the regulations. As far as specifics, the state allows the local program to decide.

Garden further explained that this is a state-wide program. All construction sites, one acre and above, and as part of a larger common plan of development if less than one acre, must be permitted under the state program and they require a stormwater pollution plan.

Carroll requested the definition for "construction activity". Nicole Fleck-Tooze referred to her memo dated April 24, 2007. The Commission has updated versions of all of the ordinances upon which the Commission is acting. The Drainage Criteria Manual and Chapter 28.01 were provided after the briefing. The packet that the Planning Commission received included all of the ordinances and design standards and there is no change in that packet. The only thing the Commission has not received is a hard copy of the updated version of Title 28, which the Planning Commission is not acting upon. The materials in the agenda packets are correct. "Construction Activity" shall mean:

....any land disturbance of one acre or more of total land area. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the agricultural use of the land.

"Individual Site Construction" shall mean:

....any land disturbance that disturbs less than one acre of total land area that is part of a larger common plan of development or sale associated with construction activity....

Carroll inquired whether "individual site construction" pertains to infill projects in the city in an existing neighborhood. Fleck-Tooze suggested that if it is not something that is "part of a larger common plan of development", it would not be included, and the state defines that very broadly. Essentially, this is going to apply to new development. She does not believe that infill projects inside the city would not fall under these provisions.

Carroll inquired whether a "stop work order" refers to any work on site, or just the grading or land disturbance work. **Miki Esposito** of the **City Law Department** stated that it refers to any land disturbance. Carroll is concerned that a stop work order for land disturbance could stop the framing work, etc., that is not disturbing the land. Upon further discussion, Esposito suggested that framing would not fit the definition of land disturbance.

Esseks referred to the letter to Marvin Krout from Karl Fredrickson and Glenn Johnson dated March 28, 2007, where there is a description of the enforcement process. Is that process in the ordinance? Fleck-Tooze answered in the affirmative. The most straight forward reference may be in the new Title 28. Section 28.01.120 would be the primary reference for enforcement. Esseks is concerned that there are adequate guidelines because this will be a larger private sector process.

Esposito added that the proposed Chapter 28.01 refers to unlawful acts, i.e. engaging in construction activity without a permit, violating the provisions of a permit, violating the provisions of a chapter. We do have provisions and it is a misdemeanor with penalty. However, the person in violation is allowed to correct their action within 10 days. A failure to correct the violations within that 10-day working period would cause enforcement action by the City, including stop work orders, assessment of fees, suspension or revocation of the permit. The individual is also requested to verify their compliance within that 10-day working period with pictures, photographs, written evidence, etc.

Esseks inquired whether there is a specified frequency of inspection by the developer. Esposito referred to Section 28.01.080, i.e. SWPPP inspections. There is a process in place for developers

to inspect individual site construction. There is also a provision for inspections by the City and Lower Platte South. Fleck-Tooze added that inspection is at least once every 7 calendar days and within 24 hours of rainfall greater than one-half inch.

Strand asked for an explanation of the process in a new subdivision. The lots are owned by individual builders. The developer is responsible for the whole area regardless of who owns the lots. If a stop work order is issued because of sediment in the street, does it stop work in the entire development?

Fleck-Tooze answered in the affirmative, if the development is in the development stage. But, if it is in the building construction stage, it would only apply to the individual lots.

Carroll noted that line 7-8 of 26.31.040 strikes out "service by mail". With this strikeout, what is considered the notice to remove? Upon further discussion, Fleck-Tooze agreed to follow-up on this language, although she believes it may now be addressed in another section.

In terms of the "larger common plan", Carlson inquired whether this would apply to a master plan redevelopment, such as the UNL Master Plan. Fleck-Tooze interprets that the state makes that very broad and that it could potentially apply if there is land disturbance. The City's code suggests that it is part of anything that is part of a larger plan associated with land disturbance for construction activity. Typically, a subdivision would be a larger common plan. "Common plan of Development or Sale" is defined to mean:

....a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but are covered under one SWPPP submitted by and under the control of the permittee".

Even though each individual lot may be less than one acre, the cumulative impact is significant.

Support

1. Fred Hoke, Government Affairs Director of the **Home Builders Association of Lincoln (HBAL)**, testified in support and referred to the number of meetings held regarding these regulations. June 2006 was the first meeting he attended, and after that meeting he was asked to chair future working group meetings. The working group then met in July, August and December, and in all of those meetings, after the general working meeting, members of HBAL, developers, builders, and contractors met to again review the deliberations of each of those major meetings. We wanted to be sure that the City did not provide requirements, recommendations and regulations that exceeded NDEQ or EPA guidelines. When dealing with stormwater issues and abating those situations, you are putting into place BMP's that do cost money, and there is an associated cost with each lot and each development. Our constant concern is that we don't add so much money to the cost of a new home that it precludes people from having an affordable home. So we were constantly looking for regulations that were fair and equitable, a process that is easy to understand, and holding overhead to a minimum. After each meeting, we forwarded our concerns to the City about that particular draft and in each case the City responded, and in almost all cases, the City incorporated those comments into the next draft. From the start, the developers wanted to take full responsibility for the large site, and the City agreed to that arrangement. Initially, there were permit and inspection fees involved. A number of the members opposed that and the city backed away from the fees, and then acquired a grant to provide an individual to provide that inspection process for at least a year.

Hoke further stated that in general, the members of HBAL and the members of these working committees wanted a program that meets but does not exceed the law, a program that is easily understood, fairly enforced and clearly implemented. In general, the members of the working group feel that the proposed regulations do meet those criteria.

Larson inquired whether this new ordinance would increase the cost per lot considerably. Hoke stated that it depends on the situation on the lot, but to stay in compliance with the regulations you may be going from no cost to \$1400 per lot, depending on the slope and BMP's. We want to be cautious that these regulations need to apply across the board.

Opposition

1. Rod Hornby, home builder, testified at this time but stated that he is not necessarily in opposition. He worked on the committee. He has been building for over 20 years. He knew very little about erosion control a year ago. He believes the whole industry is like teenagers that never had to clean their rooms. "We want to clean our rooms – we just don't know how yet." This is all good legislation but he is hopeful that "they teach us to clean our rooms before they punish us." It might take a little bit more time. There is some education legislation. We need to be taught.

2. Peter Katt appeared on behalf of developers and builders in the community. The Erosion and Sediment Control working group started about 1.5 years ago. He was not involved. It seemed to be a good public process. In the fall of 2006, there were at least some members in that group that didn't think people were listening to what they said and he was asked to get involved and look at the proposals and try to make some changes.

Katt then stated that he is appearing on behalf of Hartland Homes and Fowler Custom Homes. The principal of Prairie Homes, Steve Champoux, is also in attendance today.

The question is: Why should Lincoln expand, change, or modify the reach of its current erosion and sediment control regulations today? Why change now? What are the benefits of doing it now as opposed to later?

Katt then submitted the "History" from the staff report where he added a key date, that being 9/01/02, when the City was issued its MS4 Permit. Katt submitted that part of the confusion is, "what are the regulations?". Ms. Garden indicated that there are two different things going on in these stormwater regulations. There is the state's regulatory system – everybody has to do that – which is currently in the process of being updated and changed. It is his understanding that the state is modifying what they have proposed and will have a new draft out in about July of this year. That is important because that is a regulatory system that is in place that everyone has to follow today. So why does the city regulate stormwater? Because they are required to get an MS4 Permit. Katt then referred to pages 108 and 109 of the agenda, which is an e-mail exchange between Nicole Fleck-Tooze and Donna Garden attached to the staff report wherein they talk about the requirements of the City related to stormwater management as it relates to the City's MS4 Permit. Fleck-Tooze's purpose was, "what do we need to do to be compliant with the MS4 requirements", and Ms. Garden replies with the same confusion. Section 4 of the City's MS4 Permit (also submitted by Mr. Katt) provides that:

The City shall continue to implement the current Construction Site Storm Water Program or an equivalent program to control erosion and sediment loss....

and Ms. Garden correctly says the actual definition of exactly what you are implementing may need legal interpretation. So, who knows the requirements of the City's current MS4 Permit – who knows what they are exactly? They are very uncertain. Katt indicated that the point he is making is that the city's stormwater regulations are a requirement of its MS4 Permit with the state, and "who knows" what the City's current MS4 Permit says about regulating stormwater. It is very open to interpretation.

Katt also submitted an e-mail exchange he had with Nicole Fleck-Tooze on March 12 and March 13, 2007. Katt discovered that the MS4 Permit was issued in 2002 and has a five year life cycle, and that the City was required to submit a new MS4 application by March of this year. As best he can tell, the City timely filed an application and committed to the state that we would have a full application for our MS4 in place by the end of April, 2006. He is still waiting to see it. He believes that the MS4 Permit will resolve all of this.

From Katt's perspective, it would make sense as a community to wait until we put these pieces together because they all build upon one another. Part of the problem he has with the proposal is the definitions that don't match the state definitions that don't match the federal definitions. The City's MS4 Permit is unique in the entire state of Nebraska. He suggested that we should thrive toward a MS4 Permit that is consistent with other communities.

"Now is not the time. Wait. It is in progress. It will happen."

2. Steve Champoux, home builder, testified that he was also part of the working group and attended every meeting. He is concerned that we are headed down a track before we receive the education. EPA inspected 42 sites in town. Up until then, EPA was just a threat. He believes that the developers and builders have taken note and the developers have put the erosion control people to work with the BMP's – the gutter socks, etc. He does not want these requirements implemented until the builders have been given time to get the education and make attempts toward compliance. Permits have dropped 60 percent. Impact fees are increasing. The silt fence adds cost. We need to give the developers a chance to maintain their sediment. Let the developers and builders take the responsibility first. He does not want to go above and beyond the EPA and state requirements and enforce something that is going to cost more money. Affordability is already a problem. There were 100-150 complaints and there was only one enforcement issue. Let's not make a mountain out of a mole hill. Let's get everyone educated and let's see what happens. He believes the builders are responding to the EPA inspections.

Champoux suggested that it would take a year to get everyone involved and educated. EPA will be back and he believes we will see a difference between last year and this year. We have to do an inspection every seven days. The silt fences have gone up. After every half-inch rain we have to send the inspectors out to check the fences. He believes it will happen without this legislation.

3. Bob Benes, President of Aspen Builders, testified also as a member of the working group. How are we supposed to understand this ordinance? He is not against erosion control or having the policies in place. Developers are already responsible for their SWPPP and for what happens in that development. If a home builder tracks mud on the street, it is the developer that will get fined by the state. The developer wants to be liable and handle it. He believes this ordinance is difficult to understand. He would like to see a sit-down where the developers and home builders can ask questions about the language in the ordinance. We did not want this to go to Building & Safety; we did not want to have Building & Safety in control of a construction site. BMP's are very subjective. We do

not want construction held up. Building permits are down 60%. We have a sales tax shortfall because we don't have any construction going on in this town. If we can come up with some more education, we can help the builders and help the developers enforce it. We need a MS4 Permit first. We have to submit a mini-SWPPP to Building & Safety by this ordinance. A SWPPP changes daily. There are too many unanswered questions. He suggested that this legislation be delayed until the City gets its new MS4 Permit.

Staff response

Fleck-Tooze discussed the points raised by Peter Katt. She contends that the current MS4 Permit is clear. The city already has requirements in place from the state and feds to look at sites one acre and above and then the individual lots less than one acre. What has happened the past year or so is that the state has clarified some of this gray area when it comes to the smaller sites.

Fleck-Tooze also clarified the e-mail exchange between Nicole Fleck-Tooze and Donna Garden. The reason for the question was to identify the timeframe within which the City needs to make these changes and adopt these ordinances. We understood that we had to bring the ordinances forward:

....If we assume it to mean you will have a program in place that can effectively be enforced, including but not limited to ordinance requiring erosion and sediment control for Phase II sites, as well as sanctions to ensure compliance by the date of March 10, 2003, the City is already out of compliance.We would advise you to work as fast as possible to come into compliance and that those efforts will be taken into account in determining whether an enforcement action is necessary. Violations to NPDES permits in the State of Nebraska could result in enforcement penalties up to \$10,000/violation per day.

The EPA also provided a response and recommends formal enforcement action. EPA will be back this year and will be performing audits of some communities. We are trying to make a sincere effort to bring forward these standards. We do not have a lot of flexibility with regard to the timeframe. Fleck-Tooze assured that the City will be addressing the education issue, but the basic framework needs to be in place.

With regard to the concern raised about adequate time to review the ordinances, Fleck-Tooze pointed out that there were several drafts reviewed by the working committee that were provided back in December. The changes have been in response to the issues and concerns that were heard.

With regard to the specific question about withholding a certificate of occupancy, Fleck-Tooze stated that that provision was deleted from the ordinance because of this concern. In lieu of that, there is a requirement that the homeowner be notified of any provisions that are remaining.

Relating to the concern about Building & Safety holding up inspections on individual building sites, Fleck-Tooze assured that none of the provisions included within this ordinance are designed to do that. Nothing is changing in that regard. We already have the ability today to hold up building permits in an egregious situation.

JB Dixon responded to the education component. He commenced employment with the NRD in February of 2001, and his job was designed for this program. One of the big pieces was also education. We knew that there was a large group in the development community to educate and we understood that there was a learning curve to overcome. Therefore, we eased up on the enforcement

until we got to that point. When we take it down to the individual site construction, that is an entirely new group of people we need to educate, i.e. subcontractors, truck drivers, etc. The city and NRD understand there is education to be done. The HBAL has spearheaded those efforts working with the Attorney General's office looking for a state-wide education program specifically for this construction stormwater issue. The Stormwater Awareness Network was spearheaded to be that mechanism for some peer-to-peer training and education programs. We have done some pilot presentations for some select groups. We are not going to be "rolling out there the day after this legislation is approved with badge in hand and imposing fines". We understand there is a learning curve, but we need to be cognizant that the City does need to meet the objective of their own permit.

Esposito responded to Carroll's previous question about the notice provision relating to sediment in the public right-of-way. The reason the reference to "certified mail service" was stricken is because generally, these are unsafe conditions with mud in the street and we did not want to have to wait for the certified mail receipt. The problem needs to be addressed as soon as practical.

With regard to the "why now" issue, Esposito stated that the City does have a MS4 Permit and that permit has requirements. That permit was issued in September 1, 2002. We were supposed to have these requirements in place in March of 2003. In Mr. Katt's handout, Section 3 of the MS4 Permit requires that:

...The City shall update the current Construction Site Storm Water Program to include sites down to 1 acre in size in compliance with time frame set forth in the Phase II Storm Water regulations.

There is a table that specifies the date of March 17, 2003, to have legal authority in place to regulate construction site discharges down to one acre. That is why now. We are already out of compliance. We want to get another MS4 Permit in August, 2007, which requires this to be place. We do not want to expose ourselves to penalties from the state or federal government.

As far as exceeding state and federal minimum standards, Esposito stated that the City has been very committed not to do so. The proposed provisions come out of the Code of Federal Regulations (CFR). People who are doing these construction sites have to comply with those CFR's as well. We have tried to make this ordinance easy, fair and equitable.

It was confirmed that there were approximately 20 people on the working committee. He offered that the Web site (E&SC) will take you to that working group page and list who those persons were. Esseks notes that there are three developers asking for a delay. How many other builders and developers were on the committee? Krzycki believes there were probably at least 10 other builders on the committee and at least 7 developers/builders.

Strand urged that the definitions need to be consistent with other communities in the state. Are there differences between the MS4 Permits in different cities? Esposito responded that this is a nation-wide movement. The CFR spells out the requirements for small, medium and large MS4's. Lincoln is consistent with Omaha. It is universal. Most of the definitions are consistent with what the state is using. Our definition of "construction activity" includes sites down to one acre. The state and federal government defines "small construction activity" and "large construction activity". That is the only difference. We have the additional piece to address the sites under one acre and we are calling that "individual site construction", which is a new term that is not in the state and federal regulations.

Fleck-Tooze added that the City is trying to simplify the terminology.

Larson believes this legislation to be very confusing. As he understands it, the state has told the City to get in line. It sounds like the City has been working on that for three or four years. But, his sympathies are with the builders and developers. They have been working on it just a few months and they have a bigger job to do than the City staff. They have to educate so many people on down the line. He does not think they are going to have time to do so. He would like to see a law passed to cover the City with an enforcement date effective a year from now. Fleck-Tooze stated that she understands the concern, but the City has also adopted this program in phases. We actually began in 2000, and throughout that time we have had some huge education efforts. She observed that sometimes it is difficult to get people to the table. Now you are seeing a time where everyone is realizing how important this is. This is not new. We acknowledge that we need to continue working hard on education and we do have a partnership established to do so.

Larson wanted the City to make some formal statement to not enforce the provisions until a certain time. Fleck-Tooze reiterated that there is a 10 working day window of opportunity to voluntarily bring the site into compliance. That provision is already in place today for a development site. She believes that the City will be willing to work with the developers. We do have an obligation in the state and federal regulations to have those official enforcement mechanisms in place, but she does not believe it will change much from our practice today. Larson believes the additional costs could be prevented by education.

Esseks wanted to know the extent of the consequences if the city does not act now. Fleck-Tooze suggested that there are potential multiple consequences. In addition to the consequence of a rain event, we have the potential consequence of the City receiving an audit by EPA and being found to be out of compliance including extremely high fines up to \$32,000/day per violation. Some communities have had the experience where EPA comes in and specifically tells them what they must have in their program. It would be in everyone's best interest to get this going.

In response to the question by Esseks, Fleck-Tooze advised that if fines are issued against the City, the taxpayers would pay it. If the fines are issued against the developer or builder, they would pay.

Sunderman noted there to be a \$500 fine and clarified that to be after the 10-day opportunity to bring into compliance. Therefore, he believes that most of these cases will be on smaller sites. Fleck-Tooze agreed that the smaller sites are the newest part of the program, but there certainly could be issues on larger developments as well.

Carroll wondered whether the City's MS4 Permit would be denied if applied for under the City's current ordinances. Fleck-Tooze again noted that the City is already out of compliance with its current permit and current state and federal regulations, so at any time we are at risk of having some enforcement action taken. If still out of the compliance at the end of the permit period, she believes that enforcement action would occur.

Carroll confirmed that everything being required in this legislation is required by the state. Fleck-Tooze concurred.

CHANGE OF ZONE NO. 07015 (TITLE 27)

ACTION BY PLANNING COMMISSION:

April 25, 2007

Esseks moved approval, seconded by Cornelius.

Strand's only comment was the fact that Fred Hoke worked closely with the City throughout this process, and having been a broker and trying to oversee 50 some agents and compliance with EPA, she knows what developers are working with. She feels for the developers because they suddenly have to get a lot of people to comply very quickly. She is hopeful that HBAL will reach out, not just to their membership but to all people in the community to get trained.

Larson plead for the developers. They are going to pay the fine. They have no legal authority over any of their builders or suppliers. It is going to have to be a manner of education. That is going to take a lot of time. This just adds another cost to the cost of a lot. If we demand immediate compliance, the cost is higher than if education occurs first.

Strand assumes that the developers would certainly have attorneys that could put compliance requirements into the purchase agreements.

Motion for approval carried 9-0: Cornelius, Larson, Sunderman, Taylor, Esseks, Krieser, Carroll, Strand and Carlson voting 'yes'. This is a recommendation to the City Council.

MISCELLANEOUS NO. 07004 (TITLE 26)

ACTION BY PLANNING COMMISSION:

April 25, 2007

Esseks moved approval, seconded by Cornelius.

Carroll expressed disappointment for the Planning Commission not having all of the documents they are voting upon. The Commission should have had something in front of them to read and approve that is complete. He thinks this puts the Planning Commission in a bad position. We don't want to deny something that will impact the City with fines, etc., but we are put in that position now because we're up against the gun. There should have been a better relationship between the builders, developers and City to get this finalized prior to the City running out on the permit.

Strand agreed that the Commission should not be receiving changes today on something this important.

Taylor commented that this is a bad situation all the way around that should have been taken care of in 2001-2002. Now everyone is under the gun for compliance. He does not know what measures of delay can be used that will be adequate to help out the builders and people involved in construction to comply.

Motion for approval carried 9-0: Cornelius, Larson, Sunderman, Taylor, Esseks, Krieser, Carroll, Strand and Carlson voting 'yes'. This is a recommendation to the City Council.

MISCELLANEOUS NO. 07005 (DESIGN STANDARDS)

ACTION BY PLANNING COMMISSION:

April 25, 2007

Esseks moved approval, seconded by Cornelius and carried 9-0: Cornelius, Larson, Sunderman, Taylor, Esseks, Krieser, Carroll, Strand and Carlson voting 'yes'. This is a recommendation to the City Council.

March 28, 2007

Marvin Krout, Director
Lincoln-Lancaster Co. Planning Dept.
555 S. 10th Street, Rm. 213
Lincoln, NE 68508

Dear Marvin,

Enclosed are applications for revisions to the Zoning and Subdivision Ordinances, Stormwater Drainage Design Standards and Drainage Criteria Manual relating to erosion and sediment control (E&SC). These updates are required for the City to comply with the federal Clean Water Act through the regulations of the National Pollutant Discharge Elimination System (NPDES). **The request is to place these items on the April 25th Planning Commission agenda.** Specifically, these include:

1. Revisions to 27.81.020^{1a}, "General Regulations," of the Zoning Ordinance:
2. Revisions to the following chapters/sections of the Subdivision Ordinance:
 - 26.07 "Definitions"
 - 26.11.038 "Authority to Proceed With Improvements"
 - 26.23.190 "Land Grading"
 - 26.27.060 "Land Preparation and Grading"
 - 26.31.040 "Sediment in Public Right-of-Way; Notice to Remove; Penalty"
3. Revisions to Section 11, "Erosion and Sediment Control," of Chapter 2.05, "Stormwater Drainage Design Standards."
4. Revisions to Chapter 9, "Erosion and Sediment Control," of the City of Lincoln Drainage Criteria Manual.

A proposed amendment to the LMC to create a new Title 28, "Stormwater Quality and Erosion and Sediment Control, and a new Chapter 28.01, Regulations for Construction Site Discharges, is attached for reference, but not for action by the Planning Commission. This ordinance will be forwarded to the City Council for their action in conjunction with the revisions above.

Background

The City of Lincoln is required to meet state and federal regulations relating to erosion and sediment control (E&SC). The City meets these obligations in partnership with the Lower Platte South Natural Resources District (NRD).



CITY OF LINCOLN
NEBRASKA

MAYOR COLEEN J. SENG
lincoln.ne.gov

Public Works and Utilities Department
Karl Fredrickson, Director
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609

The following process was followed to arrive at the proposed revisions:

- In December of 2005, City and NRD staff met with a variety of interest groups including developers, builders, neighborhood and environmental groups to get input on structuring Lincoln's program to meet these requirements.
- In early 2006, the City received some additional guidance from the Nebraska Department of Environmental Quality (DEQ) and continued the dialogue with builders and developers, including a large group meeting in June of 2006.
- At the June 2006 meeting, an Erosion and Sediment Control Working Group was formed to develop recommendations for Lincoln's program, particularly as it relates to requirements for small building sites.
- Participation in the Working Group was encouraged and open to all interested parties. It was comprised of individuals representing builder, developer, and contractor interests, and staffed by the City, NRD, and DEQ. Fred Hoke, Government Affairs Director for the Homebuilders Association of Lincoln, chaired the Working Group.
- The Working Group met in July, August and December of 2006 and has provided guidance and recommendations to City and NRD staff on the program.
- Two drafts have been provided for review and comment to the Working Group and DEQ, and the proposed version reflects changes made in response to their comments. We believe this to be a balanced, equitable program that sincerely responds to the issues, concerns and guidance expressed both by the Working Group and DEQ.

Summary and Purpose of Revisions

1. **Consolidation and clarification.** Consolidate the erosion and sediment control requirements in a single chapter called "Regulations for Construction Site Discharges" within a new Title 28 entitled "Stormwater Quality and Erosion and Sediment Control." This title is anticipated to have an additional chapter in the near future relating to federally mandated requirements for illicit discharges to the storm drain system, a process being led by the Health Department. The adoption of Title 28 will not require action by the Planning Commission, but it is being provided as a reference as it relates to the other items.
2. **Consistency.** Make commensurate changes to the Zoning and Subdivision Ordinances and Design Standards.
3. **Terminology.** Add and change terminology to reflect federal and state requirements and terminology.
4. **Enforcement.** Add provisions for elements required on E&SC plans and to make the ordinance enforceable, as required.
5. **Individual Site Construction.** Add requirements for individual building sites that are less than 1 acre, but are "part of a larger common plan of development or sale," as required.
6. **Guidance and Technical Information.** Update Chapter 9, Erosion and Sediment Control," of the City's Drainage Criteria Manual to include all federally required elements on erosion and sediment control plans, and to provide complete, illustrative information and a range of alternatives that reflect today's industry standards for design

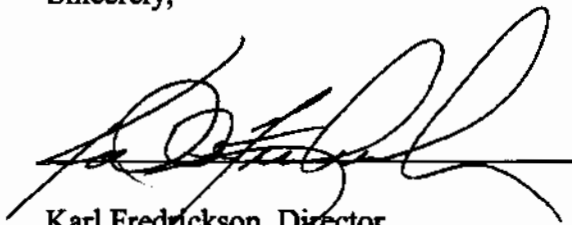
professionals who are preparing those plans.

Individual Site Construction


The City of Lincoln already has regulations in place relating to erosion and sediment control plans and implementation for development sites 1 acre and larger. Developers are required to submit a Stormwater Pollution Prevention Plan (SWPPP) prior to land disturbance on sites greater than 1 acre. Thus, a major focus of the Working Group was on requirements for individual building sites that are less than 1 acre, but are "part of a larger common plan of development or sale." The solution developed through this process was for the builder to submit a "Mini-SWPPP," an 8 ½ x 11" plan showing the measures to prevent erosion from a building site, with a building permit and to the developer. Enforcement provisions for individual site construction are drafted based on guidance from the Working Group, which was that enforcement should be done primarily by the private sector, or through the developer. Thus, as proposed the developer retains the responsibility for E&SC on the building sites.

City and NRD staff are scheduled to brief the Planning Commission on April 11th. Questions regarding this application can be directed to Rock Krzycki in the PW/U Dept. at rkrzycki@lincoln.ne.gov or 441-4959, or to JB Dixon at the NRD, @lpsnrd.org or 476-2729.

Sincerely,



Karl Fredrickson, Director
Lincoln Public Works & Utilities Dept.



Glenn Johnson, General Manager
Lower Platte South NRD

cc: Mike Merwick, Chuck Zimmerman, Lana Tolbert - B&S
Bruce Dart, Scott Holmes - Health Dept.
Nicole Fleck-Tooze, Ben Higgins, Rock Krzycki, Gary Lacy - PW/U Dept.
Miki Esposito - Law Dept.
JB Dixon, Ed Ubben - NRD
Donna Garden, Mary Schroer - NDEQ
Fred Hoke - HBAL

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donna.garden@ndeq.state.ne.us

NTooze@ci.lincoln.ne.us

08/08/2006 10:28 AM

donna.garden@ndeq.state.ne.us

To

cc

Subject

Lincoln's MS4 Permit

Donna,

Thanks for visiting about our permit requirements with regard to E&SC. Attached is page 4 of our permit with the Phase II consistency section (4) I was referencing. If you could get me something in writing (email is fine) identifying that we actually have until the end of Yr 5 of the permit (Aug 2007) to have a program in place to meet these requirements, it would be greatly appreciated. For Th, if you could just be ready to verbally share that with the work group as the discussion arises, that would be great.

Many thanks, Nicole.



(See attached file: Scan2284.pdf) (See attached file: Scan2284.pdf) Scan2284.pdf



Donna.Garden@NDEQ.State.
NE.US

08/09/2006 04:30 PM

To NTooze@ci.lincoln.ne.us

cc

bcc

Subject Re: Lincoln's MS4 Permit

History:

↩ This message has been forwarded.

Nicole:

As I read your permit, Table 1 indicates the City has committed to a March 10, 2003 date to implement(?) construction site storm water requirements down to 1 acre. The actual definition of exactly what you are implementing may need legal interpretation.

If we assume it to mean you will have a program in place that can effectively be enforced, including but not limited to ordinance requiring erosion and sediment control for Phase II sites, as well as sanctions to ensure compliance by the date of March 10, 2003, the City is already out of compliance. As with any compliance schedule the standard response from the state when these dates are missed is: We would advise you to work as fast as possible to come into compliance and that those efforts will be taken into account in determining whether an enforcement action is necessary. Violations to NPDES permits in the State of Nebraska could result in enforcement penalties up to \$10,000 / violation per day.

In addition, EPA has provided an answer as well:

Absent some compelling justification on the City's part as to why they have not yet put in place the ordinances, EPA would recommend taking a formal enforcement action against a MS4 in this situation. The violation is serious in nature and inexpensive to resolve. The enforcement should be a formal action and may or may not include penalty depending on the circumstances. A schedule in the new permit to meet the requirement in the previous permit would be inappropriate. If EPA were to audit a city in this situation we would most likely take an action. If the state would prefer EPA to take such actions we would accept referrals.

And as you know if dollar penalties are used by EPA it could be up to \$32,500 / day/ violation.

I hope this helps clarify the situation somewhat. I wanted to impress upon the city and the stakeholders that USEPA is very serious about violations in an MS4 permit as the program is very dependent on the municipalities to implement this complex program. If there is anything else I can provide, please let me know.

Donna K. Garden, Unit Supervisor
NPDES Permitting
Nebraska Department of Environmental Quality
(402) 471-1367
(402) 471-2909 FAX

SUPPORT

LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT



3125 Portia St., Box 83581, Lincoln NE 68501-3581
(402) 476-2729 • FAX (402) 476-6454
www.lpsnrd.org

ITEM NO. 4.3a,b,c: CHANGE OF ZONE NO. 07015
~~MISCELLANEOUS NO. 07004~~
~~MISCELLANEOUS NO. 07005~~
(p.75 - Public Hearing - 4/25/07)

April 25, 2007

Lincoln City/Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE 68508

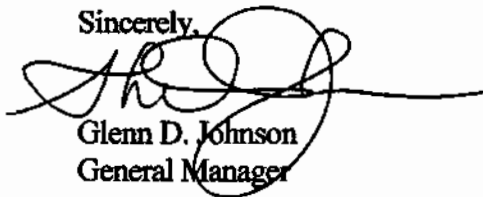
Dear Commissioners:

The Board of Directors of the Lower Platte South Natural Resources District, at their meeting on April 18, 2007 adopted a motion to endorse the proposed text changes involving the regulations and design standards relating to stormwater quality. These specifically include revisions to and new sections in Title 26, Subdivision Ordinances, amendments to Section 27 relating to "General Regulations" of the Zoning Ordinance, and Amendments to the Lincoln Design Standards and adoption by reference of Chapter 9 of the City's Drainage Criteria Manual.

These changes have been developed by the City with assistance from the Lower Platte South Natural Resources District through an extensive public input process. We feel that these changes are needed and are especially appropriate for Lincoln. Erosion and sediment control on construction sites of all sizes is important for protecting water quality and reducing off-site damages from sediment.

The Board of Directors would urge the Planning Commission to adopt a recommendation of approval of these stormwater regulation and design standards changes as proposed and forward it to the Lincoln City Council.

Sincerely,



Glenn D. Johnson
General Manager

GDJ/gdj

024

Miscellaneous #07004, #07005

PAGE 2

Change of Zone #07015 GENERAL INFORMATION:

26.11.038, 26.23.190, 26.27.060, and 26.31.040 of the Lincoln Municipal Code as hitherto existing.

CHANGE OF ZONE NO. 07015, amending Section 27.81.010 of the Lincoln Municipal Code relating to General Regulations of the Zoning Code to require compliance with Chapter 28.01, Regulations for Construction Site Discharges, for construction activity; and by repealing Section 27.81.010 of the Lincoln Municipal Code as hitherto existing.

MISCELLANEOUS NO. 07005, amending the text of the City of Lincoln Design Standards to set forth standards for construction site stormwater discharges pursuant to the National Pollutant Discharge Elimination System (NPDES) under the Federal Clean Water Act and the Nebraska Environmental Protection Act by amending Chapter 2.05, "Stormwater Drainage Design Standards," Section 11, "Erosion and Sediment Control" to repeal Sections 11.1 and 11.2 and to add new Section 11.1 setting forth the purpose and scope of the design standards for erosion and sediment control; to add new Section 11.2 requiring that a permit and SWPPP be submitted to the Lower Platte South Natural Resources District for any construction activity; to add new Section 11.3 setting forth requirements for Individual Site Construction; and to add new Section 11.4 which adopts by reference Chapter 9 of the City's Drainage Criteria Manual.

HISTORY:

1972, National Pollution Discharge Elimination System (NPDES) established to issue permits regulating discharges from a point source into any navigable water.

1990, Phase I of NPDES stormwater program addressing, among other things, discharges from large construction activities disturbing 5 acres or more of land, including smaller construction activities if they are part of a larger common plan of development or sale.

1994, Mayor's Stormwater Task Force develops recommendations for stormwater handling and sediment and erosion control.

1997 - 1999 Mayor's Stormwater Advisory Committee formed to study, among other things, the preparation of revised criteria for stormwater management and best management procedures for construction and development. Results in five policy recommendations, one of which is NPDES construction site recommendations.

2000, Amendments to Zoning Ordinance, Subdivision Ordinance, and Design Standards (with Drainage Criteria Manual by reference) that address the recommendations of the Mayor's Stormwater Advisory Committee and the requirements of NPDES are adopted. Updates to these ordinances and standards follow.

9/1/02 City of Lincoln MS4 Permit issued.

Change of Zone #07015 GENERAL INFORMATION:

2003, Phase II of NPDES stormwater program addressing, among other things, discharges from small construction activities on 1 to 5 acres, including individual construction sites if they are part of a larger common plan of development or sale.

City to Regulate to one (1) acre under permit

December, 2005, City and NRD meet with a variety of interest groups including developers, builders, neighborhoods and environmental groups to get input on structuring Lincoln's program to meet erosion and sediment control requirements.

Early 2006, the City receives some additional guidance from the Nebraska Department of Environmental Quality (NDEQ) and continues the dialogue with builders and developers, including a large group meeting in June of 2006.

June 2006, at this meeting, an Erosion and Sediment Control Working Group was formed to develop recommendations for Lincoln's Program, particularly as it relates to requirements for small building sites.

Participation in the Working Group was encouraged and open to all interested parties. It was comprised of individuals representing builder, developer, and contractor interests, and staffed by the City, NRD and NDEQ. Fred Hoke, Government Affairs Director for the Homebuilders Association of Lincoln, chaired the Working Group.

July - December, 2006, The Working Group holds three meetings and provides guidance and recommendations to City and NRD staff on the program.

March 1, 2007 - NEW MS4 Application is due

March, 2007, Two drafts are provided for review and comment to the Working Group and NDEQ, and the enclosed proposed version reflects changes made in response to their comments.

*April 30 - Full submittal of application due
Comprehensive Plan Specifications*

- From Guiding Principles for The Urban Environment: "Streams, trees, open space, and other environmentally sensitive features should be preserved within new development as design standards allow. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance." (pp. 9 - 10)

- From Guiding Principles for Watershed Management:

"Watershed planning will continue in order to be proactive and integrate stewardship principles for land conservation, stream and wetland buffers, better site design, Best Management Practices (BMP), and erosion and

Authorization to Discharge Under the
National Pollutant Discharge Elimination System
(NPDES)

This NPDES permit is issued in compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251 *et. seq.* as amended to date), the Nebraska Environmental Protection Act (Neb. Rev. Stat. Secs. 81-1501 *et. seq.* as amended to date), and the Rules and Regulations promulgated pursuant to these Acts. The municipal separate storm sewer system (MS4) identified in this permit is authorized to discharge storm water and other authorized flows, and is subject to the limitations, requirements, prohibitions and conditions set forth herein. This permit regulates and controls the release of pollutants in the discharges authorized herein. This permit does not relieve permittees of other duties and responsibilities under the Nebraska Environmental Protection Act, as amended, or established by regulations promulgated pursuant thereto.

NPDES Permit No.: **NE0133671**

IIS File No.: **PCS 73882 - P**

Permittee: **City of Lincoln**

Coverage: **All discharges from the Lincoln MS4 system that discharge to waters of the State, including any MS4 discharges that may reach waters of the State through intermediate drainageways or conduits**

Receiving Water: **Salt Creek and several tributaries**

Effective Date: **September 1, 2002**

Expiration Date: **August 31, 2007**

Pursuant to the Delegation Memorandum dated July 26, 1999 and signed by the Director, the undersigned hereby executes this document on the behalf of the Director.

Signed this _____ day of _____, _____

Jay D. Ringenberg
Deputy Director, Programs

Effective: September 1, 2002

Part III: Storm Water Management Program (SWMP)**A. Implementation of SWMP**

The permittee shall implement the Storm Water Management Program (SWMP) submitted to the Department on September 8, 2000 with the following additions set forth below in this subpart, and in accordance with the implementation schedule set forth in Table 1 below. The SWMP and the implementation schedule may be modified pursuant to the *SWMP Amendment Proposals and Approvals* procedures set forth below. The proposed Storm Water Management Program submitted September 8, 2000 by the City of Lincoln is included as an attachment to this permit for reference purposes.

1. Best Management Practices (BMP's)

The City shall review existing and additional storm water Best Management Practices (BMP's), and shall develop and implement an initial schedule for future BMP use. The purpose of the BMP's will be to reduce and/or minimize the discharge of pollutants in storm water. Monitoring to assess BMP effectiveness shall also be conducted (See Wet Weather Monitoring below).

BMP development, implementation and assessment shall consider all land-use settings that exist within the MS4 area, and any potential impacts to endangered/threatened species that may be identified by the NEDQ, the Nebraska Game and Parks Commission, or the US Fish and Wildlife Service. BMP Assessment shall also examine storm water impacts on any impaired water bodies as identified by the NDEQ pursuant to the requirements of § 303(d) of the Federal Clean Water Act (Note: Table FS-B in the Fact Sheet identifies the water bodies considered impaired at the time this permit was issued).

The initial BMP review and implementation schedule shall be completed within 12 months after the issuance of this permit. Follow-up BMP reviews shall be performed annually (See *Phase II Consistency and Annual SWMP Review* below), with a more extensive review to be conducted in the fourth year of permit coverage (See *Fourth Year BMP Review* below). The initial BMP implementation schedule and any subsequent amendments shall be incorporated into the SWMP in accordance with the amendment and approval procedures set forth below.

2. Industrial and High-Risk Runoff Areas

The City shall develop a program to identify high-risk runoff areas; and shall maintain a database of industrial facilities and high-risk runoff areas within the MS4. BMPs and/or other measures shall be implemented to address pollutant concerns from these facilities. "Other measures" may include pollution prevention and waste management programs, periodic inspections or reconnaissance visits; compliance and enforcement follow-up; or referral to the NDEQ for compliance or enforcement follow-up under the NPDES Industrial Storm Water Permit. A summary of inspection, compliance, monitoring and enforcement activities conducted at these sites shall be included in the annual report (See *Annual SWMP Review* below).

3. Construction Site Storm Water

The City shall continue to implement the current Construction Site Storm Water Program in conjunction with the Lower Platte South NRD; or an equivalent program to control erosion and sediment loss that is approved in accordance with the *SWMP Amendment Proposals and Approvals* procedures as set forth below. The City shall update the current Construction Site Storm Water Program to include sites down to 1 acre in size in compliance with time frame set forth in the Phase II Storm Water regulations.

4. Phase II Consistency

The permittee shall initiate SWMP amendments that may be necessary to comply with the six minimum measures set forth in 40 CFR Part 122.34(b) (Reprinted in Appendix B of this permit). The target date for implementing any SWMP amendments that may be required shall be March 10, 2003. On or before January 1, 2003 (i.e., approximately 3 months prior to the implementation deadline), the permittee shall review the SWMP and submit any amendment proposals needed to meet the six minimum measures of the Phase II Storm water regulations set forth in 40 CFR Part 122.34(b). These SWMP amendments and any changes in the time schedules set forth above are subject to the *SWMP Amendment Proposals and Approvals* procedures set forth below.

Peter Katt

Subject: FW: MS4 Permit Timeline

Attachments: 070305_Cover.pdf



070305_Cover.pdf
(523 KB)

-----Original Message-----

From: NTooze@ci.lincoln.ne.us [mailto:NTooze@ci.lincoln.ne.us]
Sent: Tuesday, March 13, 2007 4:25 PM
To: Peter Katt
Cc: MEsposito@lincoln.ne.gov; NTooze@ci.lincoln.ne.us;
RPeo@ci.lincoln.ne.us
Subject: RE: MS4 Permit Timeline

Re: items 1-3, attached is a copy of the letter to DEQ. Re: item 4: prior to Sept 2007.

Re: E&SC ordinance revisions: because the program and ordinance revisions are necessary to meet the minimum Federal and State regulations, a fact which will be unchanged by the next permit cycle.

(See attached file: 070305_Cover.pdf)

Nicole:

1. Is there any written record of the City's "discussion" with DEQ on this highly unusual procedure? If so, may I have a copy?
2. When will the 'full permit' be submitted?
3. When will the SWMP be submitted?
4. When would you expect the new permit to be issued by NDEQ?

Why is it a good idea to complete the local regulatory changes before the new five (5) year permit is in place with the State?

-----Original Message-----

From: NTooze@ci.lincoln.ne.us [mailto:NTooze@ci.lincoln.ne.us]
Sent: Monday, March 12, 2007 9:18 AM
To: Peter Katt
Cc: MEsposito@lincoln.ne.gov; RPeo@ci.lincoln.ne.us

Subject: RE: MS4 Permit Application Status as of March 11th

Sorry, I thought Miki let you know it would be posted on the web last week. The document on the website is the outline submitted to the State. In accordance with our discussion with DEQ, we are providing an outline in application with a full permit and Stormwater Management Plan (SWMP) to follow.

Nicole:

No word on the posting of the Application. Should I assume it was not filed on time or that you did not let me know. The Website has a document called a Draft Permit Outline but I would find it hard to believe that document was submitted to the State.

Peter

-----Original Message-----

From: NTooze@ci.lincoln.ne.us [mailto:NTooze@ci.lincoln.ne.us]
Sent: Monday, February 26, 2007 11:01 AM
To: Peter Katt
Cc: MEsposito@lincoln.ne.gov; RPeo@ci.lincoln.ne.us
Subject: RE: MS4 Permit Application

Peter, we'll make sure you're aware when it's posted.

Will you or Nicole let me know when it gets posted on the City's website?

Peter W. Katt

March 5, 2007



**CITY OF LINCOLN
NEBRASKA**

MAYOR COLEEN J. SENG

lincoln.ne.gov

Street Operations
Public Works and Utilities Department
Karl Fredrickson, Director
901 North 6th Street
Lincoln, Nebraska 68508-2315
402-441-7701
fax: 402-441-8194

Ms. Donna Garden
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street, P.O. Box 98922
Lincoln, NE 68509-8922

RE: Draft Outline for Lincoln MS4 Permit Renewal

Dear Ms. Garden:

Per our discussion regarding Lincoln's MS4 Permit renewal, attached is a draft outline of the permit for your review. We intend to submit a revised draft permit and Stormwater Management Plan by no later than the end of April 2007. We would like to set up a meeting later this month to go over any comments from NDEQ on the outline, obtain guidance on SWMP elements, and walk through a schedule for the permit process.

Please contact me regarding any questions or comments at 441-7589 or bhiggins@lincoln.ne.gov.

Sincerely,

Ben Higgins
Public Works and Utilities Department
901 N. 6th Street
Lincoln, NE 68508

cc: Mary Schroer, NDEQ
Karl Fredrickson, Nicole Fleck-Tooze - PW/U Dept.

CHANGE OF ZONE NO. 07015
MISCELLANEOUS NO. 07004
MISCELLANEOUS NO. 07005
(City Council Hearing: 5/21/07)



Jean L Walker/Notes
05/07/2007 09:28 AM

To "EC Fink" <ecfink1@earthlink.net>
cc Marvin S Krout/Notes@Notes, Sara S Hartzell/Notes@Notes, Nicole Tooze/Notes@Notes, Rock A Krzycki/Notes@Notes
bcc Jean L Walker/Notes
Subject Re: Please pass construction site discharges ordinance today (Change of Zone No. 07015, Miscellaneous No. 07004, Miscellaneous No. 07005, and new Title 28)

Dear Ms. Fink:

Thank you for submitting your comments, which have now become part of the record on these applications. On April 25, 2007, the Planning Commission voted 9-0 to recommend approval of the construction site discharge regulations. The Planning Commission action is a recommendation to the City Council. The City Council public hearing is tentatively scheduled for Monday, May 21, 2007, beginning at 5:30 p.m. Your comments will also be submitted to the City Council for their consideration.

If you have any questions about this process or the public hearings, please do not hesitate to contact me. Any questions about the regulations themselves may be referred to Nicole Fleck-Tooze in Public Works & Utilities (ntooze@lincoln.ne.gov) or Rock Krzycki (rkrzycki@lincoln.ne.gov).

--Jean Walker, Administrative Officer
City-County Planning Department
441-6365
"EC Fink" <ecfink1@earthlink.net>



"EC Fink"
<ecfink1@earthlink.net>
05/06/2007 04:08 PM

Please respond to
"EC Fink"
<ecfink1@earthlink.net>

To <plan@lincoln.ne.gov>
cc
Subject Please pass construction site discharges ordinance today

I have been watching the developers complain and say that permits are down. This reminds of previous years when the developers have hid behind the business cycle to advance their agenda.

I am just a mom of a freshman at Southwest High. I have walked through the development around Cavett Elementary when he was there where the streets were full of mud. I have walked through the streets full of mud around Scott Middle school when he was at Scott. Last spring we walked around Campbell's Village Pointe development to find construction cast-offs for the Scott Middle School Science Olympiad team. Our boots were full of mud last spring in a drought year.

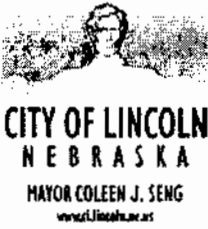
I would like to see this issue passed. The city pays for the development of sewer and rain systems. I have seen them clogged with silt and waste before occupants even move into the area. We deserve better protection of our water resources and city infrastructure.

Evelyn Fink
6510 S. 41st ST.
Lincoln, NE 68516
402-423-8184

402-730-4856

Evelyn Fink
402-423-8184
402-730-4856

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**PUBLIC WORKS AND
UTILITIES DEPARTMENT**

MEMORANDUM

Date: April 24, 2007
To: Planning Commission
From: Nicole Fleck-Tooze
Subject: *Regulations for Construction Site Discharges
Items 4.3 (a) - (c) on April 25th Agenda*

The Planning Commission received updated versions of the Zoning and Subdivision Ordinances and Design Standards relating to this item with the Planning Commission packet. These reflected some minor revisions and corrections made during the Planning review process with no changes to content. Similar revisions were made to proposed Chapter 28.01 and to Chapter 9 of the Drainage Criteria Manual. (The revisions do not change the summary of Ch 9 DCM the Commission already received). Full copies of both documents are available on the City's website at lincoln.ne.gov, keyword "E&SC."

Revisions to Chapter 28.01 and to the full Chapter 9 of the Drainage Criteria Manual previously distributed to the Planning Commission have been made as follows:

Chapter 28.01

1. Definition for Storm Drainage System: "municipal streets" was changed to use the existing terms "public streets" and "private roadways."
2. Definition for Stormwater Pollution Prevention Plan (SWPPP): the term "BMPs" was spelled out as "Best Management Practices."

Chapter 9 of the Drainage Criteria Manual

1. Discrepancies between figure numbers and text references were corrected.
2. Figure 9-2, "NPDES Permit Process Flowchart" on page 9-7: the text above the second (top) box, "Proceed," was corrected to indicate this box refers to separate sites less than one acre which do not require a SWPPP.
3. The term "Notice of Completion" on pages 9-4 and 9-9 was changed to "Notice of Termination."
4. The description of "Construction Activity" in Section 9.3 on page 9-4 and the description "Individual Site Construction" in Section 9.3.6 on page 9-12 were both modified to be consistent with the definitions listed in Chapter 28.01.