

## **Construction Site and Stormwater**

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## Article A: Construction Site Erosion Control

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### **Sec. 15-2-1 Authority.**

- (a) **Statutory Authority.** This Article is adopted pursuant to the guidelines in Section 61.354, Wis. Stats.
- (b) **Intergovernmental Cooperative Agreements.** The Village of Elk Mound may enter into intergovernmental cooperative agreements pursuant to Section 66.0103, Wis. Stats., with other governmental entities to enhance enforcement of these requirements.
- (c) **Other Village Regulatory Powers.** The provisions of this Article are deemed not to limit any other lawful regulatory powers of the Village of Elk Mound.
- (d) **Pre-Emption of More Stringent Control Requirements.** The requirements of this Article do not pre-empt more stringent erosion and sediment control requirements that may be imposed by other governmental agencies.

### **Sec. 15-2-2 Findings and Purpose.**

- (a) **Findings.** The Village Board of the Village of Elk Mound finds that soil erosion from land disturbing activities and subsequent development can disturb natural cover and land surfaces resulting in a change of run-off patterns that may have a detrimental effect on water quality and downstream uses. Land disturbing activities and subsequent development need to be strictly regulated to avoid damage to other properties and sensitive areas. Further, effective sediment and stormwater management depends upon proper planning, design and timely installation of conservation practices, as well as continuing maintenance practices.
- (b) **Purpose.** It is the purpose of this Article to:
  - (1) Preserve the natural resources;
  - (2) Protect the quality of the waters of the State of Wisconsin and Village of Elk Mound; and
  - (3) Protect and promote the health, safety and welfare of the people, to the extent practicable by minimizing the amount of sediment, soil loss, and other pollutants carried by runoff or discharge from land disturbing activities and subsequent development of the property to lakes, streams and wetlands.

### **Sec. 15-2-3 Applicability and Jurisdiction.**

- (a) **Applicability.**
  - (1) **Scope of Applicability.** This Article applies to the following land disturbing construction activities except as provided under Subsection (a)(2) below:

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- a. A construction site, which has one (1) or more acres of land disturbing construction activity.
  - b. Construction sites of any size with land disturbing activities that, in the opinion of the Village Board, or its designee, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that:
    1. Causes erosion;
    2. Increases water pollution by scouring or the transportation of particulate matter; or
    3. Endangers property of public safety.
- (2) **Areas of Inapplicability.** This Article does not apply to the following:
- a. Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under COMM 21.125 or COMM 50.115, Wis. Adm. Code.
  - b. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
  - c. Nonpoint discharges from agricultural facilities and practices.
  - d. Nonpoint discharges from silviculture activities.
  - e. Routine maintenance for the project sites under one (1) acre of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- (b) **Village Jurisdiction; Extraterritorial Jurisdiction.** This Article applies to land disturbing construction activity on construction sites located within the territorial limits of the Village of Elk Mound and publicly or privately owned lands within the extraterritorial plat review jurisdiction of the Village of Elk Mound.
- (c) **Exclusions.** This Article is not applicable to activities conducted by a state agency, as defined under Section 227.01(1), Wis. Stats., but also including the Office of District Attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Section 281.33(2), Wis. Stats.

## **Sec. 15-2-4 Definitions.**

- (a) **Article Definitions.** The following definitions shall be applicable in this Article:
- (1) **Administering Authority.** A governmental employee, or other intergovernmental agencies, that are designated by the Village of Elk Mound to administer this Article.
  - (2) **Agricultural Facilities and Practices.** Has the meaning in Section 281.16(1), Wis. Stats.
  - (3) **Average Annual Rainfall.** A calendar year of precipitation, excluding snow, which is considered typical.

- (4) **Best Management Practice ("BMP").** Structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the State.
- (5) **Business Day.** A day the office of the Village of Elk Mound is routinely and customarily open for business.
- (6) **Cease and Desist Order.** A court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
- (7) **Construction Site.** An area upon which one (1) or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one (1) plan.
- (8) **Division of Land.** The creation from one (1) parcel of two (2) or more parcels.
- (9) **Erosion.** The process by which the land's surface is worn away by the action of winds, water, ice or gravity.
- (10) **Erosion and Sediment Control Plan.** A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (11) **Extraterritorial.** The unincorporated area within three (3) miles of the corporate limits of a first, second or third class city, or within one and one-half (1.5) miles of a fourth class city or village.
- (12) **Final Stabilization.** All land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least seventy percent (70%) of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.
- (13) **Governing Board.** The Village Board of the Village of Elk Mound.
- (14) **Land Disturbing Construction Activity.** Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. "Land disturbing construction activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (15) **Maximum Extent Practicable ("MEP").** A level of implementing best management practices in order to achieve a performance standard specified in this Article which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
- (16) **Performance Standard.** A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

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- (17) **Permit.** A written authorization made by the Village designee to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (18) **Plan.** Erosion and Sediment Control Plan or Abbreviated Plan.
- (19) **Pollutant.** Has the meaning given in Section 283.01(13), Wis. Stats.
- (20) **Pollution.** Has the meaning given in Section 281.01(10), Wis. Stats.
- (21) **Responsible Party.** Any entity holding fee title to the property or performing services to meet the performance standards of this Article through a contract or other agreement.
- (22) **Runoff.** Stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (23) **Sediment.** Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (24) **Separate Storm Sewer.** A conveyance or system of conveyance including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
  - a. Is designed or used for collecting water or conveying runoff.
  - b. Is not part of a combined sewer system.
  - c. Is not draining to a stormwater treatment device or system.
  - d. Discharges directly or indirectly to waters of the State.
- (25) **Site.** The entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- (26) **Stop Work Order.** An order issued by the Village designee which requires that all construction activity on the site be stopped.
- (27) **Technical Standard.** A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (28) **Waters of the State.** Has the meaning given in Section 281.01(18), Wis. Stats.

## **Sec. 15-2-5 Technical Standards.**

- (a) **Design Criteria, Standards and Specifications.** All BMPs required to comply with this Article shall meet the design criteria, standards and specifications based on any of the following:
  - (1) Applicable design criteria, standards and specifications identified in the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222 November 1993 Revision.
  - (2) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of NR 151, Wis. Adm. Code.

- (3) For this Article, "average annual basis" is calculated using the appropriate annual rainfall or runoff factor, also referred to as the "R factor", or an equivalent design storm using a Type II distribution, with other consideration given to the geographic location of the site and the period of disturbance.
- (b) **Other Standards.** Other technical standards not identified or developed in Subsection (a) may be used provided that the methods have been approved by the Village designee.

## Sec. 15-2-6 Performance Standards.

- (a) **Responsible Party.** The responsible party shall implement an erosion and sediment control plan or abbreviated plan, developed in accordance with Section 15-2-8, which incorporates the requirements of this Section.
- (b) **Plan.** A written plan shall be developed in accordance with Section 15-2-8 and implemented for each construction site.
- (c) **Erosion and Other Pollutant Control Requirements.** The plan required under Subsection (b) shall include the following:
  - (1) BMPs that, by design, achieve to the maximum extent practicable, a reduction of eighty percent (80%) of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed eighty percent (80%) sediment reduction to meet the requirements of this Subsection. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this Subsection. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
  - (2) Notwithstanding Subsection (c)(1) above, if BMPs cannot be designed and implemented to reduce the sediment load by eighty percent (80%) on an average annual basis, the plan shall include a written and site-specific explanation as to why the eighty percent (80%) reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
  - (3) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
    - a. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
    - b. Prevent the discharge of sediment as part of site de-watering.
    - c. Protect the separate storm drain inlet structure from receiving sediment.
  - (4) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the State. However, projects that

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require the placement of these materials in waters of the State, such as constructing bridge footings or BMP installations, are not prohibited by this Subsection.

- (d) **Location.** The BMPs used to comply with this Section shall be located prior to runoff entering waters of the State.
- (e) **Alternate Requirements.** The Village designee may establish stormwater management requirements more stringent than those set forth in this Section if the Village designee determines that an added level of protection is needed for sensitive resources.

### **Sec. 15-2-7 Permitting Requirements, Procedures and Fees.**

- (a) **Permit Required.** No responsible party may commence a land disturbing construction activity subject to this Article without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Village designee.
- (b) **Permit Application and Fees.** At least one (1) responsible party desiring to undertake a land disturbing activity subject to this Article shall submit an application for a permit, including a copy of the approved WisDNR Stormwater Discharge Permit, for the project and shall pay an application fee as set forth under Section 15-2-40. By submitting an application, the applicant further authorizes the Village designee to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (c) **Review and Approval of Permit Application.** The Village designee shall review any permit application that is submitted with an erosion and sediment control plan or abbreviated plan, and the required fee. The following approval procedure shall be used:
  - (1) Within twenty (20) business days of the receipt of a complete permit application, as required by Subsection (b), the Village designee shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this Article.
  - (2) If the permit application and plan are approved, the Village designee shall issue the permit upon receipt of any engineering review fees due.
  - (3) If the permit application or plan is disapproved, the Village designee shall state in writing the reasons for disapproval.
  - (4) The Village designee may request additional information from the applicant. If additional information is submitted, the Village designee shall have ten (10) business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
  - (5) Failure by the Village designee to inform the permit applicant of a decision within twenty (20) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (d) **Surety Bond.** As a condition of approval and issuance of the permit, the Village designee may require the applicant to deposit a surety bond or irrevocable letter of credit to



guarantee a good faith execution of the approved erosion control plan and any permit conditions.

- (e) **Permit Requirements.** All permits shall require the responsible party to:
- (1) Notify the Village designee within forty-eight (48) hours of commencing any land disturbing construction activity.
  - (2) Notify the Village designee of completion of any BMPs within fourteen (14) days after their installation.
  - (3) Obtain permission in writing from the Village designee prior to any modification pursuant to Section 15-2-8 of the erosion and sediment control plan or abbreviated plan.
  - (4) Install all BMPs as identified in the approved plan.
  - (5) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the plan.
  - (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.
  - (7) Inspect the BMPs within twenty-four (24) hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
  - (8) Allow the Village designee to enter the site for the purpose of inspecting compliance with the plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (f) **Permit Conditions.** Permits issued under this Section may include conditions established by the Village designee in addition to the requirements set forth in Subsection (e) above, where needed to assure compliance with the performance standards in Section 15-2-6.
- (g) **Permit Duration.** Permits issued under this Section shall be valid for a period of one hundred eighty (180) days, or length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Village designee may extend the period one (1) or more times for up to an additional one hundred eighty (180) days. The Village designee may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this Article.
- (h) **Maintenance.** The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this Article until the site has undergone final stabilization.

## Sec. 15-2-8 Erosion and Sediment Control Plan and Amendments.

(a) **Erosion and Sediment Control Plan.**

- (1) **Plan Required.** For each construction site identified under Section 15-2-3 [sites greater than one (1) acre], an erosion and sediment control plan shall be prepared and submitted to the Village designee.
- (2) **Performance Standards.** The erosion and sediment control plan shall be designed to meet the performance standards in Section 15-2-6 and other requirements of this Article.
- (3) **Required Information and Data.** The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include the following pertinent items:
  - a. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The applicant shall also include start and end dates for construction.
  - b. Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
  - c. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
  - d. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
  - e. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.
  - f. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
  - g. Existing data describing the surface soil as well as subsoils.
  - h. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
  - i. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.
- (4) **Site Map.** The erosion and sediment control plan shall include a site map. The site map shall include the following pertinent items and shall be at a scale not greater than one hundred (100) feet per inch and at a contour interval not to exceed five (5) feet:

- a. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified one hundred (100) year floodplains, flood fringes and floodways shall also be shown.
  - b. Boundaries of the construction site.
  - c. Drainage patterns and approximate slopes anticipated after major grading activities.
  - d. Areas of soil disturbance.
  - e. Location of major structural and non-structural controls identified in the plan.
  - f. Location of areas where stabilization practices will be employed.
  - g. Areas which will be vegetated following construction.
  - h. Areal extent of wetland acreage on the site and locations where stormwater is discharged to a surface water or wetland.
  - i. Locations of all surface waters and wetlands within one (1) mile of the construction site.
  - j. An alphanumeric or equivalent grid overlaying the entire construction site map.
- (5) **Controls Description.** Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the State. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:
- a. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
  - b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Village designee, structural measures shall be installed on upland soils.
  - c. Management of overland flow at all sites, unless otherwise controlled by outfall controls.
  - d. Trapping of sediment in channelized flow.
  - e. Staging construction to limit bare areas subject to erosion.
  - f. Protection of downslope drainage inlets where they occur.
  - g. Minimization of tracking at all sites.
  - h. Clean up of off-site sediment deposits.
  - i. Proper disposal of building and waste materials at all sites.
  - j. Stabilization of drainage ways.
  - k. Control of soil erosion from dirt stockpiles.

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- l. Installation of permanent stabilization practices as soon as possible after final grading.
  - m. Minimization of dust to the maximum extent practicable.
- (6) **Requirement for Velocity Dissipation Devices.** The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (b) **Amendments.** The applicant shall amend the plan or abbreviated plan if any of the following occur:
- (1) **Changes Not Addressed in Plan.** There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the State and which has not otherwise been addressed in the plan.
  - (2) **Failure of Required Actions.** The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
  - (3) **Village Requested Changes.** The Village designee notifies the applicant of changes needed in the plan.

### **Sec. 15-2-9 Inspection.**

If land disturbing construction activities are being carried out with or without a permit required by this Article, the Village designee may enter the land pursuant to the provisions of Section 66.0119(1), (2) and (3), Wis. Stats.

### **Sec. 15-2-10 Article Enforcement.**

- (a) **Stop-Work Order.** The Village designee may post a stop-work order if any of the following occurs:
- (1) Any land disturbing construction activity regulated under this Article is being undertaken without a permit.
  - (2) The erosion and sediment control plan is not being implemented in a good faith manner.
  - (3) The conditions of the permit are not being met.
- (b) **Permit Revocation.** If the responsible party does not cease activity as required in a stop-work order posted under this Section or fails to comply with the approved plan or permit conditions, the Village designee may revoke the permit.
- (c) **Cease and Desist Order When No Permit Has Been Issued.** If the responsible party, where no permit has been issued, does not cease the activity after being notified by the

Village designee, or if a responsible party violates a stop-work order posted under Subsection (a), the Village designee may request the Village Attorney to obtain a cease and desist order in any court with jurisdiction.;

- (d) **Retraction of Stop-Work Orders.** The Village designee may retract the stop-work order issued under Subsection (a) or the permit revocation under Subsection (b) if the activity is brought into compliance with this Article.
- (e) **Village Notice of Intent to Complete Work.** After posting a stop-work order under Subsection (a), the Village designee may issue a notice of intent to the responsible party of the Village's intent to perform the work necessary to comply with this Article. The Village designee may go on the land and commence the work after issuing the notice of intent. The full costs of the work performed under this Subsection, including administrative costs and interest at a rate authorized by the Village, shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the Village Clerk-Treasurer shall enter the amount due on the tax rolls and collect as a special assessment/charge against the property pursuant to subch. VII of Chapter 66, Wis. Stats.
- (f) **Penalties.**
  - (1) Any person violating any of the provisions of this Article shall be subject to a forfeiture of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, plus the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
  - (2) Compliance with the provisions of this Article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for a forfeiture or a cease and desist order before resorting to injunctive proceedings.

## **Sec. 15-2-11 Article Appeals.**

- (a) **Board of Appeals.** The Board of Appeals created under Title 2, Chapter 4 of this Code of Ordinances:
  - (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village designee in administering this Article except for cease and desist orders obtained under Section 15-2-10;
  - (2) Upon appeal, may authorize variances from the provisions of this Article which are not contrary to the public interest and, where owing to special conditions, a literal enforcement of the provisions of this Article will result in unnecessary hardship; and
  - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) **Who May Appeal.** Appeals to the Board of Appeals may be taken by any aggrieved person affected by any decision of the Village designee.

**Sec. 15-2-12 Article Severability.**

If a court of competent jurisdiction judges any section, clause, provision or portion of this Article unconstitutional or invalid, the remainder of the Article shall remain in force and not be affected by such judgment.

**Sec. 15-2-13 through Sec. 15-2-19 Reserved for Future Use.**