

**CONSTRUCTION EROSION, SEDIMENT AND RUNOFF CONTROL****64.010 Definitions**

For the purposes of this chapter, the following words shall have the following meanings:

"Applicant" means the owner of real property or the owner's authorized agent. "Applicant" includes any person who would be required to obtain a Polk County permit or exemption approval, but who neglects or otherwise fails to do so.

"Authorized agent" means the developer, architect, contractor, engineer, builder, personal representative, or anyone designated by the owner to have control or supervision of a site involving construction site activity.

"Common plan of development" means a contiguous construction project or projects where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan.

"Construction site" means a location where a Polk County land use or building permit or exemption approval is required.

"Construction site activity" means any ground disturbing activities at a location where a Polk County permit or exemption approval is required.

"Director" means the director of the Polk County department of public works or the director's designee.

"Emergency" has the same meaning as found in ORS 401.025.

"Erosion" means the wearing away of the ground surface, or the movement, detachment or dislocation and transport of sediment including soil particles by the action of water or wind.

"Exemption approval" means an exemption from the requirement to obtain a building permit for an agricultural building.

"Final stabilization" is determined by satisfying the following criteria: (1) there is no reasonable potential for discharge of a significant amount of construction related sediment or turbidity to surface waters; (2) construction materials and waste have been removed and disposed of properly. This includes any sediment that was being retained by temporary erosion and sediment controls; (3) all temporary erosion and sediment controls have been removed and disposed of properly, unless doing so conflicts with local requirements; (4) all ground disturbing activities have stopped and all stormwater discharges from construction activities that are authorized by this permit have ceased; (5) all disturbed or exposed areas of the site are covered by either final vegetative stabilization or permanent stabilization measures. However, temporary or permanent stabilization measures are not required for areas that are intended to be left unvegetated or unstabilized following construction (such as dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or

materials); provided, that measures are in place to eliminate or minimize erosion.

"Ground disturbing activities" means any activity that exposes soil, including, but not limited to, construction, landscaping, removal of vegetation, stockpiling of soil or construction debris, grading, excavating, filling, clearing, trenching, drilling, transport or fill, or utility work, or working of land at a particular location.

"Nonresidential development" means a development in which living units are not included or individual living units are not separately owned.

"Operations and maintenance manual" means a written document containing policies and procedures related to the operation, maintenance, repair and replacement requirements for all structural, vegetative, and management practices installed and relating to stormwater control systems for a development described in the Polk County Storm Water Management Program (SWMP).

"Public storm drainage and surface water system" means natural or manmade drainage courses for the conveyance of surface water.

"Residential development" means a development in which individual living units are separately owned.

"Sediment" means finely divided loose material that can be suspended and transported in water or air and may originate from disturbed soil, landscaping, or construction activities or materials.

"Storm event" means a storm event (as defined at 40 CFR 122.21 (g)(7)(ii)) with greater than 0.1 inch of rainfall and at least 72 hours after the previously measurable storm event with greater than 0.1 inch of rainfall.

"Stormwater management area" means an area designated as a stormwater management area by the Department of Environmental Quality under Polk County jurisdiction.

"Stormwater treatment facilities" means a storm collection and conveyance system, operated and maintained by the county or by a private property owner, located outside the building envelope which serves one or multiple building storm drains, catch basins, area drains, or other drainage facilities.

### **(Construction Erosion and Sediment Control)**

#### **60.015 Purpose**

The purpose of this chapter is to minimize the amount of sediment reaching waterways, wetlands, and the public storm drainage and surface water system for the duration of construction site activities, which complies with Phase II of the National Pollutant Discharge Elimination System (NP-DES), a federal permit that requires the operator of a Municipal Separate Storm Sewer Systems (MS4) to implement Best Management Practices (BMPs) to prevent construction site runoff

#### **64.020 Permit Required**

An erosion prevention and sediment control permit is required inside a stormwater management area if construction site activity(ies) will expose at least one quarter of an acre (10,890 square feet)

of soil, either in isolation or as part of a common plan of development.

#### **64.030 Erosion Prevention and Sediment Control Plan**

- (1) An erosion prevention and sediment control plan with a certified engineer stamp is required for all erosion prevention and sediment control permits. The plan must be submitted by the applicant and approved by the director for issuance of the erosion prevention and sediment control permit, prior to the issuance of Polk County permit of exemption approval and commencement of ground disturbing activities. The plan must contain protection techniques that will eliminate runoff situation created from the construction activity both during and after construction. Site-specific considerations shall be incorporated.
- (2) The erosion prevention and sediment control plan must include sizing criteria, performance criteria, design specifications, guidance on selection and placement of controls, and specifications for long-term operation and maintenance, including appropriate inspection intervals and a self-inspection checklist.
- (3) The county may require that the applicant design and construct a temporary drainage system that will ensure any off-site impacts caused by the construction site activity can be mitigated.
- (4) The Polk County department of public works may perform inspections to ensure compliance with this chapter at the discretion of the director.
- (5) The erosion prevention and sediment control plan is required to be kept on site and available for review by inspectors.
- (6) The erosion prevention and sediment control plan must include clear steps for project phase completion, final stabilization, and permit closure.

#### **64.040 Permit Fee**

The county may establish a fee for review of plans and inspections required by this chapter by order of the board of commissioners. The board of commissioners shall set the fee to recover the public works department costs of providing an applicant's erosion prevention and sediment control permit, inspections, and plan review.

#### **64.050 Construction Site Deposits on Public Streets and into Storm Drains**

No person shall cause or allow visible and measurable erosion or sediment related to construction site activity inside a stormwater management area as defined herein to enter the public storm drainage and surface water system. Any person causing visible and measurable erosion or sediment shall immediately abate or remove it. The removal shall be accomplished by hand labor or approved mechanical means.

#### **64.060 Maintenance**

- (1) The applicant shall maintain all erosion and sediment control measures in proper functioning order for the duration of the ground disturbing activities or until adequate ground cover has been established.
- (2) The applicant shall inspect, maintain, adjust, repair, and replace erosion and sediment control measures as necessary within 24 hours following a storm event to ensure that the measures are functioning properly.

(3) During active ground disturbing activity, the applicant shall inspect and maintain erosion and sediment control measures weekly or within 24 hours of a storm event.

(4) The erosion prevention and sediment control plan must be maintained and updated as site conditions change, to prevent sediment or pollutant contaminated water from leaving the site.

(5) Permit finalization requires one of the following to be achieved:

(a) Individual lots or phases of a qualifying common plan of development obtain individual erosion prevention and sediment control permit coverage prior to the issuance of Polk County permit(s) or exemption approval(s). The director shall be notified of sale of individual lots or phases of a common plan of development no less than 14 calendar days prior to the date of closing. Until such time as an individual erosion prevention and sediment control permit is obtained, the lot or phases sold shall continue to be the responsibility of the overall development's erosion prevention and sediment control permit.

(b) Final stabilization.

#### **64.070 Falsifying Information**

No person shall knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter.

#### **64.080 Stop Work Orders**

(1) In the event there is a violation of this chapter and it is necessary to obtain compliance with this chapter, the director may issue a stop work order requiring that all work, except work directly related to the elimination of the violation, be immediately and completely stopped. If the director issues a stop work order, the applicant shall not resume work until such time as the director gives specific approval in writing. The stop work order shall include:

(a) The date of the stop work order;

(b) The erosion prevention and sediment control permit and/or permit or exemption approval number if applicable;

(c) The site address, legal description or location applicable to the stop work order;

(d) A description of all violations; and

(e) The conditions under which the work may resume.

(2) The stop work order shall be in writing and posted in a conspicuous location at the site. Other means of communication of the stop work order may be exercised in the discretion of the director.

(3) No person may remove, obscure, mutilate or otherwise damage a stop work order.

(4) A stop work order shall be effective upon posting or upon verbal delivery under subsection (5) of this section.

(5) When an emergency condition exists, the director may issue a stop work order verbally. A written stop work order shall be posted in a conspicuous location at the site within 24 hours of the verbal order.

### **(Post Construction Runoff Control)**

#### **64.100 Purpose**

The purpose PCCO 64.100-64.250 is to reduce pollutants in and quantity of stormwater reaching waterways, wetlands, and the public storm drainage and surface water system generated after the completion of development improvements in a stormwater management area as denned by the Oregon Department of Environmental Quality.

#### **64.110 Engineering Standards**

The stormwater quality treatment standards applicable to developed sites under PCCO 64.100-64.250 shall be the City of Salem Department of Public Works Standard Drawings, and they shall specify exactly what kinds of permanent stormwater treatment facilities are required (if any) for a developed site.

#### **64.120 Permit Required**

(1) The City of Salem Department of Public Works Standard Drawings shall establish under what circumstances an on-site stormwater drainage permit is required inside a stormwater management area. The permit shall require an applicant to install any applicable stormwater treatment facilities as required by the City of Salem Department of Public Works Standard Drawings effect on the date of the applicant's application for a Polk County land use or building permit or exemption approval.

(2) The permit shall include an operation and maintenance manual. For commercial or residential development, the applicant shall prepare the manual. For a single-family residence with a stormwater treatment facility that serves the residence exclusively, the county shall supply the manual and document to be recorded with the County Clerk.

#### **64.130 On-Site Stormwater Drainage Plan**

(1) An on-site stormwater drainage plan is required for all on-site stormwater drainage permits. The plan must be submitted by the applicant and approved by the director for issuance of the on-site stormwater drainage permit, prior to the issuance of a Polk County land use or building permit or exemption approval and commencement of work at the construction site. The plan must contain protection techniques that will eliminate runoff situation created after the completion of the development, Site-specific considerations shall be incorporated.

(2) If landscaping is part of the stormwater treatment facilities, then the applicant must prepare and submit for approval with the on-site stormwater drainage plan a detailed plan for management of vegetation at the site after construction, which shall be attached to the maintenance agreement and the operations and maintenance manual. The plan shall include a description of what practices will be employed to ensure that adequate vegetation cover is preserved.

(3) The department of public works shall perform at least one inspection of stormwater treatment facilities required under an on-site stormwater drainage permit during installation to ensure compliance with this chapter and the permit. The department of public works shall perform at least one inspection of stormwater treatment facilities required under an on-site stormwater drainage permit shortly after completion of installation to ensure compliance with this chapter and the permit.

#### **64.140 Maintenance Responsibility**

(1) Unless otherwise approved by the county, Polk County shall maintain stormwater treatment facilities serving residential development or public rights-of-way created pursuant to a development application submitted after the effective date of the ordinance codified in this chapter. Polk County shall not maintain stormwater treatment facilities which serve a single-family residence exclusively.

(2) The owner of property containing stormwater treatment facilities maintained by Polk County pursuant to subsection (1) of this section shall execute a surface and stormwater management easement and a stormwater treatment facility access easement to Polk County in a form sufficient to the County.

(3) Unless otherwise approved by the county, the applicant for a development creating multiple parcels intended for separate ownership shall enclose the stormwater treatment facilities maintained by Polk County pursuant to subsection (1) of this section in a separate tract, if doing so is consistent with the minimum lot size standards for the applicable zone.

#### **64.150 Maintenance Agreement**

(1) An applicant for a nonresidential development or a single-family residence with a stormwater treatment facility that serves the residence exclusively which is required to obtain an on-site stormwater drainage permit shall execute a maintenance agreement in a form acceptable to Polk County to ensure that the stormwater treatment facilities function consistently with the City of Salem Department of Public Works Standard Drawings in effect on the date of the applicant's application for a Polk County land use or building permit or exemption approval. This agreement will:

(a) Authorize Polk County public works staff to access the stormwater treatment facilities at the site for the purpose of inspection to ensure continued compliance with the City of Salem Department of Public Works Standard Drawings in effect on the date of the applicant's application for a Polk County land use or building permit or exemption approval.

(b) For a nonresidential development, require the current owner to have an operations and maintenance manual available on site at all times. The current owner shall keep a record of maintenance and repairs for the last five years, which shall be available for inspection at a reasonable time and in a reasonable manner by Polk County public works staff.

(c) Expressly run with the land and be binding on applicant's successors and assigns.

(d) Authorize Polk County public works staff to enter the subject property in order to make any repairs necessary, at the owner's expense, to restore the stormwater treatment facilities at the site to a condition consistent with the City of Salem Department of Public Works Standard

Drawings in effect on the date of the applicant's application for a Polk County land use or building permit or exemption approval in the event that the present condition of the stormwater treatment facilities poses an imminent threat to the public health, safety, or welfare.

(2) After an applicant executes a maintenance agreement, the applicant shall record the maintenance agreement in the Polk County real property deed records.

(3) Any violation of an executed maintenance agreement shall constitute a violation of this chapter.

#### **64.160 Notice of Violation**

(1) Whenever the director finds that a condition exists on an owner's property that constitutes a violation of PCCO 64.100-64.250, the director may order compliance by written notice of violation to the property owner. The notice may require without limitation:

(a) The performance of monitoring, analyses, and reporting;

(b) The maintenance of vegetation;

(c) The cessation of all violating discharges, practices, or operations;

(d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and

(e) The implementation of source control or treatment best management practices directed by the director.

(2) The notice shall:

(a) Describe the property by street address or tax lot number;

(b) Describe the nature of the violation;

(c) State by a date certain when the property owner must correct the violation in a manner acceptable to the director;

(d) Inform the owner that if the violation is not corrected the county shall either complete the repairs, seek to compel abatement or cite the owner, as appropriate;

(e) Inform the property owner that if the county performs the necessary abatement or repairs, the county will bill the property owner for the costs;

(f) Include an estimate of the costs anticipated for this county to abate or repair the violation;

(g) Inform the property owner that failure to pay the county for its costs to correct the violation may result in filing of a lien on the property;

(h) Inform the property owner of the rights spelled out in PCCO 64.190-64.220, including the right to a hearing, and individuals the property owner may contact for additional information.

(3) The notice shall be served on the property owner by any means to reasonably apprise the owner of the violation, including but not limited to personal service, or first class mail to the address of record within the County.

(4) If a stormwater treatment facility is maintained by the county, the owner is not responsible for violations of this chapter other than violations caused by the owner.

#### **64.170 Abatement and/or Repair of Violation**

If the property owner has not corrected the violation as directed within the time allowed in the notice given pursuant to PCCO 64.160 the director may take all measures necessary to abate the violation and/or restore the property. The director or persons authorized by the director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court issued warrant.

#### **64.180 Emergency Abatement**

The director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public. The director or persons authorized by the director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court-issued warrant.

#### **64.190 Collection of Costs**

(1) The county may collect all costs associated with the repair or abatement of a violation, or both, from the property owner.

(2) The county shall keep detailed records of all costs associated with the abatement or repair due to a violation of this chapter.

(3) Upon completion of the abatement or repair of the violation by the county, a notice of final costs shall be served on the owner by personal serve consistent with 64.160(3) Payment must be made within 30 days from the date of the notice of final costs. The notice must contain the following:

(a) The total cost of repair or abatement, or both;

(b) A statement that the total cost may be filed as a lien with the county clerk unless paid within 60 days from the date of the hearings officer's order described in PCCO 64.220

(c) A statement that the owner may contest the charges at a hearing that will be scheduled on the matter pursuant to PCCO 64.220

#### **64.200 Hearing Request**

A property owner who is served with a notice of violation as described in PCCO 64.160 may request a hearing before the Polk County hearings officer. Hearing requests must be filed in writing with the Polk County hearings officer within five business days from the date the notice was served.

#### **64.210 Hearing on Notice of Violation**

- (1) Upon receiving a written request for a hearing pursuant to PCC 64.200, the hearings officer shall set a time and place for a hearing that shall be no more than seven days from the date of filing of the hearing request, or as soon as practicable. The hearings officer shall notify the person requesting a hearing of the time and date of the hearing. The director shall appear and present evidence pertinent to the alleged violation and its abatement or repair. The owner of the property may also present evidence before the hearings officer pertinent to the alleged violation and its abatement or repair. The county shall have the burden of proving by a preponderance of the evidence that a violation exists and must be abated or repaired.
- (2) Failure of the person requesting hearing to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.
- (3) After the hearing, the hearings officer shall issue an order containing findings as to whether the alleged violation does in fact exist, the extent to which the violation exists and (if abatement or repair is required) shall set a date for abatement or repair to be accomplished by the owner. The hearings officer's order shall be issued within 10 days of the date of the hearing or as soon as practicable.
- (4) The decision of the hearings officer is final. Appeal shall be only by writ of review under ORS Chapter 34.

#### **64.220 Hearing on Final Costs**

- (1) At the time the notice of final costs is sent to the property owner as described in PCCO 64.190, a copy shall also be sent to the hearings officer. The hearings officer shall set a time and place for a hearing that shall be no more than seven days from the date of receipt of the notice of final costs by the hearings officer, or as soon as practicable. The hearings officer shall notify the property owner and the director of the time and date of the hearing. The only issue at the hearing shall be the reasonableness of the cost of abatement or repairs.
- (2) Failure of the property owner to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.
- (3) After the hearing, the hearings officer shall issue an order within 10 days of the date of the hearing, or as soon as practicable, detailing the amount of the final costs that the owner must pay, if any. The hearings officer's order shall also indicate that the final costs must be paid within 30 days and if they are not paid within 60 days the county may record a lien in the county clerk lien record.
- (4) The hearings officer's order of determination shall be final and binding. Appeal shall be only by writ of review under ORS Chapter 34.

#### **64.230 Lien Filing Record**

If final costs are not paid within 60 days of the hearings officer's order requiring payment of final costs, the enforcement officer shall record a lien with the Polk County clerk or any other county clerk of this state. The total amount of final costs shall be recorded as a lien in the county clerk lien record. The lien provided for herein shall be foreclosed in the manner prescribed by state law for the

enforcement of liens. Nothing in this section precludes the county from taking other action to collect the final costs.

#### **64.240 Enforcement**

(1) Enforcement of citations under this chapter shall be pursuant to PCCO chapter 50. The Public Works Director or their designee is hereby authorized to act as an enforcement officer under this chapter pursuant to PCCO 50.025.

(2) Any person cited for a violation of this chapter shall be subject to a fine of not more than \$500.00 for a noncontinuing violation and a fine of not more than \$1,000 for a continuing violation. Each day that this chapter is violated shall constitute a separate violation.

(3) The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law or Ordinance, including equitable relief and damages.

#### **64.250 Fees**

The board of commissioners may adopt fees necessary to support the stormwater program by board order.

#### Cross References:

PCCO Chapter 50 - Enforcement