

**MINUTES OF THE MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF JOHNSON COUNTY, KANSAS, HELD ON
THURSDAY September 18, 2008**

A regular meeting of the Board of County Commissioners of Johnson County, Kansas was held on Thursday, September 18, 2008, with the following members being present and participating: Chairman Annabeth Surbaugh

Commissioner C. Edward Peterson	Commissioner Ed Eilert
Commissioner John P. Segale	Commissioner Doug E Wood
Commissioner David A. Lindstrom	Commissioner John Toplikar

WHEREUPON, there came before the Board the matter of adopting certain regulations to control and minimize erosion and to prevent sediment from entering the County's stormwater collection system.

The Board, being fully advised, upon a motion duly made, seconded and carried, adopted the following Resolution:

**A RESOLUTION ADOPTING EROSION AND SEDIMENT CONTROL
REGULATIONS FOR THE UNINCORPORATED AREA OF
JOHNSON COUNTY, KANSAS**

Res. 068 -08

WHEREAS, the federal government has adopted the Clean Water Act and implemented a National Pollutant Discharge Elimination System ("NPDES") program to regulate erosion and sediment caused by "Land-Disturbing Activities;" and,

WHEREAS, the Board of County Commissioners is subject to the NPDES requirements as an operator of a "Small Municipal Separate Storm Sewer System (MS4)," and the County is obligated by federal law to develop, implement, and enforce minimum erosion and sediment control standards; and

WHEREAS, the Kansas City Metropolitan Chapter of the American Public Works Association, in order to assist local governments to comply with NPDES requirements, developed a manual of "best management practices" for erosion and sediment control; and

WHEREAS, K.S.A. 12-3301 *et seq.* provides that the Board may adopt a code by reference, and the Board desires to adopt by reference the codes captioned i) "Division

5100 Erosion and Sediment Control” approved and adopted on August 13, 2003, and published by the Kansas City Metropolitan Chapter American Public Works Association and ii) the “Division II Construction and Material Specifications Section 2150 Erosion and Sediment Control” approved and adopted May 21, 2008 from the Kansas City Metropolitan Chapter American Public Works Association (collectively referred to as the “Design Manual”); and;

WHEREAS, the proposed regulations were presented to and considered by the Johnson County Planning Commission on August 26, 2008, and the commission had no objections thereto; and

WHEREAS, notice was published once in the official County newspaper that a public hearing before the Board of County Commissioners would be held on this date to consider the adoption of these erosion and sediment control regulations, including the incorporation by reference of the Design Manual for the unincorporated area of Johnson County, Kansas; and

WHEREAS, after the public hearing was held, and upon the recommendation of the Director of the Johnson County Public Works Department, the Board adopted the following erosion and sediment control regulation, to wit:

EROSION AND SEDIMENT CONTROL REGULATION

Sections

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11.20.140 Stop Work Order Authorized

11.20.150 Effective Date

11.20.010 Purpose

The purpose of this Regulation is to require certain construction-related procedures and practices that will minimize Erosion and prevent Sediment from entering the County's Storm Sewer System during Land-Disturbing Activities.

11.20.020 Definitions

The terms or phrases used in this Regulation shall have the meanings ascribed to them in the Design Manual. The terms and phrases set forth below are not defined in the Design Manual and are, therefore, defined as follows:

- A. "County" means the Board of County Commissioners of Johnson County, Kansas.
- B. "Design Manual" means those provisions incorporated by reference by this Resolution from the document captioned "Division 5100 Erosion and Sediment Control" approved and adopted on August 13, 2003, and "Division II Construction and Material Specifications Section 2150 Erosion and Sediment Control" approved and adopted on May 21, 2008 published by the Kansas City Metropolitan Chapter American Public Works Association.
- C. "Director" means the Johnson County Director of Public Works and Infrastructure or the Director's authorized representative.
- D. "*Erosion*" means the process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means.
- E. "Land Disturbing Activity" means any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause Erosion or Sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.
- F. "LD Permit" means the permit issued by the Director and which authorizes the LD Permit Holder to proceed with the Land Disturbing Activities.
- G. "LD Permit Holder" means the Person who is issued a LD Permit.
- H. "Perennial Vegetation" means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this regulation, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

- I. "Person" means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, and any other legal entity.
- J. "Qualified Erosion Control Specialist" means a person qualified to perform inspections of Erosion and Sediment Control measures. Qualified personnel includes a Professional Engineer licensed in the state of Kansas or anyone who has obtained one of the following certifications: CCIS through Stormwater USA, LLC; CISEC through CISEC, Inc; or CESSWI through EnviroCert International, Inc. or equivalent qualifications approved in writing by the Director as part of an approved Stormwater Pollution Prevention Plan or Erosion and Sediment Control Plan.
- K. "Regulation" means this Erosion and Sediment Control Regulation (2008 Edition) for the unincorporated area of Johnson County, Kansas.
- L. "*Sediment*" means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.
- M. "Site" means the real property upon which the Land-Disturbing Activity is taking place.
- N. "Stormwater Pollution Prevention Plan" is a plan required by the Kansas Department of Health and Environment (KDHE) and for which contents are specified by the Kansas Water Pollution Control General Permit and Authorization to Discharge Stormwater Runoff From Construction Activities (General Permit No. S-MCST-0110-1). The purpose of the Stormwater Pollution Prevention Plan is to help identify the sources of pollution that affect the quality of storm water discharges from a site and to describe and ensure the implementation of practices to reduce pollutants in storm water discharges and includes the Erosion and Sediment Control Plan as well as plans to prevent pollution from other construction site sources such as, but not limited to, concrete washout, litter, and sanitary waste.
- O. "Storm Sewer System" means any conveyance or system of conveyances for Stormwater, including roads with drainage systems, public streets, private streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 CFR 122.26.

- P. “Stop Work Order” means an order issued which requires that some or all construction activity on the Site be stopped.

11.20.030 Land-Disturbing Permit Required; Exemptions

- A. Unless exempt, no Person shall undertake any Land-Disturbing Activity without first obtaining a LD Permit.
- B. No Person required to obtain a LD Permit shall fail to make application for such permit, fail to pay required fees, fail to comply with the County’s Design Manual, or violate any of the requirements of this Regulation.
- C. The following shall be exempt from obtaining a LD Permit:
- i) Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property, provided, however, if the Director determines that the situation was not an emergency then a LD Permit may be required.
 - ii) Agricultural land uses, however, nothing in this Regulation shall relieve any Person from complying with any applicable erosion and sediment standards of the United States Department of Agriculture Natural Resources Conservation Service or the requirements of the Kansas Department of Health and Environment or other federal or state agency.
 - iii) Land-Disturbing Activities of less than one acre. For purposes of this Regulation, Land-Disturbing Activities that are part of a larger, phased, staged, or common plan of development shall be considered a single Site for purposes of calculating the disturbed area.

11.20.040 LD Permit and Application

- A. The issuance of a LD Permit is contingent upon compliance with this Regulation and all other County regulations, including the County’s zoning and subdivision regulations, fire code, building code, and any other County requirements.
- B. Every LD Permit application shall be submitted to the County, on the County’s forms, which shall include to the following minimum requirements:
- i) A site-specific Stormwater Pollution Prevention Plan that complies with this Regulation, the KDHE General Permit No. S-MCST-0701-1, and the Design Manual;
 - ii) A site-specific grading plan that complies with the Design Manual and any other applicable County regulations;
 - iii) A site-specific plan that complies with the Design Manual to provide for the control of pollutants related to the Land-Disturbing Activities

that might cause an adverse impact to water quality, including, but not limited to, discarded building materials, concrete truck washout, fuel, hydraulic fluids, chemicals, litter, and sanitary wastes;

- iv) Contact information for the applicant, the Site's owner, and the retained Qualified Erosion Control Specialist who will perform the routine inspections;
- v) Description of area to be disturbed;
- vi) Proposed schedule of work and contemplated duration of Land-Disturbing Activities on the Site;
- vii) Proposed method of providing performance surety as required by this Regulation; and
- viii) Any LD Permit fee as authorized by this Regulation.
- ix) A copy of approved KDHE General Permit showing that the Storm Water Pollution Prevention Plan meets the state of Kansas requirements.
- x) Upon an applicant's request, the Director may modify these requirements to take into account any unusual circumstances or factors affecting the work to be performed.

C. The LD Permit application, Stormwater Pollution Prevention Plan, and all other technical LD Permit requirements shall be prepared under the supervision of, and sealed by, a Professional Engineer or Landscape Architect licensed in the state of Kansas who has received a minimum of eight hours classroom instruction in Erosion and Sediment Control taught by a Certified Professional in Erosion and Sediment Control, certified by CPESC, Inc., or equivalent qualifications approved in writing by the Director as part of an approved Stormwater Pollution Prevention Plan or Erosion and Sediment Control Plan.

D. It shall be the duty of the Permit Holder to ensure that Land-Disturbing Activities authorized by the LD Permit be undertaken according to the approved plans and proposed schedule of work defined in the LD Permit application. Modifications to the approved plan or proposed schedule of work that are not in compliance with the LD Permit must resubmitted for approval. Minor modifications of the approved plan or proposed schedule of work may be authorized by the Director without formal review provided those modifications are consistent with the Design Manual and standard industry practice. Failure to adhere to the schedule or complete the work in accordance with the LD Permit shall be i) a violation of this Regulation, ii) subject the LD Permit Holder to additional fees defined in this Regulation, and iii) may result in the revocation of the LD Permit and the issuance of a Stop Work Order.

E. Every LD Permit shall have an expiration date established by the Director which takes into consideration the nature, scope, and any necessary phasing of the work to be undertaken. Requests for LD Permit extension must be made to the Director

prior to the expiration of the LD Permit and are subject to approval by the Director.

- F. Prior to the expiration of the LD Permit, the LD Permit Holder shall obtain a satisfactory final County inspection and approval of the work undertaken pursuant to the LD Permit to determine whether the work complies with the Stormwater Pollution Prevention Plan. Upon such satisfactory inspection and approval, the LD Permit shall be deemed “closed” when the conditions set forth in Section 11.20.050E are met.

11.20.050 Maintenance and Inspections

- A. Maintenance of Control Measures. All Erosion and Sediment control measures set forth in the Stormwater Pollution Prevention Plan shall be maintained in good order all times both during and after construction.
- B. Routine Inspections. It shall be the duty of the LD Permit Holder to provide routine inspections of the Land Disturbing Activities and maintain effective Erosion and Sediment Control measures throughout the duration of the LD Permit. Inspections shall be performed by a Qualified Erosion Control Specialist at least once each week and within twenty-four hours following each rainfall event of one half an inch or more within any twenty-four hour period. A log of all inspections shall be kept during Land Disturbing Activities as a part of the Stormwater Pollution Prevention Plan. Any deficiencies shall be noted in a report of the inspection and the LD Permit Holder shall correct such deficiencies within a reasonable time period not to exceed three days unless extended by the Director for good cause shown.
- C. The LD Permit Holder shall keep a copy of the most current Stormwater Pollution Prevention Plan at the Site until the LD Permit is closed.
- D. The LD Permit Holder shall notify the Director when construction of the Erosion and Sediment Control measures commence.
- E. A LD Permit shall not be closed until a final inspection and approval of the Site stabilization and restoration is issued by the County. A Site shall be considered stabilized and restored when Perennial Vegetation, pavement, buildings, or structures using permanent materials cover seventy percent (70%) of the upstream tributary area found within the area defined by the LD Permit and as required by the Director. All portions of the Site using Perennial Vegetation for ground stabilization shall be homogeneously covered with at least a seventy percent (70%) vegetation density. Restoration includes the removal of all non-permanent Erosion and Sediment Control devices for the Site. Final certification of the restoration and stabilization of the Site shall be submitted for approval to the Director by the LD Permit Holder.
- F. A LD Permit conveys to the Director and the Director’s designees, the right to enter upon property described in the LD Permit as necessary to enforce the

provisions of this Regulation.

11.20.060 Performance Surety.

Performance under every LD Permit shall be secured by an agreement between the County and the owner of the Site to provide for the installation of the Erosion and Sediment Control measures required by this Regulation and the Design Manual. The agreement shall provide, *inter alia*, for an owner-provided performance surety that may be in the form of a letter of credit, performance bond, cash escrow, or other method which provides adequate assurances to the County that the construction of the Erosion and Sediment Control measures required by this Regulation and the Design Manual are installed in a timely and workmanlike manner and maintained throughout the duration of the project.

11.20.070 For Land-Disturbings and Utility Work Less Than One Acre

For Land-Disturbings that do not require a LD Permit, the Site owner is not required to submit a site-specific Stormwater Pollution Prevention Plan, or pay a fee, but must comply with the guidelines in the document “Erosion and Sediment Control Standards for Building Construction that Disturbs Less Than One Acre for Unincorporated Area of Johnson County” attached to resolution as Exhibit A.

Franchised and public utility providers disturbing less than one acre shall obtain a general, annual permit in-lieu of obtaining a Site-specific permit. The general land disturbance permits for utility providers can be renewed annually and shall include the effective erosion control standards and construction methods that are to be implemented on the utility’s projects, conforming to the Design Manual. The fee and performance surety, if any, for a general permit will be as shown in Section 11.20.100.

11.20.080 Right of Entry

Whenever the Director has cause to believe that there exists in or upon any premises any condition which constitutes a violation of this Regulation, the Director is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this regulation.

11.20.090 Time Requirement

Where Land-Disturbing Activity appears to have temporarily or permanently ceased on a portion of a Site for fourteen consecutive days, all disturbed area shall be protected from Erosion by stabilizing the area with mulch or other similarly effective soil-stabilizing BMPs. Where implementation of stabilization measures is precluded by weather, snow cover, or other reason beyond the LD Permit Holder’s control, the Director may allow the LD Permit Holder to delay the implementation of such stabilization measures for a reasonable period.

11.20.100 Fees

Prior to the issuance of LD Permit for projects that disturb one acre or greater, each applicant shall pay a fee in the amount of \$250.00 to the Johnson County Public Works Department. Franchised and public utility providers shall pay a fee in the amount of \$100 to the Johnson County Public Works Department to obtain a general Land Disturbance Permit. The Director may adjust the Fee Schedule annually and shall make such Fee Schedule available to the public.

Fees paid for a LD Permit that is subsequently revoked by the Director are not refundable. A Person undertaking work for a County improvement project shall not be required to pay a fee.

11.20.110 Responsibility for Compliance

The Person responsible for compliance with this Regulation shall include, jointly and severally:

- A. The owner of the Site upon which a Land-Disturbing Activity takes place. When a LD Permit is issued to a Person, such person shall remain responsible for Land-Disturbing activities notwithstanding a transfer of the Site unless the County approves, in writing, an assignment of the Person's obligations: and
- B. If the owner is not the LD Permit-holder, the Person to whom a LD Permit is issued for a Site upon which a Land-Disturbing Activity takes place is jointly and severally liable along with owner of the Site for compliance with this Regulation; and
- C. Any Person who undertakes any Land-Disturbing Activity but fails to ensure that a LD Permit has been issued by the County for such Land-Disturbing Activity.

11.20.120 Compliance and Use

The Site described in a LD Permit shall be maintained at all times in compliance with the provisions of the Stormwater Pollution Prevention Plan.

11.20.130 Enforcement of Code Provisions

The failure to comply with any requirement of this Regulation shall be classified as a Class H Infraction under the adopted fine schedule for the Johnson County Codes Court, and may be prosecuted in said Court and fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each such violation. Each day such violation shall be permitted to exist shall constitute a separate offense punishable by a separate fine.

- A. In addition, any Person who fails to provide and implement a Stormwater Pollution Prevention Plan as required by this Regulation may be ordered by the

Director to take remedial action on any Site to prevent the occurrence or recurrence of a violation of this Regulation. Remedial action shall include, but not be limited to, conformance to the requirements of this Regulation. When failed or absent Erosion and Sediment control has resulted in mud, silt, gravel, dust or other debris entering into the public right-of way, any drainage easement, alley, or other property, the remedial action required also shall include the restoration of the area disturbed to a neat and presentable condition and the removal of any debris or other pollutants caused by a failure to comply with the Design Manual.

- B. Whenever the Director finds a violation of this Regulation, the Director may order the owner of the Site and the LD Permit Holder to take action within three days after service of such order to comply with the provisions of this Regulation. Notice may be given in person, by mail, including electronic mail, posting at the Site, telephone, by facsimile, or by any other method reasonably calculated to provide notice.

11.20.140 Stop Work Order Authorized

In addition to the enforcement provisions of this Regulation, the Director may issue a Stop Work Order if the Director determines that work authorized by a LD Permit is in violation of this Regulation or the Stormwater Pollution Prevention Plan or if any one or more of the following conditions exist:

- A. Inspection by the Director reveals the Site defined by the LD Permit is not in substantial compliance with the Stormwater Pollution Prevention Plan, as determined by the Director; or
- B. Failure to comply with a written order from the Director to bring the Site into compliance with the LD Permit, correct a violation of this Regulation, or restore a disturbed area within the time limits defined by the Director; or
- C. Failure to pay any required fee; or
- D. Failure to submit reports in accordance with the Design Manual.

If a Stop Work Order is issued by the Director, the Director shall order and direct the Site owner, or the Site owner's agent, and any party in possession of the Site, including the contractor performing work at the Site, to immediately suspend work.

A Stop Work Order shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a Person to whom it is directed by any reasonable method including by personal delivery, by posting at the Site, or mailing a copy of the same to the address identified within the LD Permit application for the LD Permit Holder, Site owner, or any party in possession of such property. If the Director issues a Stop Work Order, all Persons shall cease all work on the Site, except work

necessary to remedy the cause of the Stop Work Order as expressly authorized by the Director.

It shall be a violation of this Regulation for a Person to undertake, allow, consent, or permit another to undertake work upon a Site subject to a Stop Work Order.

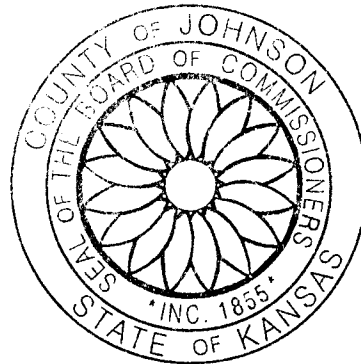
If the cause of a Stop Work Order is not cured within a reasonable period, the LD Permit may be revoked by the Director and thereafter no Person shall continue any work described in the LD Permit without first obtaining a new LD Permit and paying a new LD Permit fee as required by this Regulation.


11.20.150 Effective Date; Grandfathered Permits

The provisions of this Regulation shall be effective on January 1, 2009. A LD Permit shall not be required for any Land-Disturbing Activities upon Sites for which a valid County building permit, grading permit, or right-of-way construction permit has been issued prior to the effective date. Any final plat or final site plan approved prior to the effective date shall nonetheless be subject to this Regulation except for Sites within such prior plat or site plan for which a building permit, grading permit, or right-of-way construction permit has been issued prior to the effective date.

This Resolution shall be published once in the Official County Newspaper. One copy of this Resolution, together with the code incorporated herein by reference, shall be kept by the County Clerk and the same provided to any judicial or administrative decision making body without charge, all as provided by K.S.A. 12-3301, *et seq.*

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

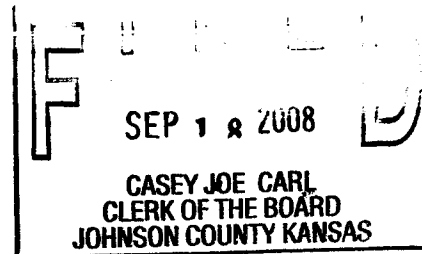



Annabeth Surbaugh, Chairman

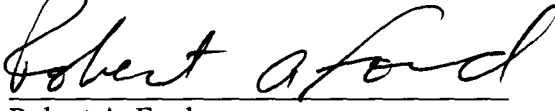
ATTEST:


Casey Joe Carl
Clerk to the Board 091808

APPROVED 6-0



APPROVED AS TO FORM:

A handwritten signature in cursive script, reading "Robert A. Ford", written over a horizontal line.

Robert A. Ford
Assistant County Counselor