BOOK 0070 PAGE 486 BOOK 0004 PAGE 041

HARDIN COUNTY, KENTUCKY
ORDINANCE NO. 239, SERIES 2005

AN ORDINANCE RELATING TO EROSION PREVENTION AND SEDIMENT CONTROL IN HARDIN COUNTY, KENTUCKY

Section I. Introduction / Purpose

WHEREAS, Hardin County Fiscal Court (Court) was issued a Stormwater Phase II General Permit (KPDES No. KYG200003) by the KY Division of Water on September 2, 2003. The permit states that the Court must develop and implement an ordinance to require erosion and sediment controls on construction sites of one acre or more, and from projects that disturb less than 1 acre if they are part of a larger common plan of development that disturbs one acre or more.

WHEREAS, the purpose of this ordinance is to protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of activities that disturb or move soil. During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. Streets and roads with sediment deposits are slick and hazardous to the public. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

NOW, THEREFORE, BE IT ORDAINED by the Fiscal Court of County of Hardin, Commonwealth of Kentucky:

Section II. Definitions

Best Management Practice (BMP) – A measure that is implemented to protect water quality and reduce the potential for pollution associated with stormwater runoff consistent with the Hardin County Fiscal Court Best Management Practices Handbook, which is hereby adopted by reference as if set out in full and made a part hereof, as may be duly amended or modified. This includes but is not limited to detention ponds, extended detention ponds, swales, bioretention systems, vegetated filters, and hydrodynamic separators.

County – as referenced herein shall mean a county elected official, county employee, representative or designated person or agency. It may include the County Engineer, Road Supervisor, Code Enforcement Officer, Deputy Judge/Executive, Employee of the Planning Commission such as the Director, Planner or Building Inspector.

Erosion – The process by which the ground surface is worn away by the action of wind or water.

Excavation or Cut – Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced, or relocated, including the conditions resulting from such activities.

Fill – A deposit of soil, rock, or other non-deteriorating material used by man to replace or supplement the original soil or sub-soil.

Floodplain – That land adjacent to a stream, channel, or body of water, which has been or may be hereafter covered by floodwater during the 100-year storm.

Grading – Any stripping, excavating, filling, stockpiling of soil, or any combination thereof, and shall include the land in its excavated or filled condition.

Notice of Intent (NOI) – A formal notice to the KY Division of Water that a construction project is seeking coverage under the KPDES General Permit for Stormwater Point Source Discharges – Construction Activities.

Notice of Termination (NOT) – A formal notice to the KY Division of Water that the original operator of the site is no longer the operator, or that construction activity on the site has ceased.

Phasing – Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment – Any solid material that is a product of erosion, whether mineral or organic, and that is in suspension, is being transported, or has been moved from its site of origin, whether by air, water, or gravity.

Slope – Any inclined, exposed surface of a fill, excavation, or natural terrain.

Soil – All earth material of whatever origin that overlies bedrock and may include the decomposed zone of bedrock that can be readily excavated by mechanical equipment.

Stabilization – The use of Best Management Practices to prevent erosion and keep sediment on the construction site.

Stormwater Manual – The Stormwater Manual adopted herewith by the County and incorporated into this Ordinance by reference to provide standards for the design, review, construction, and inspection of stormwater facilities. From time to time, the County may revise, modify, or amend the Stormwater Manual as provided by law. When referenced in this Ordinance, the current edition, latest revision of the Stormwater Manual shall be used.

Stream – Any river, creek, or channel in which water flows for substantial periods of the year.

Stripping – Any activity that removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

BOOK 0070 PAGE 488 0000 PAGE 043

Section III. Scope of Coverage

A) Proposals for Subdivision Plats and Development Plans as required by the County's land use ordinance and subdivision regulations and building permits as required by the Kentucky Building Code plus any development activity that involve land disturbance of one acre or more shall submit the following to the County prior to any construction activity:

1. Best Management Practices (BMP) Plan prepared in accordance with the KPDES General Permit for Stormwater Point Source Discharges – Construction Activities.
2. Copy of the Notice of Intent sent to the KY Division of Water before beginning construction.
3. Copy of the Notice of Termination sent to the KY Division of Water when construction has ceased.
4. Copies of permits required by the Kentucky Division of Water and the US Army Corps of Engineers related to construction in or along a stream or wetland.

B) A BMP Plan is not required for the following activities:

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
2. Existing nursery and agricultural operations conducted as a permitted main or accessory use. However, permitting through regional, state, and federal agencies may be required.
3. Construction activities for building additions or accessory structures that involve disturbance of less than one acre and do not require Stormwater General Permit from the KY Division of Water.

C) Each BMP Plan shall bear the name, telephone information, electronic contact information, and address of the owner/developer of the site, contractor, and design engineer.

D) Fees – Applicants proposing development activities covered by this ordinance shall pay a fee as established by a Fee Schedule adopted by the County.

Section IV. Review of BMP Plan

A) The County shall review each BMP Plan to determine its conformance with the provisions of this ordinance. Acceptance indicates that minimum requirements or intent are met and does not imply a guarantee of performance. Based on this review, the County will:

1. Accept the BMP Plan, or

2. Accept the BMP Plan subject to such reasonable conditions as may be necessary to meet the requirements/intent of this ordinance, or
3. Reject the BMP Plan, indicating the reason and procedure for submitting a revised Plan

B) The County reserves the right to inspect the site prior to any construction activity in furtherance of the review process.

C) The County's review of the BMP Plan is for general compliance with this ordinance. The design engineer is ultimately responsible for the details of design of the BMP Plan, and the property owner is responsible for implementation.

Section V. Contents of Best Management Practices Plan

A) The BMP Plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater. The Plan shall be completed before submitting the Notice of Intent to the KY Division of Water, and it shall be implemented when construction begins. The Plan should be developed and signed by a professional engineer licensed in Kentucky. The Plan requirements are contained in the KPDES General Permit for Stormwater Point Source Discharges – Construction Activities and are summarized below:

1) Site Description

The BMP Plan shall include a clear description of the:

- nature of the construction activity
- order of major soil disturbing activities
- estimates of the total project area and the total disturbed area
- post construction runoff coefficient
- existing data describing soil condition or discharge quality
- receiving water name
- site map indicating drainage patterns and approximate slopes after grading, areas of disturbance, the location of control measures, surface waters or wetlands, and stormwater discharge locations

2) Erosion and Sediment Control Measures

The BMP Plan shall include a clear description of the erosion and sediment control measures to be used and when they will be implemented. The following measures shall be used at a minimum:

- Soil stabilization such as seeding, mulching, placing sod, and using erosion control blanket. All disturbed areas shall be stabilized within 14 days of reaching final grade. Areas that will be inactive for 21 days

or more shall be stabilized within 14 days of reaching temporary grade.

- Perimeter structural practices such as silt fence, sediment basins, sediment traps, check dams, inlet protection, etc. Sediment basins shall be used where the disturbed drainage area is more than 10 acres. The sediment storage capacity of the basin shall be 3,600 cubic feet per disturbed acre.

- Stormwater management devices to control the pollutants in stormwater after construction has been completed. Velocity dissipation devices shall be installed at pipe outlets and along channels to prevent erosion. Other devices shall be used to remove 80 percent of the total suspended solids that exceed predevelopment levels. This includes devices such as detention ponds, wet ponds, vegetated swales, velocity dissipation at culvert outlets, etc.

3) Other Control Measures

Controls shall be implemented to prevent the discharge of solids, including building materials, to streams and lakes. Tracking of sediment off-site and dust generation shall be minimized.

4) Other State and Local Permits

The Plan shall include any local requirements. The implementation and inspections shall be included with the administration of the KENTUCKY BUILDING CODE. At the requested times to perform a building inspection (footer, framing and final) an inspection of the implementation of the BMP Plan will be conducted. If the elements of the BMP Plan for erosion and sediment controls are not in place or maintained, the building inspection may be denied and a Stop Work Order imposed.

5) Maintenance

The Plan shall describe the maintenance procedures that will be used.

6) Inspections

The Owner shall have qualified personnel inspect the BMPs every 7 days and within 24 hours of every rainfall 0.5 inches or greater. Areas that have been permanently or temporarily stabilized shall be inspected once a month. All inspections and corrective actions taken shall be documented.

7) Non-Stormwater Discharges

The Plan shall include measures for preventing the discharge of non-stormwater pollutants.

8) Contractors and Subcontractors

The BMP Plan shall clearly state the contractor or subcontractors that will implement each control measure identified in the BMP Plan. All contractors and subcontractors identified in the BMP Plan shall sign a copy of the certification statement below before conducting any work at the site:

> "I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with industrial activity from the construction site identified as part of this certification."

The certification shall include the name and title of the person providing the signature, the name, address, and telephone number of the contracted firm, the address, or other identifying description of the site, and the date the certification is made. All certification statements shall be included in the BMP Plan.

B) Modifications to the Plan shall be processed and accepted or denied in the same manner as Section IV of this ordinance and may be authorized by the County by written authorization, and shall include:

1) Major amendments of the BMP Plan require an engineer's signature and shall be submitted to the County Engineer for acceptance.

2) Field modifications of a minor nature shall require an engineer's signature and shall be noted and dated on the BMP Plan and available for review by the County.

Section VI. Erosion and Sediment Control Requirements

A) Sites regulated by this ordinance shall meet the design criteria set forth in the most recent version of the County Stormwater Manual.

B) Cut and fill slopes shall be no greater than 3:1, except as approved by the County to meet other community or environmental objectives.

C) Clearing, except that necessary to construct sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

BOOK 0004 PAGE 047

BOOK 0070 PAGE 492

D) Phasing shall be required on all sites disturbing greater than 50 acres, with the size of each phase to be established at plan review and as approved by the Planning Commission.

E) Erosion Prevention BMP requirements:

1) Soil stabilization shall be completed within fourteen days of final grade. Areas that will be inactive for 21 days or more shall be stabilized within 14 days of reaching temporary grade.

2) A stabilized construction entrance shall be constructed where vehicles leave the site to enter a public road.

3) Special techniques such as riprap, turf reinforcement, and other methods shall be used on steep slopes and channels to ensure stabilization.

4) Soil stockpiles shall be stabilized or covered and/or have sediment control measures in place to control sediment. Stockpiles shall have temporary vegetation established if it is going to be left for 21 days or more.

5) During the winter months when there is no construction activity, the entire site shall be stabilized using a heavy mulch layer or other methods that do not require germination to control sediment and prevent erosion.

6) Clearing and grading shall be limited to the smallest possible area.

7) Existing vegetation and trees shall be preserved to the maximum extent possible.

8) Areas to be left undisturbed during construction shall be clearly shown on the plans and marked in the field.

9) Vegetive buffer strips in combination with other perimeter controls shall be used for the protection of adjacent properties, streams, and rights of way.

10) Best management practices shall be used to minimize sedimentation of drainage structures, receiving water bodies, natural karst features, roads, rights-of-way, and adjacent properties.

F) Sediment Control BMP requirements:

1) Dust control techniques shall be used to prevent the blowing of dust during land disturbance, demolition, and other construction activities.

2) Diversion of upland runoff past disturbed slopes shall be implemented when necessary.

3) Settling basins, sediment traps, and/or perimeter controls shall be implemented to control sediment.

4) Effective debris and trash management shall be required.

G) Stream and channel protection requirements:

1) A temporary stream crossing shall be installed for construction vehicles.

2) A no-disturbance vegetative buffer strip shall be established along streams having a drainage area of 100 acres or more. The buffer strip shall be 25 feet wide on each side of the stream, measured from the stream bank.

3) Constructed channels shall be stabilized before, during, and after any in-channel work.

4) Constructed channels shall be designed in accordance with the County Stormwater Manual.

5) Inlets and outlets of pipes and paved channels shall be stabilized.

Section VII. Inspection

A) BMP Plans accepted by the County for grading, stripping, excavating, and filling work shall be maintained on site throughout the duration of the work. .

B) The County shall be contacted for a Preconstruction Inspection after erosion and sediment control measures have been installed. The Owner may begin site construction upon completion of the Preconstruction Inspection by the County.

C) The County or designated agent shall make inspections as deemed necessary to ensure that erosion and sediment controls are being properly implemented and maintained during construction. If they are not being maintained, the Owner shall be notified and enforcement actions may be taken.

D) The Owner shall have qualified personnel make regular inspections of all control measures to determine the overall effectiveness of the BMP Plan and the need for additional control measures. The frequency of these inspections shall be once every seven (7) calendar days and after storm events of a half-inch (1/2") of precipitation or more. All inspections shall be documented in written form and kept on the construction site. Reports shall be available for the County or State Inspectors to review upon request during a site inspection.

BOOK 0070 PAGE 494 BOOK 0004 PAGE 049

E) The County or designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under sub-section D above.

Section VIII. Submission of Financial Security

The County shall not accept a BMP Plan until the Owner has posted an irrevocable letter of credit or cashiers check in an amount determined by the County as being sufficient to ensure the provision of the following on the site:

A) Re-grading of the site as might be necessary to correct any slopes that do not meet the standards of this ordinance.

B) Installation of erosion and sediment control measures to protect adjoining or on-site streams and waterways.

C) Seeding and mulching of the site as would be needed to stabilize the soil.

D) Conversion of any temporary basins to properly operating permanent stormwater best management practices.

Section IX. Enforcement

A) Whenever the County finds that a person has violated a prohibition or has failed to meet a requirement of this Ordinance, the County may order compliance by sending a written notice of violation to the property owner. All violations shall be corrected within the time period specified in the notice, but in no case shall such time period be less than twenty-four (24) hours. The notice of violation shall be mailed to the property owner, or by personally serving, or by causing to be personally served, the property owner with a written notice of violation. If the violation is not corrected as specified, the County may, without limitation:

1) Order such work as is necessary to leave the site in a safe condition and to achieve compliance with this Ordinance and the Stormwater Manual.

2) Order the stoppage of work that is determined to have created, or to have contributed to, any dangerous conditions.

3) Call the letter of credit that was posted for the site and initiate corrective action by work forces under control of the County, with the cost of such work being recoverable from the letter of credit.

B) Penalties – The County may commence appropriate legal action and/or seek equitable relief, including injunctive relief, against any person who fails to abate a violation and/or to restore an affected property prior to the deadline established in the notice of violation. Any person who conducts grading, stripping, excavation, filling, or other disturbance of the natural ground cover in violation of this Ordinance, or who violates, neglects, omits, or refuses to comply with any provision of this Ordinance shall, upon conviction, be fined not less than $10.00 nor more than $500.00 for each offense. The time of violation shall be measured from the time written notice to correct is given to the owner. Each day a violation is maintained shall constitute a separate offense. Any recoverable cost of corrective action shall be in addition to fines imposed as a penalty. The imposition of any penalty shall not exempt the violator from compliance with the provisions of this Ordinance.

C) Stop-Work Order; Revocation of Building Permit – In the event that any person holding a building permit violates the terms of this ordinance, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of the public near the development site or vicinity so as to be materially detrimental to the public welfare or injurious to property or improvements in the vicinity, the County may suspend or revoke the building permit.

Section X. Separability

The provisions and sections of this ordinance shall be deemed to be separable, and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

Section XI. Effective Date

The effective date of this Ordinance shall be January 1, 2006.

Section XII. Conflicts

All ordinance or parts of ordinances in conflict herewith are hereby repealed to the extent of said conflict.

Given First Reading on this the 22nd day of November, 2005.

Given Second Reading on this the 13th day of December, 2005.

Adopted on this the 13th day of December, 2005.

HARRY L. BERRY
HARDIN COUNTY JUDGE/EXECUTIVE

Attested by:

KENNETH L. TABB
HARDIN COUNTY COURT CLERK

Approved as to legal form:

KEN M. HOWARD
HARDIN COUNTY ATTORNEY
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