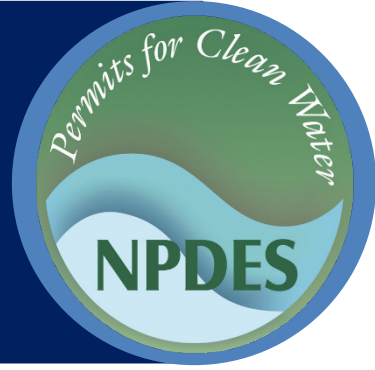




# Stormwater Best Management Practice

## Local Ordinances for Construction Site Stormwater Control



**Minimum Measure:** Construction Site Stormwater Runoff Control  
**Subcategory:** Municipal Program Oversight

### Description

Erosion and sedimentation from construction sites can impact water quality and other environmental problems. Communities with regulated municipal separate storm sewer systems (MS4s) develop a stormwater management program with a component aimed at controlling erosion and sediment on construction sites. Municipalities should also establish the appropriate legal authority to enforce this requirement. Many municipalities use their grading ordinances (e.g., requirements to develop an erosion and sediment control [ESC] plan to get a grading permit) or their stormwater codes as the legal mechanism for triggering ESC requirements.

### Development Considerations

Ordinances need to be enforceable, and to cover applicable activities occurring or expected to occur in a particular municipality. An ordinance should specify which sites should implement controls. For example, stormwater discharges from construction sites disturbing more than one acre or part of a larger common plan of development that collectively will disturb one or more acres. Some municipalities use a smaller area such as 5,000 square feet or a volume threshold, such as 50 cubic yards of earth moved. It should require implementation and maintenance of ESCs and include penalties for noncompliance. Ordinances can set grading limits, design requirements, erosion control practices, sediment control practices, waterway crossing specifications, or other stormwater controls applicable to the local area.

Ideally, the ordinance will establish the broad authority for the municipality to require ESC practices. The municipality will then implement the ordinance through a set of policy documents that outline how to satisfy and enforce the requirements of the ordinance. Typically, the documentation that supports the ordinance includes



Local ordinances or codes can be used to require erosion and sediment control practices within a community.

design standards, procedures for design review, procedures for site inspections, and enforcement response plans. Implementing the ordinance through policy documents allows the MS4 to adapt and change through time without having to pass a new ordinance for each iteration of the program.

Through code or through ordinance, communities should require ESC practices and can use the following as examples:

- Require the preparation of a stormwater pollution prevention plan or an equivalent document (e.g., ESC plan).
- Provide and maintain natural buffers and/or equivalent ESCs when a water of the United States is within 50 feet of the site's earth disturbance.
- Require the installation and maintenance of general ESCs, such as perimeter controls, inlet protection and soil stabilization.
- Specify the amount of time allowed to stabilize exposed soil when construction activities have temporarily or permanently ceased.

- Control stormwater discharges, including both peak flowrates and total volume, to minimize channel and streambank erosion and scour.
- Manage stockpiles or land-clearing debris piles and minimize sediment track-out.
- Require that construction staff take corrective actions when a stormwater control needs repair or replacement, or when discharges are causing an exceedance of an applicable water quality standard.
- Require construction staff to conduct inspections at least every 7 days (or every 14 days and within 24 hours of a storm event of 0.25 inches or more).

For an EPA example ordinance, as well as examples of ESC ordinances from across the country, visit EPA's [Urban Runoff: Model Ordinances for Erosion and Sediment Control](#) Web page

## Effectiveness

Ordinances are only as effective as the degree to which municipalities implement and enforce them. This makes it imperative to accompany ESC ordinances with an effective [municipal construction inspection](#) program and have associated enforcement response plans (or similar policy documents) in place that clearly identify penalties for failure to comply.

It is critical that the municipality have the authority and policies in place to initiate a range of enforcement actions to address the variability and severity of noncompliance. Enforcement responses should consider criteria such as magnitude and duration of the violation, effect of the violation on the receiving water, compliance history of the operator, and good faith of the operator in compliance efforts. Particularly for construction sites, enforcement action should be timely to be effective. Response to the enforcement should also be timely. Enforcement actions should clearly establish enforcement response expectations. Failure to respond to enforcement actions or repeated violations necessitates escalation of enforcement against the offending party.

The following are some of the primary enforcement mechanisms for improving compliance with and effectiveness of an ordinance:

- **Warning** – A written or verbal warning that does not contain penalties. These can be a good first step in enforcement. Warnings are typically suitable when a practice or deficiency may lead to a violation. They can be an effective tool because they impose a low administrative burden and properly implementing them can increase compliance. A municipality should not rely on warnings too much, though: repeated warnings will delegitimize an enforcement program.
- **Notices of Violation** – A written or verbal notification that one or more violations were committed. A notice of violation provides instructions for coming into compliance and allows the recipient an opportunity to discuss their actions and efforts to mitigate the violation. Administrative fines may or may not be part of a notice of violation.
- **Administrative Fines** – A monetary penalty issued to the construction site owner or operator for violation of a municipal code, policy and/or standard. The municipality should establish penalty guidance that accounts for the severity, impact and culpability of the offense.
- **Administrative Orders** – An example of an effective administrative order for construction sites is the stop work order. A municipality might issue a stop work order or a grading or building permit revocation when development violates a permit; adversely affects the health, welfare or safety of people living or working in the neighborhood; or poses a risk of injury to people or property.
- **Civil Penalties** – Monetary assessments paid by a person or regulated entity due to a violation or noncompliance. Penalties act as an incentive for coming into compliance and staying in compliance with the environmental statutes and regulations. They recover the economic loss of noncompliance and compensate for the seriousness of the violation.

- **Criminal Penalties** – Federal, state or local fines imposed by a judge at sentencing. As well as facing criminal penalties, a defendant may have to pay restitution to those the violation has affected. For example, the defendant may have to pay a local fire department the cost of responding to and containing a hazardous waste spill.
- **Other Actions** – Some municipalities require violators to perform restoration work or implement an ESC rather than pay a fine. Additionally, bond funds set aside to repair damage to temporary

construction site ESCs (e.g., silt fences) caused by storm flows, high winds or fallen trees can serve as an incentive for compliance. Ordinances can specify that construction site owners or operators may only use funds if inspections document that they have installed and maintained ESCs as required.

Ordinances that only allow for criminal or civil penalties will be harder to enforce than those including an administrative enforcement policy. Mature enforcement programs will have administrative, civil and criminal penalties available based on the severity of the violation.

#### Additional Information

Additional information on related practices and the Phase II MS4 program can be found at EPA's National Menu of Best Management Practices (BMPs) for Stormwater website

## References

U.S. Environmental Protection Agency (U.S. EPA). (2021). *Urban runoff: Model ordinances for erosion and sediment control*.

#### Disclaimer

*This fact sheet is intended to be used for informational purposes only. These examples and references are not intended to be comprehensive and do not preclude the use of other technically sound practices. State or local requirements may apply.*