

9.14.185 - Erosion and sediment control.

- (1) Purpose and Intent. The requirements and performance standards of this chapter are intended to control soil erosion and sedimentation through the use of temporary and permanent erosion and sediment control practices. The purpose of the requirements is to allow flexibility in choice of erosion and sediment control methods through the requirement of applicants to prepare an erosion and sediment control (ESC) plan that meets the specific needs of each site and employs appropriate measures to meet the performance standards for erosion and sediment control.

The purpose of this chapter is to:

- (a) Protect and prevent damage to Spokane County's stormwater management infrastructure;
 - (b) Minimize erosion and sedimentation, and the impact of increased runoff, onto private property, public roads and rights-of-way, and water bodies caused by land-disturbing activities; and
 - (c) Protect the health, safety and welfare of the general public and shall not be construed to establish any duties to protect or benefit any particular person or class of persons.
- (2) General Provisions.
 - (a) Administration. The public works director/designee is responsible for interpretation, administration and enforcement of the requirements of this chapter.
 - (b) Applicability. This chapter applies to all major land-disturbing activities, and all minor land-disturbing activities for which a permit is required by county ordinances, within the unincorporated areas of Spokane County, unless exempted in this chapter.

All major land-disturbing activities which do not require a permit or approval by Spokane County, remain subject to the performance standards and enforcement provisions of this chapter. Although a land-disturbing activity may not require a permit from Spokane County, a permit may be required from state and/or federal agencies.

The performance standards and other requirements of this chapter apply to other

activities allowed by county ordinances relating to land-disturbing activities.

- (c) Exemptions. The provisions of this chapter do not apply to the following:
- (1) Commercial agriculture as regulated under Revised Code of Washington (RCW) Chapter 84.34.020;
 - (2) Forest practices regulated under Washington Administrative Code (WAC) Title 222, except for Class IV General Forest Practices that are conversions from timber land to other uses;
 - (3) Actions by a public utility or any other governmental agency to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic, provided the public utility or governmental agency cleans and/or removes any erosion and sedimentation after the emergency condition is alleviated, utility service restored or the thoroughfare is reopened, pursuant to the performance standards in subsection (5)(b) of this section;
 - (4) Issuance of permits and/or approvals for land divisions, interior improvements to an existing structure, or other approvals for which there is no physical disturbance to the surface of the land;
 - (5) Minor land-disturbing activities which do not require a permit under county ordinances.
- (d) ESC Best Management Practices (BMPs). ESC BMPs should be used to comply with the requirements in this chapter. Examples of BMPs are outlined in the Spokane County Erosion and Sediment Control BMP Manual available at the Spokane County public works building. The intent of the BMP manual is to provide an example of available BMPs which property owners can choose from, to help meet the requirements contained in this chapter. Use of BMPs from the manual is at the discretion of the property owner, permit applicant, or their agent.

It is not the intent of the BMP manual to limit any innovative or creative effort to effectively control erosion and sedimentation. In those instances where appropriate BMPs are not in the BMP manual, experimental management practices can be considered. Experimental management practices are encouraged as a means of solving problems in a manner not addressed by the BMP Manual, in an effort to improve erosion

control technology and meet the purpose and intent of this chapter. All experimental management practices are required to meet the performance standards identified in subsection (5)(b) of this section.

- (e) Interpretation. The provisions of this chapter will be held to be minimum requirements in their interpretation and application.
- (f) Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions for erosion and sediment control, the provisions of this chapter will prevail.
- (g) Severability. If any provision of this chapter or its application to any person, entity, or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons, entities, or circumstances shall not be affected.

(3) Definitions.

"Best Management Practices (BMPs)" means physical, structural, and/or managerial practices that, when used singularly or in combination, have been shown to prevent or reduce erosion and sediment transport.

"Class IV Forest Practices" are defined as forest practices other than those contained in Class I or II: (a) on lands platted after January 1, 1960; (b) on lands being converted to another use; (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development; and/or, (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the Department as to whether or not a detailed statement must be prepared pursuant to the State Environmental Policy Act, chapter 43.21.C RCW (RCW 76.09.050), as amended.

"Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

"Earthen material" means any rock, natural soil or fill and/or any combination thereof.

"Erosion" is the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

"Land-disturbing activities" means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to: demolition, construction, clearing, grading, filling, logging, and excavation.

"Minor land-disturbing activity" means a land-disturbing activity of less than one acre of disturbed area; an individual, detached, single-family residence or duplex; or the creation or addition of impervious surface areas less than five thousand square feet.

"Major land-disturbing activity" means a land-disturbing activity greater than or equal to one acre of disturbed area or the creation or addition of impervious surface area greater than or equal to five thousand square feet.

"Permanent erosion and sediment control measures" are erosion and sediment control devices that replace any temporary devices and provide for long-term, permanent stabilization of a site.

"Permitted activity" means any activity for which a permit is required under county ordinances.

"Public works director" means that person, or his/her designee, who has been appointed by the board of county commissioners to direct the activities of the Spokane County public works department.

"Sediment" means earthen material moved by wind, water, ice and tracking.

"Sedimentation" means the gravitational deposit of transported material in flowing or standing water.

"Site" means the piece of property which is directly subject to land-disturbing activities.

"Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

"Stormwater" means that portion of precipitation or snow melt that has not naturally percolated into the ground or evaporated, but is flowing via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed detention and/or infiltration facility.

"Temporary erosion and sediment control measures" means erosion and sediment control devices used to provide temporary stabilization of a site, usually during construction or land disturbing activities, before permanent devices are installed.

"Tracking" means the deposit of sediment on to paved surfaces from the wheels of vehicles.

"Water body" shall include those water bodies that are defined as surface waters of the state or waters defined as waters of the state under Revised Code of Washington (RCW) chapter 90.48.020, as amended.

"Wetland or wetlands" means those areas in Spokane County that are inundated or saturated by surface or ground water at a frequency and a duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city (RCW 36.70A.030), as amended. For identifying and delineating a wetland, Spokane County will rely on the methodology contained in the wetland delineation manual.

(4) Erosion and Sediment Control Plans.

- (a) Submittal of Plans. An ESC plan is required for major land-disturbing activities that require a permit or plan acceptance by Spokane County. An ESC plan is not required for minor land-disturbing activities.

An ESC plan, when required, shall be submitted with a permit application prior to any land-disturbing activity. ESC plans are only required to address the area of land that is subject to the land-disturbing activity for which a permit is being requested. Although others may prepare the ESC plan, the permit applicant is responsible for ensuring that all requirements are addressed in the ESC plan. The ESC plan is required to be on file at the County, although it will not be reviewed or approved by the County.

- (b) Content of Plans. At a minimum, all ESC plans must be legible, reproducible, and contain the following information:
- (i) Title block;

- (ii) Name of property owner;
 - (iii) Name of permit applicant;
 - (iv) Name of contact person at project site;
 - (v) Project address;
 - (vi) Legal description;
 - (vii) Name of person preparing plan;
 - (viii) Professional seal (required for major land-disturbing ESC plans);
 - (ix) Description of project;
 - (x) Description of ESC measures;
 - (xi) Description of existing vegetation on the site;
 - (xii) Location of any existing water bodies;
 - (xiii) Date plan was prepared;
 - (xiv) Scale of drawing;
 - (xv) North arrow;
 - (xvi) Property boundary and dimensions;
 - (xvii) Vicinity map;
 - (xviii) List of soils on-site (information may be obtained at the county soil conservation district);
 - (xix) Certification statement by the person preparing the plan that the plan meets the ESC plan requirements as listed in Chapter 4.5 of the Guidelines for Stormwater Management.
- (c) ESC Requirements for Minor Land-Disturbing Activities. Though an ESC plan is not required to be submitted for minor land-disturbing activities for which a permit is required by Spokane County, the performance standards and other provisions of this section shall remain in effect. The provisions of this section shall not govern minor land-disturbing activities for which no permit is required. However, individuals/property owners undertaking minor land-disturbing activities for which a permit is not required may desire to ensure that such activity protects adjacent and surrounding private properties.
- (d) ESC Plan Requirements for Major Land-Disturbing Activities. All ESC plans for major land-disturbing activities shall be prepared and have a seal affixed by either a licensed professional engineer (PE) or a licensed landscape architect

(LA). Both the professional engineer and the landscape architect must be licensed in the State of Washington and be knowledgeable in both hydrology and ESC practices.

The following fifteen items shall be addressed in ESC plans for major land-disturbing activities. As site conditions dictate, additional measures relating to ESC, as determined by the licensed professional engineer (PE) or licensed landscape architect (LA) preparing the plan, shall be addressed in order to meet the intent and purpose of this chapter and to comply with stated performance standards contained in subsection (5)(b) of this section. Special site conditions may include, but are not limited to, steep slopes, slope length, soil type, or vegetative cover.

- (i) Construction Access Route. Access for construction vehicles should be limited to one route whenever possible. The access route must be stabilized to minimize the tracking of sediment onto public roads.
- (ii) Stabilization of Denuded Areas. Stabilization of all exposed soils to prevent soils from eroding and depositing sediment downstream.
- (iii) Protection of Adjacent Properties/Water Bodies/Public and Private Roads. Protection of adjacent properties, water bodies, public and private roads from erosion and sediment deposition. The intent is to keep sediment on the project site and not allow it to reach adjacent properties, water bodies, and public and private roads.
- (iv) Protection of Inlets. Protection of downstream inlets to drywells, catch basins and other stormwater management facilities.
- (v) Increased Runoff from Construction Sites. Consideration and mitigation of the effects and impacts of increased and concentrated runoff from land-disturbing activities on downstream properties, water bodies, and public and private roads.
- (vi) Washout Site for Concrete Trucks and Equipment. Designate the location of a slurry pit where concrete trucks and equipment can be washed out. Slurry pits shall not be located in a swale, drainage area, stormwater facility, or water body nor in an area where a stormwater facility is proposed.
- (vii)

Material Storage/Stockpile. Identify location for storage/stockpile areas, within the proposed ESC plan boundaries, for any soil, earthen and landscape material which is used or will be used on-site.

- (viii) Maintenance and Permanent BMPs. Maintenance of all erosion and sediment control BMPs is required during the land-disturbing activity. Regular inspection and maintenance of all erosion and sediment control BMPs is required to ensure successful performance of the BMPs. Permanent BMPs shall be included in the plan to ensure that successful transition from temporary BMPs to permanent BMPs occurs.
- (ix) Clearing Limits Delineation. Field identification and delineation of all clearing limits, sensitive/critical areas, buffers, trees to be preserved, and drainage courses.
- (x) Sediment Trapping Measures. Design and construction of sediment ponds and traps, perimeter dikes, sediment barriers, and other onsite sediment trapping BMPs as necessary prior to the start of other land disturbing activities.
- (xi) Cut and Fill Slopes. Design and construction of cut and fill slopes in a manner that will minimize erosion.
- (xii) Stabilization of Temporary Conveyance Channels and Outlets. Design, construction, and stabilization of all temporary on-site conveyance channels to prevent erosion from the velocity of runoff from storms under developed conditions. Design, construction, and stabilization of all temporary conveyance system outlets to prevent erosion of: stormwater facilities, adjacent stream banks, slopes and downstream reaches.
- (xiii) Removal of Temporary BMPs. Removal of all temporary sediment control BMPs within thirty days after final site stabilization or after the temporary BMPs are no longer needed. Trapped sediment shall be removed from the project site or stabilized on-site. Stabilization of disturbed soil areas resulting from removal of the temporary BMPs.
- (xiv) Dewatering Construction Site. Discharge of dewatering devices to appropriately designed sediment traps or sediment ponds.
- (xv)

Control of Pollutants Other Than Sediment on Construction Sites.

Control of all on-site pollutants other than sediment in a manner that does not cause contamination of stormwater or groundwater.

- (e) Modifications to Plans. ESC plans may be modified after submittal to the county. An amended plan should be submitted to illustrate any modifications to the techniques and methods used to prevent and control erosion and sedimentation.
- (5) Maintenance, Performance Standards, and Enforcement.
- (a) Maintenance Responsibility. During any land-disturbing activity subject to this ordinance, the property owner(s) or permit applicant, if different from the property owner(s), engaged in the land-disturbing activity is responsible for preventing erosion and sedimentation through the use of BMPs. The property owner(s) or permit applicant, if different from the property owner(s), is subject to the enforcement and penalty provisions provided herein, and it is their responsibility to ensure BMPs are used and the performance standards are met. After any land-disturbing activity is complete and the site has been permanently stabilized, maintenance and the prevention of erosion and sedimentation is the responsibility of the property owner.
 - (b) Performance Standards. The performance standards set forth below are intended to provide a minimum threshold for controlling soil erosion and sedimentation caused by land disturbing activities and will be used to determine if the requirements of this chapter have been met:

Minimize tracking onto public, private, and future public roads;

Protection of public roads and stormwater facilities;

Proper washout of concrete trucks and equipment;

Protection of private properties;

Protection of water bodies and wetlands;

The following criteria will be used to determine if the performance standards listed above have not been met.

(i)

Minimize Tracking Onto Public, Private, and Future Public Roads.

The performance standard for minimizing tracking onto public, private, or future public roads has not been met if soil, dirt, mud or debris is tracked onto a public, private, or future public road and there is no evidence of reasonably trying to control it through the use of ESC BMPs or experimental BMPs (i.e., sweeping), both as defined in subsection (2)(d) of this section.

- (ii) Protection of Public Roads and Stormwater Facilities. The performance standard for protecting public roads and stormwater facilities has not been met if there is deposition, other than tracking, of more than two gallons (0.27 cubic feet) per day of soil, dirt, mud or debris from the project site onto adjacent public roads and/or a stormwater system within a public right-of-way.
 - (iii) Proper Washout of Concrete Trucks and Equipment. The performance standard for ensuring the proper washout of concrete trucks and equipment has not been met if there is observation or evidence of concrete washout material within a drainage area, stormwater facility, or water body, nor in an area where a stormwater facility is proposed.
 - (iv) Protection of Private Properties. Spokane County does not presently have sufficient resources to enforce the provisions of this section for violations that affect private properties. Therefore, no performance standards have been established with respect to the deposit of soil, dirt, mud or debris from a project site onto adjacent private property. Private property owners, however, may have the ability to seek judicial redress for such actions.
 - (v) Protection of Water Bodies and Wetlands. The performance standard for protection of water bodies has not been met if there is deposition of soil, dirt, mud, or debris from the project site into adjacent water bodies.
- (c) Enforcement.
- (i) General. Enforcement and penalties will be in accordance with this section whenever there is a violation of the project's erosion and sediment control plan or any performance standard(s) contained herein,

as they relate to public facilities. Failure to submit an erosion and sediment control plan will result in nonissuance of underlying permit.

The public works director/designee has the authority to assess penalties only related to public facilities including but not limited to, swales, drainage areas, or stormwater facilities. Violations related to private property are a civil matter and are not enforceable by Spokane County.

(ii) Notice of Noncompliance. The public works director/designee will have the authority to issue a notice of noncompliance and penalty to the property owner(s), or permit applicant if different than the property owner(s), engaged in the land-disturbing activity, if an action is being undertaken that does not comply with all performance standard(s) of this chapter.

(A) Content of Notice of Noncompliance. A notice of noncompliance will contain:

1. The name and address of the property owner(s) or permit applicant to whom the notice of noncompliance is directed; and
2. The street address, when available, or a general description of the building, lot, or land upon which the noncompliance is occurring; and
3. A description of the specific nature, extent, and date of noncompliance; and
4. A notice that the noncompliant activity cease and desist, and corrective action be undertaken to correct the activity within twenty-four hours; and
5. A statement that a cumulative civil penalty in the amount of two hundred fifty dollars per day for minor land-disturbing activities or one thousand dollars per day for major land-disturbing activities, will be assessed for each and every day following the date set for correction on which the noncompliant activity continues; and
6. A statement regarding the appeal process.

(B)

Notification. The notice of noncompliance will be issued in writing, either by certified mail with return receipt requested, or by personal service, to the property owner(s) or permit applicant. If the notice of noncompliance is not issued to the property owner(s), the property owner will be given a copy of the notice of noncompliance so that the property owner(s) is informed that a notice of noncompliance has been issued to the permit applicant. A copy of the notice of noncompliance may also be given to the contact person at the project site.

- (C) Effective Date. The notice of noncompliance issued under this section will become effective immediately upon receipt.
 - (D) Compliance. Failure to comply with the terms of a notice of noncompliance will result in the issuance of a civil penalty.
- (iii) Civil Penalty. A person who fails to meet the performance standards of this chapter and who fails to comply with a notice of noncompliance issued under this chapter will be subject to a civil penalty.
- (A) Amount of Penalty. The penalty will be two hundred fifty dollars per day for each violation associated with a minor land disturbing activity and one thousand dollars per day for each violation associated with a major land-disturbing activity. Each day of continued violation or repeated violation will constitute a separate violation. Any costs associated with clean-up or other corrective actions shall be the sole responsibility of the violator.
 - (B) Notice and Assessment of Penalty. A civil penalty will be imposed by a written notice of penalty either by certified mail with return receipt requested or by personal service. A notice of penalty will contain:
 - 1. The name and address of the property owner(s) or permit applicant to whom the notice of penalty is directed; and
 - 2. The street address, when available, or a general description of the building, lot, or land upon which the violation is occurring; and
 - 3. A description of the specific nature, extent, and date of violation; and

4. A statement that the corrective action ordered in the notice of noncompliance was not undertaken; and
5. The amount of the penalty; and
6. A statement that the penalty shall be assessed for each and every day the violation continues; and
7. A statement that the penalty is due within thirty days. A statement of the appeal process will also be included.

(C) Penalties Due.

1. Penalties imposed under this section will become due and payable within thirty calendar days of receipt of the notice of penalty. If the amount of a penalty owed to the county is not paid within the time specified, the county may take appropriate action necessary to recover such penalty.
2. If an appeal of a notice of noncompliance is filed, the thirty-day time frame does not apply. A penalty will not be assessed if the decision of an appeal is that a violation of the performance standards did not occur.

(D) Penalty Recovered. All penalties will be deposited in a fund created with the Spokane County treasurer's office and may be appropriated for education, administration, and enforcement of this chapter.

- (iv) Appeals. A notice of noncompliance may be appealed in writing to the public works director/designee within fourteen calendar days of receipt of the notice. The public works director/designee shall have the authority to approve or deny the appeal. A reduction or waiver of a penalty may be granted, if the public works director/designee determines that there is substantial evidence that reasonable ESC BMPs, or experimental BMPs, were used prior to the notice of noncompliance, and that damage to public facilities did not occur.

The decision of the public works director/designee may be appealed to the board of county commissioners. This appeal must be filed within fourteen calendar days of the decision of the public works director. The board of county commissioners will hear the appeal and make a final decision on the notice of noncompliance and penalties due.

(Res. 98-0201 Attachment A (part), 1998)