

# Sediment & Erosion Control Meeting Summary

## at the Lower Platte South Natural Resources District

August 10, 2006

Introductions and brief summary of the of materials provided by the City and a summary of the agenda.

Donna Garden of NDEQ read a letter from EPA regarding the status of the City E&SC program with respect to E&SC measures on small sites. In general the letter stated that EPA the Phase II portion of the permit was supposed to be in place by March of 2003. That time frame has already lapsed. One of the requirements we have for both permits is that you meet that time table at least the end of the term of the permit. We also got a statement from EPA regarding meeting this requirement, and I'll read it directly to you all. "Absence of the compelling justification on the City's part as to why they have not yet put into place the ordinances, EPA would recommend taking a formal enforcement action against the MS4 in this situation. The violation is serious in nature and inexpensive to resolve. The enforcement should be a formal action and may or may not include penalties, depending on the circumstances. The schedule in the new permit, the next permit, to meet this requirement would be inappropriate." In other words, they will not allow another scheduling of the next permit. You have to have it done or else some enforcement action has to be taken. "If EPA were to audit a city in this situation we would most likely take action. If the State would prefer EPA to take such action we would accept deferral." So EPA is very serious about this program and very dependent on the City to implement the program down to the one-acre sites, down to the smaller sites in the larger common development. Just a note on the City's permit itself, it expires September 1<sup>st</sup>, or August 31<sup>st</sup>, of next year. So the time table is very short for getting these ordinances passed.

The City's consultant presented a summary of the six minimum requirements that the federal government requires for a community to be considered a "qualifying local program".

The City responded to a question raised about Phase I cities complying with Phase II regulations. Phase I cities do comply with the intent of Phase II rules. Lincoln is a Phase I city and we are required under our permit to comply with the those Phase II rules. Further clarification on this subject is also available in the *EPA Fact Sheet 3.0 section titled "Who Is Covered Under the Phase I Rule?"*

The question was asked, what is the drop-dead date? NDEQ stated that the City was already past their date. The State has the right to enforce upon the City for missing that compliance date. The group was requested by NDEQ to work as quickly as possible. A question was asked about the date on memo that NDEQ read to the group; NDEQ stated that the date was one day prior to the meeting.

The City also pointed out that their response to the question regarding the deadline to get ordinances in place by the end of the calendar year was drafted before they got some of this additional information from NDEQ. NDEQ reinforced the need to wrap things up fairly quickly.

Requests we heard at the last meeting from the building community regarding a E&SC program:

- create a program that is simple, easy to follow, and clear to understand,

- must be equitable, such that everybody is on the same playing field,
- program must comply with federal and state requirements,
- a single point of contact in the program with in the City,
- City resources will need to be allocated to operate the program
- the program should allow the developer to maximize their resources
- the developers have the resources and tools and the people in place that can take care of many of the program elements,
- possibly manage individual lots through a purchase contract

The consultant created a flow chart for a process with these elements.

Main points of concern from building community:

- Lots stabilized at the point of transfer - This means stabilized by the developer when the builder takes it over, and eventually from the builder to the ultimate home or building owner.
- More education on this whole process. Not only what erosion and sediment control entails, but how to implement it, and of course what the rules and regulations are.
- Streamline enforcement and administration - People would like to see a more streamlined process so that things happen faster and people can get things taken care of and moving on their way.
- No outrageous penalties. Don't penalize the good guys. - This program is meant to be fair to everybody. If people don't comply with it, which are the people who don't care about erosion and sediment control or who want to bypass it, they should be most impacted. Create a program everyone can live with

The City's consultant provided a sequential overview of the new draft proposed E&SC program.

1. The process starts out with the developer and his or her development filing a Notice of Intent with the NRD on behalf of the City, and also with the Nebraska Department of Environmental Quality. (This is the same thing that happens right now once a erosion and sediment control permit is filed for.)
2. Usually you, your engineer, or consultant fills out the Stormwater Pollution Prevention Plan, SWPPP.
3. Sends NOI and SWPPP to the NRD, and the NRD reviews that on behalf of the City. The City's review of those plans which is one of our minimum control measures, and also sends them to NDEQ who also reviews it.
4. When the NOI is accepted, the permit is actually an authorization letter to do the work and do land disturbance. The letter is issued by NDEQ and by NRD. With this new program, a new item to be included with that Notice of Intent application, is a "mini-SWPPP". The mini-SWPPP is a simplified template for the measures that would be put in place on an individual building lot. The mini-SWPPP is to be developed jointly by the City and building community. The mini-SWPPP would have a check-list that says on a typical site, here is how you're managing the six minimum control measures, maybe a check-list for what those items are going to be. Also, an example of what a typical plot plan will look like. The engineer wouldn't have to go through and do a full SWPPP for every single building site. Basically it just says "here's what has to be included in this little mini-SWPPP". Standard information on the example would show the plot plan that shows your typical footprints, your site boundaries, your drainage areas showing where drainage is going to go, and basic locations of where the erosion and sediment control

measures will be put in place. A boiler plate plan can be quickly filled out and is an example for what you'll need to show later in the process.

5. The developer goes through and does his mass grading, puts his erosion control measures in place before he starts mass grading (grade the site as now) and at the point that site is ready for sale, the developer would temporarily stabilize the site and make sure all the measures are in place, as is the practice now.
6. Then an owner would apply to the City for the Executive Order to be released for the individual lot construction to begin. Currently the City has requirements where an owner will have to maintain their erosion and sediment control measures and conduct inspections. That basic process isn't going to change. The land owner or their consultant is inspecting the measures regularly and making sure that they're in place, repairing any failures or problems that occur, and documenting that. Changes to the State's new construction general permit increase the frequency of inspection as per the federal requirements. Inspecting the site, documenting inspections and making repairs, will be required once every seven days or after every 1/2 inch rain.

The City is required to oversee the inspection process as one of the required six minimum control measures. The new permit requirement says that if you have frozen ground conditions in the winter time, you can do it once a month, but as a general rule of thumb, it every seven calendar days or after each 1/2 inc rain event.

The main point of doing inspections is not to repair a failure after a rainfall, but it's to avoid a failure before the rain happens. It's preventative maintenance really, is what the inspection routine is.

7. Keep the SWPPP documentation records on site, things may have to change. Changes may be necessary as the development proceeds. Document those changes on your SWPPP and your master plan just as you would now. At the point that site is completely stabilized and you're ready to sell off your lots, then we go into the next phase.
8. So the site has to be totally stabilized, temporary vegetation on the lots or any areas that aren't being developed right away. At that point the City comes in and does their inspections as they would now. They certify that everything is temporarily stabilized and releases your Executive Order allowing you to start selling lots.

Other items of importance:

- have one single point of compliance
- the City is required to oversee the program
- at the time of sale the purchase agreement between the developer and the builder could lay out the requirements stating that the builder who purchases that lot will agree to, maintain erosion and sediment control measures on their building site and lots.
- the developer will provide the builders with the mini-SWPPP template, and the example of the plot plan, and the builder will then fill in where the erosion and sediment control measures go on the individual site plan
- the developer who already has resources may provide general services, they will still maintain the overall development measures, they will probably provide any cleanup, the sediment that gets in the street, that type of thing.
- the builder will be responsible for their own site, but then the developer may provide some of the general services for the development as a whole
- the developer will ensure that the building site BMP's are maintained, there's no

sediment in the streets, and then will have the mechanisms to enforce that in that purchase contract

- the developer will be the first contact for small sites issues/violations,
- the City still needs to respond to complaints from the public.
- Notice of Termination, so when 95% of your development area is permanently stabilized/is built out, and there is permanent vegetation established, at that point you can submit your Notice of Termination to the State and terminate the permit
- On the individual small sites, the process to close out the mini-SWPPP is similar
- Builders responsibility for maintaining the small site does not start until the building permit is pulled.
- City to create new guidance material that brings everybody through the program and a guide that you can use in the field to maintain your measures.
- City to provide training/education on placing measures filling out a SWPPP, how you fill out a Notice of Intent, the mini-SWPPP, the plot plan,
- the contract will need to reflect the ordinances as to when the builder takes over responsibility for E&SC measures (when individual building permit is pulled)
- a certification program to be sure that the erosion control inspectors are qualified professionals that know how to do inspections and enforcement.
- proposed seven days to correct a Notice of Violation for large sites
- propose five days to correct issues on small sites
- notice to Stop Work if violation not corrected
- fines to follow if Stop Work is not effective in getting problem resolved
- developer ultimately responsible for small site compliance, City retains right to enforce on builder.

#### Resources

- current program, basically has one and one-half people running the program
- Current program complaint driven
- Complaints take a lot of time because there's a lot of paperwork that has to be filed and shuffled and you have to go back and do re-inspections and what not
- With the available staff under the current program, it's not possible to get to all large sites to do inspections in a fiscal year.
- We took a look at what other communities E&SC programs in the region and the number of employees allocated. We found that around the region, the minimum number was two for cities smaller than Lincoln; (which have less development going on.) the maximum we saw was seven.
- Not a single community polled said that they had more staff than they needed. Everybody kind of said, 'well we've got the bare minimum' or 'we don't have enough resources to do our job'.
- The City proposed three dedicated employees to run the E&SC program.
- Current staff (one and one-half) now currently being paid for out of the City and the NRD's general funds, so the public is already paying for the program right now. We recommended that we add one and one-half FTE's.
- We suggested the possibility to have a half time administrator to administer the program, track it, and maintain it, and then add a full time inspector.
- Proposed possibly funding the E&SC program from an NOI fee of \$500 per development plus \$75 per acre, to cover the additional resources that we will need to run this program.
- City proposed a \$75 re-inspection fee.

- Any fines that the City collects go to the public schools
- The number of personnel the City proposed is actually on the low side compared to what other communities have to run their E&SC program.

Response to questions from HBAL internal meeting

*The Q and A portion of the meeting has been summarized into topics*

The NOI, SWPPP and the Mini-SWPPP

- The City will require a example plan or mini-SWPPP template for the smaller individual construction sites to be submitted with the documentation for the NOI and SWPPP for the larger overall development site at the time of filing.
- The Mini-SWPPP will be a two or three page document that would take about half and hour to fill out. BMPs will be shown on the Mini-SWPPP, basically anywhere sediment has a potential to leave the site.
- Types of BMPs are negotiable as long as they can be shown to be effective.

Fees for offsetting the cost of the E&SC program

- City researched the resources needed to add the additional work load of regulating the small construction sites (1,370 FY 05.) The City obtained statistical information from municipalities in neighboring states to establish the number of staff and fees needed to support those staff. A fee of \$500 plus a \$75 per acre was the in the mid range of fees being charged for the construction site E&SC permit. Currently in Lincoln the NOI is the only construction related permit for which there is no charge.
- The building community felt that the fees were too high and provided alternatives for doing their own inspection for the small sites and fielding complaints to keep costs down One of the options suggested to reduce City site verification was photo verification submittals to assure that requested corrections had been made.
- Building and Safety would also do windshield inspections of the small sites with followup being done by Public Works, Watershed Management. B&S would be asked to withhold permits and inspections if site violations are not resolved.
- The Building Community also expressed the need for electronic filing and inspection reporting to keep costs down. The City is looking into what is needed to incorporate those requests (more discussion on inspections see Site Inspections below.)

Closing out the SWPPP and Mini SWPPP

- Large Construction SWPPP  
To close out an EO for grading, a letter is send to the City stating that the grading is complete and that the erosion and sediment control measures are in place before the EO is released. The conditions for closing out the EO are not the same as closing out the NOI for the site. This does not include having all of the vegetation established to meet the 95% stabilization threshold.
- Small Construction Site SWPPPs  
Small site questions regarding winter time or situations where sod or grass is not established, but builder would like to sell the site and close out the Mini-SWPPP.

Basically a site is required to have measures installed and maintained until permanent vegetation is established. If the ground is frozen the measures will need to be installed when conditions are suitable. If the site has measures up when the home owner buys it, what ever agreement the builder and the home owner have regarding installation of permanent vegetation will decide who is responsible for sediment runoff from the site. How that need to be done need to be worked out.

#### Notice to Comply

- When a Notice of Violation letter is received by a party responsible, or site owner, the time to comply (7 days for large sites 5 days for small sites) starts at the time the party receives notification. A re-inspection would be required or a submitted verification of compliance. If an owner is not willing to comply, the City could take one or a combination of the following actions: remove sediment and bill back the owner, withhold permits, impose a stop work order, or impose fines.

The City would initially contact the developer or the builder depending on the Mini-SWPPP paper trail. The main component of the developer participating in the E&SC program is that the developer is willing to brunt the larger portion of the enforcement work. Imposing consequences on a developer for an entire site would not happen unless the majority of the entire site was out of compliance. The main goal of the program is to deal with the “bad apples” and leave the compliant developers and builders alone. The builders mentioned that the enforcement need to have “teeth” to be effective. A \$500 per day fine for site violations was thought to be excessive by the developers that attended.

#### Site Inspections

- Building Community raised concerns with inspection being approved by registered engineers needing to be verified. Allowances for various certifications will be incorporated into the program. Periodic site visits by City staff are required to verify accuracy and maintain required municipal oversight of the program.
- The State’s draft of the NPDES Construction Site permit referred to “qualified individuals” to conduct inspections, but no specific level of expertise or specific certification title has been set to date. The International Erosion Control Association will be offering classes this next year specifically for persons to become a Certified Inspectors in Erosion and Sediment Control, other states also have one day courses for persons to be trained and certified as E&SC inspections.

If the City can prove that the E&SC program has sufficient provisions to ensure that inspections are being done by “qualified individuals” a level of State oversight can be eliminated, this would mean less State involvement in the E&SC process for the City and development community. Also, specific standards for inspections criteria need to be created.

#### Site Access and BMP Maintenance

It would be the developer’s responsibility under the proposed program to make sure that there is compliance on the small sites. A contractual agreement between the developer and the builder could be established to do this work through the sales contract. This agreement could also be established through the Mini-SWPPP process. These details will need to be worked out in the process. The builder would take responsibility for the BMPs on the site at the time they obtain a

building permit for the site.

#### Timeline

Working Group requested to meet again one they've had a chance to review the City's draft ordinances. The City will be writing the draft ordinances, design standards and changes to the drainage criteria manual based on the discussion that took place at the meetings. The City hoped to have a draft for review in October.