RESPONSE TO:

DISCUSSION ITEMS REGARDING DRAFT REGULATIONS

(City Response in Italics)

E&SC Work Group Members

December 15, 2006

Question from HBAL regarding Regulations for Construction Site Discharges 28.01

1. p. 5: 10-12 - What is the original intent? Is small site SWPPP issued after site is 90% stabilized?

   R:to "What is the original intent?"

   From EPA Fact sheet for General Permit

   ""What are My Options For Meeting the "Final Stabilization" Criteria?

   In most cases, you can terminate permit coverage as soon as the portion(s) of the project for which you are an operator are finally stabilized. For the purpose of these discussions, "structure" is used not only in the more traditional sense of "buildings," but also refers to other things that would remain in a non-vegetated condition after construction has ended. Examples of "structures" include: buildings; parking lots; roads; gravel equipment pads, sidewalks, runways, etc. All other disturbed areas must be finally stabilized by either vegetative or non-vegetative practices, except disturbed areas on lands that will be returned to an agricultural use such as cropland, rangeland, or silviculture need only be returned to the preexisting condition (e.g., tilled land, grass rangeland, agricultural buffer stip, etc).

   Where a residential homeowner has decided to install their lawn themselves, only temporary stabilization is required. Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Vegetative final stabilization requires 70 percent coverage of the "natural" vegetative cover in that part of the country. If the natural vegetation in your area covers 50 percent of the land, final stabilization is achieved when coverage of 35 percent or more of the land is achieved (70 percent of 50 percent - *NDEQ has set this threshold at 90%*). Non-vegetative stabilization could include rip-rap, gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique. Long-term, semi-permanent erosion control practices combined with seeds that would establish vegetative stabilization (e.g., properly secured seed impregnated erosion control mats, etc.) could also be used as "final stabilization." To qualify as "long-term," the erosion control practice must be selected, designed, and installed so as to provide at least three years of erosion control.""

   R: "Is small site SWPPP issued after site is 90% stabilized?" - Yes, a Small site SWPPP would still need to be submitted at the time the individual builder pulls the building permit for the site, but the City would be enforcing directly on the builder and not the developer at that point.

2. p. 5: 19 – Clarify. **Stop Work Order** shall mean an order by the City, ***at the request of***

NRD or Developer to cease any and all construction activity occurring at or within the development site…… (Developer is responsible to get the builder to comply. B&S stops work only when out of compliance)
R: In this definition "City" refers to Public Works and Building and Safety, the developer may choose to act on the individual lot owners through covenants which are not enforceable by the City/Director, thus the Developer would not be included as an enforcing entity in the ordinance. The text "occurring at or within the development" allows Public Works to Stop Work on large sites for large site violations and Building and Safety to stop work (permits) on small or individual sites so the entire development would not be impacted. Regarding the NRD, a reference to the interlocal agreement will be added to the ordinance on their role in the process.

3. Clarify on where a small site SWPPP is needed. If a building is torn down in the City, is a SWPPP or mini-SWPPP required?
R: Small Site SWPPPs are needed if the area being disturbed is part of a larger common plan of development or sale (i.e. a development site with an open NOI.) If the demolition activity is on a site one acre in size or greater an NOI and SWPPP would be required. If either of these two do not apply the site operator would need to keep sediment out of the street and/or off the adjacent property. This type of scenario will be addressed in the up coming Building and Safety Code study.

4. After a Notification of Termination, is the developer done?
R. If the permit has been terminated using true and factual information the NOI applicant would be done. If was discovered that the permit was closed by providing inaccurate information the applicant could still be on the hook until the issues are resolved.

5. Be consistent from development to development so builders, subs and suppliers can be consistent.
R: See response to ***"Additional notes from subsequent conversations:"*** *The best known way to be consistent is to inspect as many sites as is possible on a regular basis.*

6. City needs to continue to keep the staffing levels low or at least consistent with the work flow.
R: See response to ***"Additional notes from subsequent conversations:"***

7. Develop responsibility for streets in out lots.
R: We assume this to mean streets adjacent to outlots, thus it would be the responsibility of the developer to address this in the large construction SWPPP.

8. LES won't trench over silt fences. Telephone first to remove fences.
R: See response to ***"Additional notes from subsequent conversations:"***

9. Developer does not give mini-SWPPP to builder.
R: The developer must include an example Small Construction SWPPP with the Large

Construction SWPPP submittal. The builder is required to provide a copy of the site-specific Small Construction SWPP to the permittee of the large construction activitiy and to the Building and Safety Dept.

10. B&S should not stop their scheduled building inspection when site is out of compliance.
R: If a B&S inspector shows up and finds a new violation he will still carry out the inspection he showed up to do. If a stop work order exists on a site and the violations have not been resolved inspections will be denied.

11. p. 13:11 Clarification. Say "small sites"
*R: the Title of the ordinance reads "**Requirements for <u>Small</u> Construction Activity Stormwater Pollution Prevention Plan (SWPPP) .**" The City does not feel it is necessary to repeat "small site" where it was addressed in the title.*

12. p. 13:13 (C) A statement indicating that all BMPs are in place and in working order ***within10 days*** prior to any land disturbance; and"
R: If the building community wants this text added that is doable. Please keep in mind that a site violation would occur if the measures were installed nine days instead of ten.

13. p. 14:11 "such nuisance at the expiration of twenty-four hours **or next business day** from delivery of notice, the City may remove"
R: This applies to "immediate nuisance and hazard to public safety." Allowing 24 hours is a standard response time in many cities. Depending on the nature of the nuisance, public safety threat, and what response is necessary, the City reserves the option to extend the response time if necessary.

14. p. 14:14 We interpret the word "Director" to mean Director (or designee)
R: That is correct.

15. p. 15:7 Move paragraph beginning with lines 7-9 "Any person who violates this section **may** be guilty **and may be subject** to a misdemeanor" under paragraph beginning with lines10-14. Incorporate the wording, "Failure to correct within 10 days"
R: The language as stated, is standard text for enforcement ordinances in the LMC. A violation must be proven by the City before responsibility is established. Regarding "Failure to correct within 10 days" this is already stated as "within the prescribed period".

16. Reference NRD on behalf of the City
R: Reference to Interlocal Agreement will be added.

Question from others:

Re: Sec. 28.01

17. Sheet 10, line 21/22 & sheet 13, line 13/14 - The wording " that all BMPs are in place and in working order prior to any land disturbance" is not practical. This should apply to perimeter conditions. However under certain conditions exceptions should be allowed (for example some initial grading may be necessary to allow fill placement to construct sediment basins. Maybe under that condition temporary silt fence would be installed until the silt basin is built). In the SWPPP narrative sequencing of BMPs would be implemented to control the situation.
R: The reference to "all BMPs are in place" goes to those BMPs that are required for specific phases of construction as shown in the SWPPP. The SWPPP should address the construction phasing and appropriate BMPs for each phase. Regarding the example referenced, the SWPPP could identify that temporary silt fence would be installed until the silt basin is built.

Re: Existing Ordinances

18. Sheet 16,lines 16 thru 19 - The wording "indicating where the grading and erosion and sediment controls have been completed, with the seal of the professional to the Director of Public Works and Utilities that the grading and shaping of the land to be developed has been completed" seems confusing. I would suggest replacing with the following: "with the seal of the professional to the Director of public Works and Utilities indicating where the grading and erosion and sediment controls has been completed".
R: This section has been redrafted to incorporate the comments without omitting the language certifying that the grading has been completed according to the preliminary plat plans.

Additional notes from subsequent conversations:

- Make rules and regulations the same in all developments so all contractors know the rules and can abide by them.

R: We argree a level playing field is critical and the standards will be consistent. The Drainage Criteria Manual will provide additional, specific guidance for measures to meet the standard.

- Make sure that City utilities, LES and all telephone companies are responsible for their own cleanup and do not contribute to violations for contractors.
  R: *It is the responsibility of the permittee, as part of fulfilling the requirements of the permit, to communicate and coordinate logistical issues regarding E&SC on the development site, including the utility work, in order to minimize impacts to BMPs. Issues involving clean-up and repairs to damaged/removed BMP's should be coordinated by the permittee and communicated clearly to all contractors and sub-contractors involved with the project. Sub-contractors should be made aware of terms & conditions of the permit, and demonstrate an acknowledgement of the SWPPP for any permitted site they work on.*

- The City does not increase staffing which increases the cost to the developer.
  R: The City has made a staffing decision to add ½ of an FTE to do the additional administrative work for the increased workload associated with adding small sites to the current program as required under our permit. The proposed program will be assessed at the end of one year with input from the building community and from a municipal prospective.
  R: The City and NRD have proposed fees for the SWPPP permit. This is the only permit currently in place which does not have fees. The proposed fees are anticipated to fund ½ of an FTE. We believe is the absolute minimum to adequately manage our duties for the E&SC program. This is a significant reduction from the initial proposal for fees which were much more comparable with similar communities and would have supported an additional 1.5 FTE's.

- According to state and federal regulations the City is not required to comply with Phase II regulations.
  R: EPA's Phase II Stormwater Regulations added new regulations for smaller urban areas called "Small MS4s" (often referred to as "Phase II communities"), but it also revised the regulations that apply to Lincoln for "Medium and Large MS4s" (often referred to as "Phase I communities"). As a Phase I city, Lincoln is required to comply with 40 CFR 122.26 regulations, which include having a program to regulate and enforce construction site runoff, including construction activity "that is part of a larger common plan of development or sale." City staff will be meeting next week with the attorneys who have questions regarding Phase II requirements.