

ORDINANCE No. 186, SERIES 2007

**AN ORDINANCE AMENDING AND REENACTING  
CHAPTER 159 OF THE LOUISVILLE/JEFFERSON  
COUNTY METRO GOVERNMENT CODE OF ORDINANCES  
RELATING TO EROSION CONTROL.**

**Sponsored By:** Councilmen Blackwell and Downard

**WHEREAS**, the Legislative Council of the Louisville/Jefferson County Metro Government ("Metro Council") wishes to amend certain portions of Chapter 159 of the Louisville/Jefferson County Metro Government Code of Ordinances to update that ordinance and to re-enact Chapter 159 in its entirety pursuant to KRS 67C.115(3):

**NOW THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS FOLLOWS:**

**SECTION I.** Chapter 159 of the Louisville/Jefferson County Metro Government Code of Ordinances is hereby amended and reenacted in its entirety as follows:

**. § 159.01 GENERAL PROVISIONS.**

(A) Title. This ordinance shall be known and may be officially cited as the "Louisville/Jefferson County Erosion Prevention and Sediment Control Ordinance." It is referred to in this chapter as "this Ordinance."

(B) Authority.

(1) This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky counties a consolidated local government in KRS Chapter 67C.

(2) This Ordinance is also adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, 33 U.S.C. § 1323, Part A., et seq., and in particular those parts that authorize local governments to require any federal department

or agency to comply with all local water pollution control requirements.

(C) Purpose. The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of Louisville and Jefferson County, and more specifically are intended to:

(1) Conserve, preserve, and enhance the natural resources of Jefferson County, including its soils, waters, vegetation, fish and wildlife;

(2) Control soil erosion and sedimentation arising from development and other land disturbing activities (e.g., clearing and grading), to prevent adverse impacts and offsite degradation, including short-term and long-term damage to public and private property;

(3) Comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth in the Kentucky Pollutant Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge Elimination System general permit for municipalities (Phase I and Phase II); and

(4) Provide definitive procedures in the area of eErosion prevention and sediment control (hereinafter "EPSC") regulations and review, as applied in Jefferson County.

(D) Definitions.

(1) General provisions. For purposes of this Ordinance, the terms and words set forth below shall be defined as set forth below. Any terms or words not defined here shall be defined as set forth in the Land Development Code and the Metropolitan Subdivision Regulations (hereinafter "the Development Code") as it may be amended

from time to time.

(2) Specific definitions.

**ADVERSE IMPACT.** A material negative impact on land, water, and associated resources resulting from a land disturbing activity. The negative impact includes increased risk of flooding, degradation of water quality, increased sedimentation, reduced groundwater recharge, adverse effects on aquatic organisms, wildlife, and other resources, and threats to public health.

**CEASED.** One or more deliberate actions taken by the Permittee that, taken together, reasonably indicate a site is no longer active, including but not limited to removal of equipment and machinery or failure to maintain EPSC best management practices.

**CERTIFIED CONSTRUCTION REVIEWER** (hereinafter "CCR"). Those individuals, having passed a training course sponsored or approved by the Louisville and Jefferson County Metropolitan Sewer District (hereinafter "MSD"), who provide on-site EPSC inspection for the Permittee in accordance with this Ordinance.

**CONCEPT EPSC PLAN.** A preliminary presentation of techniques, measures, and controls intended to prevent erosion and control sedimentation arising from land disturbing activities on a specific development site or parcel of land.

**CONSTRUCTION DEWATERING.** The removal of water for construction activities by pumping, drainage or evaporation.

**CONTRACTOR.** A person who contracts with the permittee, landowner, developer, or another contractor (i.e., subcontractor) to undertake any or all the land disturbing activities covered by this Ordinance.

**CO-PERMITTEE.** Any person, other than the permittee, including but not limited to a developer or contractor who has or represents having financial or operational control over the land disturbing activity.

**DETAILED EPSC PLAN.** An accurately- scaled plan and attendant documentation depicting and describing techniques, measures, and controls intended to prevent erosion and control sedimentation arising from land disturbing activities on a specific development site or parcel of land. The detailed EPSC plan includes full engineering and construction details for all proposed controls and shall be incorporated into the full construction plans.

**DEVELOPER.** A person undertaking, or for whose benefit, any or all the activities covered by this Ordinance are commenced or carried out.

**DEVELOPMENT CODE.** The Land Development Code including the Zoning District Regulations and the Metropolitan Subdivision Regulations, as amended from time to time.

**EPSC.** The prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

**EPSC BOARD.** The Louisville Metro Planning Commission.

**EROSION.** The wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.

**FINAL STABILIZATION.**

- (1) All land disturbing activities at the site have been completed;
- (2) There are no areas of active erosion evident; and

(3) A uniform perennial vegetative cover with a density of 70% of the cover for the area has been established or equivalent stabilization measures (i.e., mulches or geotextiles) have been employed.

**GENERAL PERMIT.** An agreement between the regulating authority and the Permittee which specifies conservation measures which must be implemented in the construction of activities specified in the terms and conditions of the general permit.

**GRADING.** Any stripping, cutting, filling or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

**LAND DISTURBING ACTIVITY.** Any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands, including but not limited to, clearing, grading, excavating, transporting and filling of land, except the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(2) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced provided appropriate sediment control practices are implemented for any long-term stockpiling of excavated or fill materials;

(3) Septic tank lines or lateral fields unless included in an overall plan for land- disturbing activity relating to construction of the building to be served by the septic tank system;

(4) Tilling, planting or harvesting of agricultural, horticultural, or forest

crops or livestock feedlot operations; including soil conservation operations related to agriculture as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation which does not cause an increase in storm water runoff and does not exacerbate erosion and sedimentation;

(5) Clearing and grading activities that disturb less than 2,000 square feet and are situated no closer than 50 feet to a solid or intermittent blue line stream, and which are not governed under a general permit or site disturbance permit;

(6) Emergency work to ensure health, safety, property and emergency repairs. However, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this Ordinance.

**LANDOWNER.** A person, firm, or governmental agency holding legal title, or in possession or control of the land who indirectly or directly allows the land disturbing activity or benefits from it.

**PERMITTEE.** See **PERSON RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY.**

**PERSON.** Any individual, firm, partnership, joint venture, association, club, fraternal organization, corporation, estate, trust, receiver, organization, syndicate, city, county, municipality, district, or other political subdivision, or any other group or combination acting as a unit, and any agency or instrumentality thereof.

**PERSON RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY.** The

person holding legal title to the land upon which the land disturbing activity will take place or the person in possession or control of the land or who directly allows the land disturbing activity or benefits from it.

**QUALIFIED PLAN PREPARER.** At a minimum, a professional engineer or landscape architect licensed in the Commonwealth of Kentucky. MSD may, at a later date, develop a program to identify other qualified professionals.

**RESPONSIBLE PERSONNEL.** Any foreman, superintendent or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with land disturbance.

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, ice, or gravity from its site of origin.

**STOP WORK ORDER.** An order directing a Permittee to cease and desist all or any portion of the work which violates the provisions of this Ordinance.

(E) Applicability. Subject to the exemptions set forth in subsection (F) below, the EPSC provisions of this Ordinance shall apply to all land disturbing activities undertaken in Jefferson County.

(F) Exemptions. The following land disturbing activities shall be exempt from compliance with the provisions of this Ordinance, provided all such exempt activities are undertaken in a manner that presents no significant erosion or sedimentation potential:

(1) Agricultural operations required to adopt and implement an individual agriculture water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS 224.71-100 et seq.), as it may be amended from time to time;

(2) Usual and customary site investigation and surveying activities, such as soil testing, rock coring, test pits, boundary and topographic surveying, monitoring wells, and archaeological excavations, undertaken prior to submittal of an application for preliminary subdivision or development approval; provided any land disturbance is incidental to necessary equipment access and performance of investigation and surveying activities;

(3) Following preliminary subdivision or development approval but prior to site disturbance permit approval and issuance, clearing necessary to provide access for survey work, rock soundings, or other usual and customary site investigations, provided the following conditions are met:

(a) Preliminary site investigations that have been planned to minimize the amount of clearing required;

(b) Clearing shall follow proposed roadway centerlines and shall not result in a clear access way of more than 20 feet in width;

(c) Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width and no trees eight inches or greater in diameter measured at breast height (dbh) shall be removed without prior approval by the Louisville Metro Division of Planning and ~~Development~~ Design Services (hereinafter "DPDS").

(4) Minor land disturbing activities that disturb 2,000 square feet or less of land area and not within 50 feet of a drainageway. This exemption shall not apply to land disturbance activities subject to the general permit provisions set forth in § 159.02(H) below (e.g., land disturbance activities by utilities or in connection with single-



family home construction).

(G) Relationship to other ordinances and codes.

(1) Conflicts with other regulations. When the provisions of this Ordinance are inconsistent with one another or when the provisions of this Ordinance conflict with the provisions found in other adopted ordinances or regulations, the more restrictive provision that provides maximum EPSC shall govern.

(2) Relationship with other metropolitan ordinances; codes regulating land development.

(a) Wherever practicable, the provisions of this Ordinance, which require review and approval of EPSC measures prior to the commencement of land disturbing activity, shall be applied concurrently with the administering agencies' obligations to review and/or approve subdivision plans, general or detailed development plans, construction plans, building plans and floodplain permits.

(b) It shall be the Permittee's responsibility to determine and comply with all other applicable city, county, state, or federal ordinances or regulations governing land development and land disturbing activities, some of which may be conditions of approval under this Ordinance (i.e., KPDES general permit).

(H) Transitional provisions. This subsection addresses the applicability of new procedural and substantive standards enacted by this Ordinance to activities, actions, and other matters that are pending or occurring as of January 1, 2001.

(1) Completion of land disturbing activity or development commenced or approved prior to January 1, 2001.

(a) Buildings or developments with previously issued building

permits or approved construction plans. Any building, structure, development, or land disturbing activity for which a valid building permit was granted or for which construction plans were approved prior to January 1, 2001, shall be permitted to proceed to construction if such activity or construction received the appropriate permits under the provisions of this chapter in effect prior to September 25, 2001. If construction is not completed within the time allowed under the original building permit, construction plan approval or any extension granted, then the building or development shall be constructed or completed only in compliance with all requirements of this Ordinance.

(b) Buildings or developments with complete applications for construction plan approval. Any building, structure, development, or land disturbing activity for which a complete application for construction plan approval has been submitted to MSD prior to January 1, 2001 shall be permitted to finish the approval process, and if approved, proceed according to the approved plans if such construction or activity received the appropriate permits under the provisions of this chapter in effect prior to September 25, 2001. If construction is not completed within the time allowed under the original construction plan approval or any extension granted, then the building or development shall be constructed or completed only in compliance with all requirements of this Ordinance.

(c) Developments or other activities with applications for approval pending. Any development or land disturbing activity that has submitted an application for preliminary subdivision, development plan, conditional use, or any other type of land use or grading/clearing approval other than for construction plan approval, but for which no final action has been taken by the appropriate reviewing body on such

application prior to January 1, 2001, shall be approved only if the development or land disturbing activity complies with all provisions of this Ordinance.

(2) Grandfathered development; activities still subject to enforcement and penalties provisions. Developments or land disturbing activities for which complete applications for construction plan approval have been submitted or approvals/permits have been granted prior to January 1, 2001 may proceed as provided in § 159.01(H)(1)(b) above, provided that all such development and land disturbing activities undertaken after January 1, 2001, and not otherwise exempt from this Ordinance, shall be in accordance with the previously approved plans. Failure to develop in accordance with such previously approved plans or failure of the previously approved plans to prevent offsite sedimentation shall subject the development to all provisions of this Ordinance, including those provisions dealing with inspection, enforcement and penalties.

(I) Rules of construction and interpretation.

(1) Meaning and intent. All provisions, terms, phrases, and expressions contained in this Ordinance shall be construed according to this Ordinance's stated purpose and intent.

(2) Text controls. In case of any difference of meaning or implication between the text of this Ordinance and any heading, drawing, table, or figure, the text shall control.

(3) Delegation of authority. Whenever a provision of this Ordinance requires the head of a department to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate the authority to

subordinates, unless the terms of the provision specify otherwise.

(J) Severability. If a court of competent jurisdiction declares that any section, subsection, or provision of this Ordinance is invalid, that ruling shall not affect the validity of any other part of this Ordinance or the Ordinance as a whole, which shall remain in full force and effect.

(K) Liability disclaimer. Nothing contained in this Ordinance, and no action or failure to act under this Ordinance shall be construed to:

(1) Impose any liability on the Metro Government, MSD, or other administering or enforcement agency or entity for the recovery of damages caused by such action or failure to act; or

(2) Relieve the Permittee of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

#### **§ 159.02 ADMINISTRATION AND REVIEW PROCEDURES.**

(A) Administering authorities; powers. This subsection sets forth the roles and powers that MSD and various Metro Government agencies and bodies have in administering this EPSC Ordinance.

(1) MSD. The powers and functions of MSD with respect to administering this Ordinance are as follows:

(a) Review and approve all EPSC plans and issue all requisite site disturbance permits authorized by this Ordinance.

(b) Negotiate the terms and conditions of all general permits authorized by this Ordinance in consultation with the DPDS and the Metro Government.

(c) Perform pre-construction site meetings, construction inspections and negotiated compliance efforts in the enforcement of this Ordinance; issue notices of violation and stop work orders.

(d) Develop an education and training program for contractors, inspection agency personnel, plan reviewers and plan preparers and individuals seeking certification as CCR's.

(e) Prepare, implement and revise methods, EPSC standards and specifications for inclusion in the MSD Design Manual, Standard Specifications and Standard Drawings.

(f) Adopt, collect and distribute permit fees for EPSC plan review and construction inspection activities.

(2) DPDS. The powers and functions of DPDS with respect to administering this Ordinance are as follows:

(a) Upon referral from MSD, review and comment upon detailed EPSC plans submitted concurrently with construction plans required under the Development Code.

(b) Participate with MSD, as appropriate, in pre-construction site meetings required pursuant to this Ordinance, in order to coordinate compliance with other applicable Development Code standards and provisions.

(c) Through zoning enforcement, landscape, binding element and/or environmental health and protection officers, perform inspections and negotiated compliance efforts in the enforcement of this Ordinance, including the necessary issuance of notices of violation and stop work orders, against MSD.

(d) Negotiate the terms and conditions of MSD's general permit and assist MSD with negotiation of all other general permits authorized by this Ordinance.

(3) Louisville/Jefferson County Metro Department of Public Works & Assets. The powers and functions of the Metro Department of Public Works & Assets with respect to administering this Ordinance are as follows:

(a) Upon referral from MSD, review and comment upon detailed EPSC plans submitted concurrently with construction plans required under the Development Code.

(b) Participate with MSD, as appropriate, in pre-construction site meetings required pursuant to this Ordinance, in order to coordinate compliance with other applicable Development Code standards and provisions.

(c) Assist MSD with negotiation of general permits authorized by this Ordinance.

(4) Louisville/Jefferson County Metro Department of Inspection, Permits and Licenses.Codes and Regulations The function of the Louisville/Jefferson County Metro Department of Inspection, Permits and Licenses.Codes and Regulations with respect to this Ordinance consists of and is limited to, in the course of their normal inspection and enforcement duties, cursory observations of individual building sites related to the standards of this Ordinance and refer any observed violations to MSD. This is not to be interpreted as an inspection with authority to act on any violations pertaining to this Ordinance.

(5) Other municipal code enforcement agencies located in Jefferson

County. The function of other Metro Government code enforcement agencies or municipalities located in Jefferson County with respect to this Ordinance consists of and is limited to, in the course of their normal inspection and enforcement duties, cursory observations of individual building sites related to the standards of this Ordinance and refer any observed violations to MSD. This is not to be interpreted as an inspection with authority to act on any violations pertaining to this Ordinance.

(6) EPSC Board. The powers and functions of the EPSC Board with respect to administering this Ordinance are to issue remedial orders and impose specified civil fines to enforce violations of this Ordinance.

(B) Permittees.

(1) Permittee verification identified. The Permittee for site disturbance permits authorized by this Ordinance shall sign the application form acknowledging his/her status as the Person Responsible for the Land Disturbing Activity.

(2) Co-Permittee verification required. All contractors and subcontractors whose construction activities may impact the quality of discharge from the site shall complete a written form acknowledging their status as Co-Permittees under the provisions of this Ordinance. Such form(s) shall be kept on-site at all times during site development and during the land disturbing activity. This provision does not apply to single family general Permittees.

(C) Review and approval of land disturbing activities; general provisions.

(1) Applicability. No land disturbing activity subject to the provisions of this Ordinance shall take place except in accordance with either:

(a) An approved EPSC plan and a duly-issued site disturbance

permit; or

(b) An authorized general permit.

(2) Types of EPSC plan approval procedures. For purposes of this Ordinance, there are three types of plan approval procedures keyed to the proposed land disturbing activity at issue: Type I Review, Type II Review, and Review Pursuant to a General Permit. These review procedures are described in § 159.02(F) through (H), and summarized in Table 159-1 found in Appendix A to this Ordinance.

(3) Types of permits. There are two types of permits granted by MSD to allow land disturbing activities subject to the provisions of this Ordinance: Site Disturbance Permits (Type I and Type II approvals) and General Permits. These permit requirements are keyed to the proposed land disturbing activity at issue and are described in § 159.02(F) through (H), and summarized in Table 159-1 found in Appendix A to this Ordinance.

(4) Types of EPSC plans required. There are two types of EPSC plans that may be required as part of an application for approval of land disturbing activities subject to this Ordinance: Concept EPSC plans and Detailed EPSC plans. Plan preparation requirements are described in § 159.02(E) below.

(a) Concept EPSC plans are required only for those land disturbing activities subject to a Type I review and not otherwise exempt or subject to a general permit under the terms of this Ordinance. When no concept EPSC plan is required, documentation will be so noted on the land-use plan receiving preliminary plan approval from MSD.

(b) Detailed EPSC plans are required for all land disturbing



activities subject to this Ordinance, except those authorized by a general permit.

(5) Applications. Applications for review and approval of EPSC plans shall be submitted by the Permittee on forms provided by MSD in such numbers as required by MSD. Applications shall be accompanied by a non-refundable fee established by MSD to defray the costs of program administration and operation.

(6) Permitted scope of action.

(a) All EPSC plans shall be approved according to the procedures set forth in § 159.02(F) through (H) below. In addition, all plans shall evidence compliance with the standards set forth in § 159.03 below and all applicable standards and specifications set forth in MSD's Design Manual, Standard Specifications and Standard Drawings.

(b) MSD may impose conditions on the application or allow amendments to the application if the effect of the conditions or amendments is to ensure compliance with this Ordinance and/or reduce the erosion or sedimentation adverse impacts or offsite degradation of the development or land disturbing activity.

(7) Submittal requirements. A schedule of submittal requirements for each type of application and plan required under this Ordinance is set forth in the MSD Design Manual. The schedule of submittal requirements shall be reviewed periodically and may be adjusted, if necessary, by MSD.

(8) Revocation authority. MSD shall have the authority to revoke any final approval or permit granted pursuant to this Ordinance, after notice to the Permittee, upon a finding of any of the following:

(a) The land disturbing activity is being undertaken in violation of

this Ordinance;

(b) The land disturbing activity is being undertaken in violation of any approved plans, specifications, or conditions of approval;

(c) The land disturbing activity is being undertaken in such a way as to constitute a public nuisance; or

(d) The approval or permit was procured by false representation or was issued by mistake.

(9) Upon revocation of any final approval or permit, all land disturbing activities authorized by that approval or permit shall cease until and unless a permit or approval is reissued, provided that all remedial or reclamation work shall proceed as directed by MSD.

(D) Table 159-1: summary of review and plan requirements. Table 159-1 summarizes the review and plan requirements by type of land disturbing activity and can be found in Appendix A to this Ordinance.

(E) Plan preparation and content.

(1) Concept EPSC plans.

(a) Applicability. A concept EPSC plan, submitted by a Qualified Plan Preparer, shall be required for all land disturbing activities with sensitive features subject to a Type I review procedure.

(b) Contents. The concept EPSC plan shall contain the information and data as set forth in the MSD Design Manual, Standard Specifications and Standard Drawings, including a narrative description of phasing, sequencing, or other accommodations, if applicable.

(2) Detailed EPSC plans.

(a) Applicability. A detailed EPSC plan shall be required for all land disturbing activities subject to a Type I or Type II review procedure. For a land disturbing activity subject to a Type I review, the detailed EPSC plan shall be required subsequent to the preliminary or development plan approval and prior to the commencement of construction or clearing and grading activity.

(b) Contents. A detailed EPSC plan shall contain the information and data as set forth in the MSD Design Manual, Standard Specifications and Standard Drawings.

(c) Plan preparers.

1. Detailed EPSC plans for land disturbing activities subject to Type I review. A detailed EPSC plan subject to Type I review shall be prepared and certified by a Qualified Plan Preparer. In addition, MSD may require consultation with geologists, hydrologists, soil scientists, and other professionals, as MSD deems appropriate.

2. Detailed EPSC plans for land disturbing activities subject to Type II review. Unless determined otherwise by MSD, a detailed EPSC plan subject to Type II review shall be prepared and certified by a Qualified Plan Preparer. Such determination will be based upon the amount of site disturbed, the type of disturbance and the proximity to drainageways.

(F) Type I review procedure; issuance of site disturbance permit.

(1) Applicability. Type I review shall be required if a land disturbing activity under this Ordinance is proposed as part of an activity or development subject to

land use approval by the Louisville Metro Planning Commission or its designated committees or administrators TRC, LD&T, Board of Zoning Adjustment, or legislative body. The Metro Council. Such activities include, but are not limited to:

(a) Standard and innovative subdivisions, excluding minor plats and record plats;

(b) Developments requiring a general or detailed development plan under the Development Code;

(c) Conditional uses under the zoning provisions of the Development Code; and

(d) Developments requiring a rezoning.

(2) Concept EPSC plan submittal and approval.

(a) Concept EPSC plan submittal. The Permittee shall submit a concept EPSC plan, when required, to the DPDS as part of the application for the land use or development approval.

(b) Preliminary review and approval. The concept EPSC plan shall be forwarded to MSD and also distributed to interested agencies for their review and comment as part of the development application approval process. Taking into consideration interested agency and public comments, MSD shall review and take final action on the concept EPSC plan, either approving, approving with conditions, or denying the concept EPSC plan.

(c) Pre-construction site meetings; determination. As part of the concept EPSC plan approval, MSD may require that a pre- construction site meeting occur for purposes of enforcing and administering the provisions of this Ordinance in

accordance with § 159.02(F)(4) below.

(3) Detailed EPSC plan submittal.

(a) Detailed EPSC plan submittal. Prior to the commencement of any land disturbing activity in anticipation of development or construction, a detailed EPSC plan shall be submitted to MSD concurrent with any required construction plans or building permit applications.

(b) Referral to DPDS and Public Works. The detailed EPSC plan, as part of the submitted construction plans, shall be referred to DPDS and the appropriate Department of Public Works for review and comment. Such review shall be primarily in regard to the detailed EPSC plan's potential conflicts with other land development and land use standards and policies and conformance with applicable performance standards.

(4) Pre-construction site visits; meetings.

(a) Purposes. The purposes of pre-construction site meeting are to:

1. Correct any inadequacies in the EPSC plan that are identified during the visit and meeting; and
2. Ensure that the Permittee, particularly the on-site contractor representative, understands the EPSC plan, inspection, maintenance, and record-keeping requirements.
3. In addition, MSD inspectors and other involved personnel should inspect and note existing natural conditions adjacent to and downstream of the controls prior to construction, so that any changes or degradation due

to inadequate control measures can be more easily identified during future inspections.

(b) Applicability; timing.

1. If required as a condition of concept EPSC plan approval, a pre-construction site meeting shall be conducted prior to MSD final action on the detailed EPSC plan.

2. In all other cases, MSD, in consultation with the other reviewing agencies, may require a pre-construction site meeting prior to MSD final action on the detailed EPSC plan, or may require a pre-construction site meeting as a condition of detailed EPSC plan approval and postpone such visit until the notice of construction is received.

(c) Participants in the pre- construction site meeting. The following persons may participate in a pre-construction site meeting:

1. Appropriate MSD personnel and, if warranted, representatives from DPDS, Public Works, or any other relevant review agencies; and

2. The Permittee, the project designer or engineer, the CCR if applicable, and, if available, the contractor (foreman or similar person).

(5) MSD final action on the detailed EPSC plan and issuance of site disturbance permit.

(a) MSD final action; general provisions. MSD shall consider any comments and shall then take final action on the detailed EPSC plan, either approving, approving with conditions, or denying the detailed EPSC plan.

(b) Minor/no revisions to the detailed EPSC plan; site disturbance permit issuance. After review of the detailed EPSC plan and the pre-

construction site meeting (if applicable), if no revisions to the plan or only minor revisions or field adjustments to the plan are necessary for approval, MSD shall take the following actions:

1. MSD shall approve or conditionally approve the detailed EPSC plan; and
2. If all other site disturbance related approvals required under federal, state or local law or regulation have been received, MSD shall grant a site disturbance permit to the Permittee. At MSD's discretion, the site disturbance permit may be issued prior to final approval of the remainder of any submitted construction plans considering such factors as weather and optimum construction scheduling.

(c) Significant revisions to the detailed EPSC plan. If MSD and interested agency review of the detailed EPSC plan, other construction plans for development, and/or the pre-construction site meeting reveals the need for significant revisions to the detailed EPSC plan, MSD approval shall not be granted. Instead, MSD shall allow the Permittee a reasonable opportunity to revise the plan and resubmit the plan for re-review and final action by MSD. If MSD thereafter approves or conditionally approves the revised plan, MSD shall grant a site disturbance permit to the Permittee. At MSD's discretion, the site disturbance permit may be issued prior to final approval of the remainder of any submitted construction plans considering such factors as weather and optimum construction scheduling.

(6) Effect of detailed EPSC plan approval; site disturbance permit issuance.

(a) Permitted activities. Upon issuance of the site disturbance

permit, site clearing and grading activities in anticipation of construction may commence on the site only after required EPSC measures are installed and appropriate notice is given pursuant to § 159.02(F)(7) below. No work/building permit shall be issued or requested until a site disturbance permit is granted.

(b) Automatic lapse for inactivity. If the Permittee does not commence land disturbing, construction or development activity according to the provisions and time frame established or approved in the underlying land use approval, then the approval of the detailed EPSC plan and the site disturbance permit shall automatically lapse and become null and void.

(7) Notification of construction. Upon receiving detailed plan approval and a site disturbance permit, the permittees for land disturbing activities subject to these Type I review and site disturbance permit requirements shall file a notice of construction with MSD no later than three working days prior to construction activity initiation or related (non- exempt) land disturbing activity on a site, whichever occurs first. Prior notice of construction allows MSD to conduct, in a timely manner, any required pre-construction site meetings and to schedule inspections during construction, as necessary. Violation of this provision may result in immediate issuance of a Notice of Violation or a Stop Work Order under § 159.05 of this Ordinance.

(8) Completion of construction and final inspection request.

(a) Certification of completion. Upon completion of site construction and final stabilization, the Permittee shall submit a letter of completion to MSD certifying that construction, including final stabilization, is complete and in accordance with all approved EPSC plans. Temporary EPSC measures may still be in



place at the time of certification of completion, depending on the season, provided that adequate surety is given pursuant to §159.04(B) below for the maintenance and ultimate removal of such temporary controls at a later date.

(b) Permit termination.

1. If at final inspection the site is in compliance with the approved EPSC plan, including final stabilization or adequate surety pursuant to § 159.04(B), the site disturbance permit shall be terminated.

2. if at final inspection the site is not in compliance with the approved EPSC plans or this Ordinance, the site disturbance permit shall not be terminated, related performance assurances shall not be released, and the Permittee shall not be permitted to request a certificate of occupancy for the development.

(G) Type II review procedure; issuance of site disturbance permit.

(1) Applicability.

(a) Requires building permit only (no land use approval). Type II review shall be applicable to all land disturbing activities subject to this Ordinance that are associated with the construction of a specific development proposal that does not require land use approval under the Development Code. Type II review shall also be applicable to earth excavation, structure demolition, site clearing, or filling of land (including excavations and earth filling which may be performed without a conditional use permit pursuant to Section 9.6 of the Development Code). For example, a development proposal that is consistent with applicable zoning and that only needs a building permit to proceed to construction shall be subject to a Type II review for purposes of this Ordinance.

(2) Detailed EPSC plan submittal and approval.

(a) Detailed EPSC plan submittal. Prior to the commencement of any land disturbing activity in anticipation of development or construction, a detailed EPSC plan shall be submitted to MSD concurrent with required construction plans or building permit application.

(b) Pre-construction site meeting. Following detailed EPSC plan submittal, MSD, in consultation with the reviewing agencies, may require a pre-construction site meeting prior to taking final action on the detailed EPSC plan. Alternately, MSD may require a pre-construction site meeting as a condition of detailed EPSC plan approval and postpone such meeting until the notice of construction is received pursuant to § 159.02(G)(4) below. Participants in the pre-construction site meeting shall be as set forth in § 159.02(F)(4)(c) above.

(c) MSD final action; general provisions. MSD shall consider any comments from the public and interested review agencies and shall then take final action on the detailed EPSC plan, either approving, approving with conditions, or denying the detailed EPSC plan.

(d) Minor/no revisions to the detailed EPSC plan; site disturbance permit issuance. After review of the detailed EPSC plan and the pre-construction site meeting (if applicable), if no revisions to the plan or only minor revisions or field adjustments to the plan are necessary for approval, MSD shall take the following actions:

1. MSD shall approve or conditionally approve the detailed EPSC plan; and

2. If all other site disturbance related approvals required under federal, state or local law or regulation have been received, MSD shall grant a site disturbance permit to the Permittee. At MSD's discretion, the site disturbance permit may be issued prior to final approval of the remainder of any submitted construction plans considering such factors as weather and optimum construction scheduling.

(3) Significant revisions to the detailed EPSC plan. If MSD and interested agency review of the detailed EPSC plan, other construction plans for development, and/or the pre-construction site meeting reveal the need for significant revisions to the detailed EPSC plan, MSD approval shall not be granted. Instead, MSD shall allow the Permittee a reasonable opportunity to revise the plan and resubmit the plan for re-review and final action by MSD. If MSD approves or conditionally approves the revised plan according to provisions of this section, MSD shall grant a site disturbance permit to the Permittee. At MSD's discretion, the site disturbance permit may be issued prior to final approval of the remainder of any submitted construction plans considering such factors as weather and optimum construction scheduling.

(4) Effect of detailed EPSC plan approval; site disturbance permit issuance.

(a) Permitted activities. Upon issuance of the site disturbance permit, site clearing and grading activities in anticipation of construction may commence on the site only after all required EPSCs are installed and appropriate notice is given pursuant to § 159.02(G)(5) below. No work/building permit shall be issued or requested until site disturbance permit approval is granted.

(b) Automatic lapse for inactivity. If the Permittee does not

commence land disturbing activity or construction within one year of MSD's approval of the detailed EPSC plan, or within the approved time frame for any related building permit, whichever occurs first, then the approval of the detailed EPSC plan and the site disturbance permit shall automatically lapse and become null and void.

(5) Notification of construction. Upon receiving detailed plan approval and a site disturbance permit, the Permittees for land disturbing activities subject to these Type II review and site disturbance permit requirements shall file a notice of construction with MSD no later than three working days prior to construction activity initiation or related (non- exempt) land disturbing activity on a site, whichever occurs first. Prior notice of construction allows MSD to conduct in a timely manner any required pre-construction site meetings pursuant to § 159.02(G)(2) above, and to schedule inspections during construction, as necessary. Violation of this provision may result in immediate issuance of a Notice of Violation or a Stop Work Order under § 159.05 of this Ordinance.

(6) Completion of construction and final inspection request. The provisions regarding notification of completion of construction, final inspection, and permit termination set forth in § 159.02(F)(8) above shall apply.

(H) General permits.

(1) Purpose and intent. General permits are intended to streamline the application of this Ordinance to land disturbing activities undertaken by specific public or governmental entities, or utilities which activities typically are repetitive and small-scale. General permits are also intended to simplify application of this Ordinance to land disturbing activities undertaken on individual residential lots within subdivision

developments already subject to an approved detailed EPSC plan under this Ordinance.

(2) Authorization.

(a) MSD, in consultation with the DPDS and the Metro Government, shall have the authority to negotiate the terms and conditions of all general permits authorized by this section.

(b) When applicable, a general permit shall incorporate the terms and agreement reached in any Memorandum of Understanding between MSD and individual state agencies or other subdivisions of the Commonwealth of Kentucky.

(c) Notwithstanding the permitted scope of general permits as set forth in § 159.02(H)(3) below, a general permit may include provisions that allow MSD to specify review and approval processes for land disturbing activities undertaken by a general Permittee otherwise subject to the terms and conditions of this Ordinance.

(d) The MSD Chief Engineer shall have authority to review, amend and approve the terms and conditions of general permits with such approvals or amendments being effective following approval, or at such time specified, by the Chief Engineer.

(3) Scope of authorized general permits.

(a) 1. All land disturbing activities covered by an authorized general permit shall proceed subject to the specific terms and conditions of the general permit, which terms and conditions shall supersede and control over the administrative and review requirements set forth in this § 159.02, the EPSC standards and criteria set forth in § 159.03 below, and the maintenance and performance requirements set forth in § 159.04 below.

2. Notwithstanding this provision, until the specific terms and conditions of the general permit are approved by the MSD Chief Engineer, the EPSC standards and criteria, the administrative and review requirements, and the maintenance and performance requirements set forth in this Ordinance shall apply to the subject land disturbing activity.

(b) Unless specifically addressed in the general permit, all other provisions of this Ordinance not addressed in § 159.02(H)(3)(a) above, including specifically the enforcement and penalties provisions set forth in § 159.05(F) and § 159.05(H) of this Ordinance shall apply to all land disturbing activities subject to a general permit.

(4) Land disturbing activities covered by general permits.

(a) Land disturbing activities undertaken by public utilities.

1. General permits shall be applicable to repetitive land disturbing activities undertaken by utilities, and the private contractors hired by the utility to undertake such work. Such activities may include:

a. Land disturbing activities associated with routine maintenance and/or repair of water, electric, gas, or communications lines;

b. Land disturbing activities associated with the placement of underground lines for the distribution or transmission of water, electric energy, gas, or communications services;

c. Land disturbing activities associated with placement of poles for overhead distribution or transmission of electric energy or of communications services;

d. Land disturbing activities associated with small trench work and service hook-ups to individual residences and buildings.

2. The general permit shall contain, among other things, standard EPSC practices for utilities' land disturbing activities, which should include, but not be limited to, provisions that address:

- a. Protection of stockpiled areas;
- b. Protection along trenches (including perimeter controls during line installation and interior controls after backfilling);
- c. Phasing and scheduling;
- d. Stream crossing details; and
- e. Final stabilization provisions.

3. The general permit may have one set of EPSC provisions geared to utility installations connected with private development activity such as subdivisions, and a second set of provisions geared to a utility's general maintenance/repair activities or its own initiated construction projects.

(b) Single-lot residential construction or demolition. A general permit shall be applicable to all land disturbing activities associated with the construction or demolition of residential principal and accessory structures on individual lots. The general permit shall allow such construction to proceed, subject to the following:

1. Exceptions. The following single-lot residential construction shall be excluded from the terms of this general permit, and shall instead be subject to an individual review by MSD.

- a. Individual residential building lots of

record that were identified (“red flagged”) on the approved subdivision preliminary plan or record plat for additional restrictions or scrutiny prior to construction.

2. The Metro Government, in consultation with MSD, shall adopt administrative rules and procedures to implement this general permit, including but not limited to instituting a means to identify qualifying general Permittees at the time of building permit issuance.

3. The general permit shall contain standard EPSC practices for the covered land disturbing activities, which should include, but not be limited to, provisions that address:

- a. Perimeter controls;
- b. Temporary construction access;
- c. Protection and proper placement of stockpiled materials;
- d. Protection around existing drainage structures;
- e. Prevention of tracking soil, mud and debris onto public rights- of-ways;
- f. Maintenance of EPSC measures;
- g. Final stabilization;
- h. Removal of EPCS measures following final stabilization; and
- i. Inspection and record-keeping requirements



(I) Appeals from action on detailed EPSC plans.

(1) Any person or entity claiming to be aggrieved by a final action of MSD on a detailed EPSC plan may appeal such action to the MSD Board. Such appeals shall be taken within 30 days of the final action taken by MSD in § 159.02(F)(5) for Type I reviews, or within 30 days of the final action taken by MSD in § 159.02(G)(2)(e) for Type II reviews, by filing with the Secretary of the MSD Board a notice of appeal specifying the grounds thereof. Any final action not appealed within 30 days of such action shall be considered final and unappealable.

(2) Appeals from action of the MSD Board on detailed EPSC plans shall be taken to a Kentucky court of competent jurisdiction pursuant to applicable Kentucky statutes.

### **§ 159.03 REVIEW STANDARDS AND CRITERIA.**

(A) General EPSC standards. MSD shall review all EPSC plans for compliance with the following general standards and review criteria:

(1) Overall design goal. A design removal efficiency goal of 80% for total suspended solids from land disturbing activities shall be applied to the design, review, and approval of EPSC plans. The following structural and non-structural standards are to be utilized to achieve this goal.

(a) Compliance with MSD Design Manual, Standard Specifications and Standard Drawings. Except where innovative or alternative management practices are approved pursuant to § 159.03(A)(2) below, all EPSC measures shall be designed and installed in accordance with the specifications contained in the MSD Design Manual, Standard Specifications and Standard Drawings,

as it may be revised from time to time, which is hereby incorporated by reference into this Ordinance.

(b) Non-structural site management practices. Non-structural site management practices to prevent erosion and minimize sediment discharge shall be considered in MSD's evaluation of § 159.03(A)(1) above. Such practices may include the following standards:

1. Minimize site disturbance to preserve and maintain existing vegetative cover;
2. Limit the number of temporary access points to the site for land disturbing activities;
3. Phase and sequence construction activities;
4. Locate temporary and permanent soil disposal areas, haul roads and construction staging areas to minimize erosion, sediment transport and disturbance to existing vegetation.

(c) Attainment of design goal not practicable. Where attainment of this design removal efficiency goal through the use of structural and non-structural measures is not practicable, the Permittee shall submit written justification to MSD for review and approval.

(2) Alternative management practices. To encourage the development and testing of alternative EPSC measures, alternative management practices that are not included in the MSD Design Manual, Standard Specifications and Standard Drawings may be allowed upon review and approval of MSD.

(a) A Permittee seeking to use an alternative management

practice shall concurrently submit substantial evidence that the proposed measure will perform at least equivalent to a currently approved control contained in the MSD Design Manual, Standard Specifications and Standard Drawings. Evidence may include, but is not limited to, peer-review by a panel of registered professional engineers and research results as reported in professional journals or other literature.

(b) If MSD finds the control or practice has failed or is inadequate to contain sediment onsite, the Permittee shall remove and replace it with a control approved by MSD and found in the MSD Design Manual, Standard Specifications and Standard Drawings.

(B) Specific EPSC standards. MSD shall review all EPSC plans for compliance with the following specific standards and review criteria:

(1) Sediment tracking control. Stabilized construction entrances shall be located and utilized at all points of ingress/egress on a construction site. The transfer of soil, mud and dust onto public rights-of-ways shall be prevented.

(2) Construction dewatering operations. Whenever construction dewatering operations are required on a site, they shall be conducted according to the specifications set forth in the MSD Design Manual, Standard Specifications and Standard Drawings.

(3) Crossing of waterways. Crossings of waterways during construction shall be minimized and approved by MSD. Encroachment into stream buffers, riparian areas and wetlands shall be avoided.

(4) Topsoil. Topsoil shall be stockpiled and preserved from erosion or dispersal both during and after site grading operations.

(5) Temporary stabilization measures.

(a) Where construction or land disturbance activity will or has temporarily ceased on any portion of a site, temporary site stabilization measures shall be required as soon as practicable, but no later than 14 calendar days after the activity has ceased. Permanent or temporary stabilization shall be completed within:

1. 14 calendar days for the surface of all perimeter dikes, ditches, swales, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1);

2. 14 calendar days as to all other disturbed or graded areas on the project site.

(b) The requirements of §§ 159.03(B)(5)(a)1. and 159.03(B)(5)(a)2. do not apply to those areas which are shown on the plan and currently being used for material storage or for those areas on which construction activities are currently being performed or to prepared structural subgrades, provided that structural EPSC measures remain in place.

(6) Final stabilization. Final stabilization of the site shall be required within 14 calendar days of construction completion.

(7) Temporary structural controls. Temporary structural controls installed during construction shall be designed to accomplish maximum stabilization and control of erosion and sedimentation, and shall be installed, maintained, and removed according to the specifications set forth in the MSD Design Manual, Standard Specifications and Standard Drawings. All temporary structural controls shall function as designed when controlling the peak runoff resulting from the storm event identified in the

MSD Design Manual, Standard Specifications and Standard Drawings.

(8) Permanent structural controls. All permanent structural controls, including drainage facilities such as channels, storm sewer inlets, and detention basins, shall be designed according to the standards set forth in the MSD Design Manual, Standard Specifications and Standard Drawings.

**§ 159.04 MAINTENANCE AND PERFORMANCE REQUIREMENTS.**

(A) Maintenance and damage remediation.

(1) Maintenance during construction.

(a) The Permittee, or his or her designee, shall be required to conduct continuing inspections of all EPSC measures, and direct the appropriate persons to make any repairs or modifications necessary, within 48 hours of the initial discovery of a control failure or violation, unless extenuating circumstances such as weather or complexity of repairs or modifications justify a longer time frame. At a minimum, such inspections shall occur every seven calendar days and within 24 hours after each storm event that produces 0.5 inches or more of precipitation.

(b) In addition, silt accumulation upstream of temporary controls shall be removed when the control reaches the percentage of storage capacity established for the maintenance of that particular type of control in the MSD Design Manual, Standard Specifications and Standard Drawings.

(c) A copy of the EPSC plan and records of all inspections, repairs, and modifications shall be kept on-site throughout the duration of the construction or land-disturbing activity. All records of inspection shall be in a form specified by MSD and shall include the date and time of inspection, and the name and

signature of the inspector as defined in § 159.04(A)(1)(a) above. These records shall be made available to agency inspectors upon request.

(d) If the Permittee chooses to use a CCR for site inspections and monitoring of all land disturbing activities, the Permittee shall sign a statement giving the CCR full authority to inspect the site and to require necessary measures to maintain compliance. The name, address, and phone number of the CCR shall be noted on the cover sheet of the submitted detailed EPSC plan, but in no instance later than the time notice of construction is filed with MSD. If requested, the CCR shall submit signed and dated weekly inspection logs to the appropriate inspection agency. Copies of such logs shall be maintained on site and shall be signed and dated by the CCR.

(2) Post-construction maintenance. Following release or acceptance of a project (and termination of the site disturbance permit), the property owner shall be responsible for maintaining the project site in a manner to prevent soil erosion and sedimentation in violation of this Ordinance.

(3) Damage remediation.

(a) In the event of adverse impacts or off-site degradation resulting from improper or inadequate controls or practice in violation of this Ordinance, MSD shall have the authority to take the following action:

1. Determine the extent of damage resulting from noncompliance with the plan or failure to maintain the practices required by the plan;
2. Determine the impact and severity of the resulting adverse impacts or off- site degradation;
3. Require and approve an agreement with the Permittee

for correction and clean-up of the existing damage and an agreement for prevention of future damage.

(b) Cost incurred by MSD and other agencies, as a result of having to hire outside expertise, to determine the extent, impact and severity of damage and in remediating any such damage shall be collected from the Permittee.

(c) Failure of the Permittee to implement the agreement according to its terms shall constitute a violation of this Ordinance, and subject the Permittee to all applicable enforcement actions and penalties.

(B) Performance assurances.

(1) Generally. The Permittee shall be responsible for the installation, good repair, maintenance, proper functioning and ultimate removal of all temporary and permanent EPSC measures.

(2) Fiscal surety required. For all land disturbing activities subject to a Type I or Type II review under this Ordinance, the Permittee may be required to post a fiscal surety, consisting of a performance bond or other instrument, acceptable to and approved by MSD. When a fiscal surety is required, the following conditions will apply.

(a) Timing of surety. The surety shall be posted no later than the issuance of a site disturbance permit or, with MSD approval, prior to issuance of a certificate of occupancy, as applicable.

(b) Combination with other appropriate bonds. Whenever feasible, the fiscal surety for EPSC required by this section may be combined with and posted as part of the sanitary sewer lateral extension bond or subdivision performance bond required for all subdivisions approved pursuant to the Development Code.

(c) Amount of surety. For activities subject to Type I review, the amount of the surety for EPSC shall be the cost of the approved EPSC measures to be installed on the site and any prescribed site revegetation or restoration measures, including labor costs. MSD shall have the discretion to set alternate amounts for or to waive a surety for activities subject to Type II review that are commensurate with the complexity or size of the project. The final amount of the surety shall be determined by MSD and shall be in addition to any other surety required as part of subdivision or development approval.

(d) Use of surety.

1. If at any time following the period allowed to the Permittee to complete his or her obligations under this Ordinance, MSD finds that: (i) the required temporary or permanent improvements or control measures have not been installed or maintained properly; (ii) the required temporary or permanent improvements are not in good repair or functioning properly; or (iii) required revegetation and restoration of a site have not been completed as required, then in addition to other enforcement remedies, MSD may declare the Permittee to be in default if it does not appear that the improvements or controls will be completed or repaired within a reasonable time considering the potential for harm, inconvenience, nuisance or annoyance to others including nearby property owners.

2. Upon declaration of default, MSD shall demand such amounts from the surety as required to remedy the default. In the event that amounts available from the surety are sufficient to cover the costs of remedying the default, such surety shall be collected and used in full in such proportion as the MSD determines to be



just and equitable based upon apparent responsibility for the default. Anyone claiming to be aggrieved by such determination shall have as his or her exclusive remedy a cause of action for contribution or indemnity against the parties responsible for the default. The determination of MSD shall not be used as evidence in support of or against responsibility in such cause of action, and MSD shall not be made a party to such action.

(e) Release of surety. Application for release of a fiscal surety required by this Ordinance may be made by filing a certificate with MSD bearing a notice that false statements made therein are punishable. MSD may make an inspection of the property and shall grant a release of the surety upon determining that:

1. Site construction is finished;
2. Final stabilization has been completed;
3. The site disturbance permit has been terminated;
4. The required improvements and controls are properly installed, are in good repair, and are functioning properly;
5. Temporary controls have been removed; and
6. There is no reason to believe that construction on the lot has or will cause the malfunctioning of installed improvements on other property.

(3) Imposition of lien. In addition to or as an alternative to use of any fiscal surety, MSD shall have the option of placing alien on any property on which the Permittee has failed to properly install, keep in good repair, or maintain the proper functioning of all required temporary and permanent EPSC measures or has failed to complete required revegetation or restoration measures. The amount of the lien may cover necessary costs of ensuring compliance with applicable provisions of this

Ordinance, including but not limited to any necessary remedial and restoration measures to alleviate the adverse impacts or off-site degradation, and all associated administrative costs.

**§ 159.05 ADMINISTRATION AND ENFORCEMENT.**

(A) Modifications.

(1) Modifications to review standards and criteria. The MSD Chief Engineer, in consultation with other applicable reviewing agencies, shall have the authority to make modifications to applicable EPSC standards/design requirements and exemptions set forth in this Ordinance or the MSD Design Manual, Standard Specifications and Standard Drawings to provide flexibility to deal with the unique characteristics of a site. Such modifications may be granted only upon a finding by the MSD Chief Engineer that the standards set forth in this subsection have been met.

(2) Modifications to controls. Changes to the location and placement of temporary non- structural or structural controls may be approved by the MSD Chief Engineer during construction plan review or, once construction has commenced, may be approved in the field by an inspector without the need for additional, formal review if the change is in accord with the MSD Design Manual, Standard Specifications and Standard Drawings. However, changes to the location or placement of permanent structural controls shall necessitate formal review and approval by MSD.

(3) Review standards for modifications. No modification shall be approved by MSD unless all of the following standards have been met.

(a) The requested modification is consistent with the purposes of this Ordinance and will not have adverse effects on the effectiveness to the plan to

adequately control erosion and sedimentation as required by this Ordinance;

(b) The requested modification eliminates an unnecessary burden on the Permittee and is required to address some unusual aspect of the site or proposed development that is not shared by landowners in general; and

(c) Any potential adverse impacts resulting from the modification will be mitigated.

(B) Fees. A fee, charges, and expenses schedule may be established by MSD for the administration and management of the EPSC program created by this Ordinance, including fees to cover the costs of processing applications and variances, and conducting field inspections. No application for action required by this Ordinance shall be accepted until such fees are paid in full.

(C) Inspections.

(1) Inspection of land disturbing activities subject to this Ordinance shall be the primary responsibility of MSD. Assistance may be provided by ~~zoning enforcement and~~ environmental health officers, Department of Codes and Regulations ~~Louisville/Jefferson County Building Code Enforcement Officers, the Department of Inspection, Permits and Licenses,~~ or duly authorized inspectors from any other municipal enforcement agency as appropriate, to enforce this Ordinance against MSD.

(2) To ensure compliance with approved plans and to examine field practices to determine if control measures are adequate to advance the purposes of this Ordinance, authorized enforcement agencies and inspectors shall have the power to periodically inspect any land disturbing activity upon presentation of appropriate identification and to review records of all inspections, repairs and modifications made by

the Permittee.

(3) Notice of such right of inspection shall be included in the site disturbance permit or other applicable permit, and such right shall include the right to inspect with or without notice and all such inspections shall be at the discretion of the inspecting authority.

(D) Enforcement.

(1) Civil offense. The violation of this Ordinance, including the violation of any plan approved or permit issued under this Ordinance, shall constitute a civil offense which may subject the violator to a civil fine and/or other remedial orders in accordance with this section.

(2) Complaints. MSD shall receive complaints, perform inspections and enforcement or route the complaint to the appropriate responsible enforcement agency.

(3) Enforcement procedures.

(a) Negotiated compliance.

1. Applicability. It is the intent of this Ordinance that negotiated compliance be pursued and secured whenever practicable and effective prior to alternative enforcement measures being invoked. However, where clearing or other land disturbing activity has proceeded without an approved plan, issuance of a site disturbance permit and proper Notice of Construction under this Ordinance, or where a violation is causing, or has the imminent ability to cause, adverse impacts or off-site degradation, the inspector shall immediately issue a notice of violation and stop work order. When clearing or other land disturbing activity has proceeded without proper Notice of Construction only, the inspector shall be authorized to immediately issue a

notice of violation and, as necessary, a stop work order. Failure of a properly approved, installed and maintained plan to contain sediment on-site shall not alone constitute off-site degradation or a violation of this Ordinance, provided remedy of such is performed by the contractor during the course of same day activities.

2. Process. When the inspector, based on personal observation or investigations, has reasonable cause to believe that a person has committed a violation of this Ordinance or any plan approved or permit granted hereunder, the inspector shall undertake a negotiated compliance process as set forth below unless circumstances dictate alternative compliance measures. This negotiated compliance process shall consist of:

- a. A warning to the on- site Permittee of any deficiencies;
- b. An explanation of necessary corrective action;
- c. Specification of a reasonable time frame within which such corrective action shall occur (no more than 48 hours, unless extenuating circumstances such as weather or complexity of repairs or modifications justify a longer time frame).

3. Documentation. The inspector shall document the negotiated compliance process with a written notice to the Permittee setting forth the identified deficiency, the request for corrective action, and the time frame for compliance. The documentation process shall include:

- a. A copy of the written notice shall be placed in the appropriate agency file.

b. A copy shall be given to the owner, contractor's representative, or responsible person on-site.

c. In the event that no authorized person is on-site, and that the inspector is not successful in contacting the Permittee(s), a copy of the notice to comply shall be sent certified mail to the Permittee(s).

4. Compliance review. At the end of the time period specified above, an inspector shall perform a follow-up site inspection to determine whether compliance has been achieved. Depending on that determination, the following actions may occur:

a. Corrective action performed. If the identified deficiencies have been corrected, the inspector shall issue an inspection report stating that fact and the site shall be returned to a normal construction review status.

b. Corrective action not performed. If the identified deficiencies have not been corrected further actions may be initiated as outlined in § 159.05(D)(3)(b) below.

(b) Notice of violation; stop work order. If the negotiated compliance process fails to produce necessary corrective action, the inspector shall be authorized to issue a notice of violation (NOV). A stop-work order shall be issued in conjunction with the NOV when the violation is causing, or has the imminent ability to cause, adverse impacts or off-site degradation, or in other circumstances as deemed necessary by the inspector.

1. Form of NOV and issuance. Issuance of a NOV initiates enforcement proceedings for violations of this Ordinance. Where the inspector,

based upon personal observation or investigation has reasonable cause to believe that a person has committed a violation of the Ordinance, and the inspector has complied with § 159.04(D)(3)(a), the inspector is authorized to issue a NOV to the Permittee and Co-Permittees. The NOV shall be in a form prescribed by MSD and shall contain:

- a. The date and time of issuance;
- b. The name and address of the Permittee to whom the NOV is issued;
- c. The date and time the violation was committed;
- d. The facts constituting the violation;
- e. The section of the Ordinance violated;
- f. The name of the inspector;
- g. The civil fine that will be imposed for the violation; and
- h. A statement informing the Permittee to whom the NOV is issued of the right to appeal the NOV or to contest the proposed civil penalty.

2. Stop work order. Issuance of a stop work order shall result in a suspension of the project development or site plan approval, and except for work related to remediation of the violation, no additional land disturbing activity shall occur and no additional grading or building permits shall be issued until the violation is resolved to the enforcement agency's satisfaction. Stop work orders shall specifically state the provisions of this Ordinance being violated.

3. Service of NOV and stop work order. Service of a NOV or stop work order shall be by personal service to the on-site supervisory personnel

at the site, by posting a copy of the NOV and any stop work order at the site, and by certified mail to the Permittee.

4. Compliance notice. When compliance measures specified in the NOV are satisfactorily completed, the Permittee shall notify MSD. MSD shall re-inspect the site no later than the following work day after notification by the Permittee. Upon acceptance the inspector shall provide a written notice of compliance to the Permittee and place such letter in the appropriate agency file.

5. Appeal. When an NOV is issued, the person to whom the NOV is issued shall respond to the NOV within seven days of the date the NOV is issued by either remedying the violation and paying the civil fine set forth in the NOV or requesting, in writing, a hearing before the EPSC Board to contest the NOV. If the person fails to respond to the NOV within seven days, the person shall be deemed to have waived the right to a hearing to contest the NOV and the determination that a violation was committed shall be considered final. In this event, the EPSC Board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the NOV. Filing of an appeal does not stay the effect or the obligations of a stop work order or NOV unless otherwise ordered by the designated official hearing such appeal, based on a demonstration by the Permittee issued the NOV of a substantial likelihood of prevailing on the merits of the appeal, and the absence of adverse impact if the order or NOV is stayed pending review.

6. Nothing contained in this Ordinance shall prohibit the MSD from taking immediate action in the court of appropriate jurisdiction to remedy a violation of this Ordinance when there is reason to believe that the existence of the



violation presents a serious threat to the public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

(c) The EPSC Board shall hear all contested NOV's.

1. If a person to whom the NOV is issued requests a hearing before the EPSC Board, the EPSC Board shall schedule the hearing within 14 days unless all parties mutually agree to a continuance.

2. Evidence against the person charged with the violation shall be presented the person cited may be represented by counsel. The EPSC Board shall take all testimony under oath and may subpoena alleged violators, witnesses and evidence to its hearing.

3. Any person not appearing at a duly scheduled hearing shall be deemed to have waived the right to a hearing and the EPSC Board may enter its final decision.

4. The EPSC Board shall hear the evidence presented and based thereon shall render its decision and final order, which may uphold the NOV, dismiss it, order remedies and corrective action or a penalty or some combination thereof.

(4) Repeated Violations. In cases in which the Permittee has a record of two previous Notices of Violations causing adverse impact or off-site degradation within a two-year period, MSD shall be authorized to undertake any or all of the following actions:

(a) To refuse to accept applications for any development or land disturbing activity or to process any such application of the Permittee;

(b) To revoke a general permit as it applies to any development or land disturbing activity carried out by the Permittee; and

(c) To revoke the certification of any CCR who has been associated with serious or repeated violations of the provisions of this Ordinance.

(5) Appeals from the EPSC Board. Appeals shall be taken to a Kentucky court of competent jurisdiction pursuant to applicable Kentucky statutes.

(E) Penalties. Any person who violates this Ordinance, or any plan approved or permit granted hereunder, shall be subject to a fine of no more than \$4,000 per violation and shall comply with such remedial orders as may be issued by the EPSC Board. Each act of violation and each day during which the violation exists after the period granted by §159.05(D)(3)(a) and (b) to remedy the violation shall be deemed a separate offense.

(F) Education and training.

(1) On-site responsible personnel training.

(a) Within six months of the effective date of this Ordinance, all on-site responsible personnel shall be required to hold a certificate of attendance from a MSD-sponsored or approved training course. This requirement applies to persons employed by homebuilders, contractors, utilities, or any other person in a position of operational control over the land disturbing activity. This training shall be valid for a period of three years or until the course content is significantly modified due to ordinance modification or additional state or federal requirements, whichever occurs first.

(b) Further, the Permittee shall certify to MSD at the time of plan submittal that a person holding an attendance certificate shall be on the site during

construction or development activity to such degree as to be in operational control over the land distributing activity and provide continuing inspections in accordance with § 159.04(A). This person may include but is not limited to a foreman, developer, construction manager, or property owner. The name of this person shall be provided to MSD as soon as it is available, but no later than the time that notification of construction or disturbance is filed with MSD.

(c) MSD shall maintain a list of attendees to all training programs and provide confirmation of attendance.

(2) Training and certification.

(a) Agency inspector training and certification. Within six months of the effective date of this Ordinance, all agency inspectors shall be required to attend an MSD-sponsored or approved training course. Each inspector shall be required to achieve certification through this course to conduct site inspections, issue violations, negotiate on-site compliance, and refer violations for formal enforcement actions. This certification shall be valid for a period of three years, upon which the inspector must be re-certified.

(b) Agency plan reviewer training and certification. Within six months of the effective date of this Ordinance, all agency plan reviewers are required to attend an MSD-sponsored or approved training course. Each plan reviewer shall be required to achieve certification through this course to conduct plan reviews, pre-construction site meetings, and permit negotiations. This certification shall be valid for a period of three years, upon which the plan reviewer must be re-certified.

(c) Qualified plan preparer training. Qualified plan preparers,

including but not limited to professional engineers and landscape architects, shall be strongly encouraged to attend training sessions for plan reviewers and inspectors, as space is available. MSD may also, at its discretion, develop a separate course for qualified plan preparers. A fee may be established for this training based on the actual cost to develop and administer this course.

1. The option of a CCR is offered to allow for self-monitoring of the EPSC plan implementation. Based on demand, MSD may sponsor or approve a training course to certify private individuals as CCRs. These certifications shall be valid for a period of not more than three years. MSD may extend this period; however, continuing education shall be required for maintenance of the CCR. At MSD's sole discretion, a fee may be established for this training based on the actual cost to develop and administer this course.

2. MSD, in its discretion, may provide incentives for the use of a CCR.

(3) Revocation of certifications.

(a) Certifications may be revoked by MSD for repeated violations of the provisions of this Ordinance, activities that result in significant adverse impact or off-site degradation, or for willful disregard in implementing the intent of the certification programs. MSD shall appoint a hearing officer to hear appeals of revocation actions. A third party may bring action for revocation of a certification. These actions shall be presented to the MSD hearing officer for decisions.

(b) Any revocation action shall be supported by documentation as deemed appropriate by the hearing officer. The hearing officer may establish penalty

amounts up to \$500 per occurrence depending on the nature of the offense. Revocation of certifications shall be for at least one year. Re-certification shall be based on attending the training courses and paying all appropriate fees. Re-certification will only be allowed one time in a three-year period from the date of revocation.

**§ 159.98 SEVERABILITY.**

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

APPENDIX A: TABLE 159-1

Type of Land Disturbing Activity	Type of Permit Required See § 159.02(C)(3)		Type of Review Procedures Required See § 159.02(C)(2)			Type of EPSC Plan Required See § 159.02(C)(4)	
	Site Disturbance Permit	General Permit	Type I	Type II	General Permit	Concept EPSC plan	Detailed EPSC plan
1. Requires Land Use Approval <sup>1</sup>	X		X			X	X
2. Requires Building Permit Only (Not Discretionary) <sup>2</sup>	X			X			X
3. Undertaken by a Public Utility <sup>3</sup>		X			X	N/A	N/A
4. Single-Lot Residential Construction in an Approved Subdivision <sup>4</sup>		X			X	N/A	N/A
4a. Reserved							
4b. Single-Lot Residential Construction on a "Red-Flagged" Lot <sup>5</sup>	X			X			X (At MSD's Discretion)
5. Excavation, Site Clearing, or Filling of Land (No Building Permit Required)	X			X		X (Only if Type I Review Required)	X

<sup>1</sup> Includes all land disturbing activities associated with a specific development proposal subject to discretionary land use or development approvals (e.g., subdivisions, conditional uses, development plan review, etc.).

<sup>2</sup> Includes all land disturbing activities associated with a specific development proposal not subject to discretionary land use or development approvals (e.g., development requiring building permit approval only).

<sup>3</sup> Includes land disturbing activities undertaken by a private contractor hired by a utility; includes utility-related land disturbing activities such as small trench work, service hook-ups to individual structures, general and emergency maintenance/repair work, and the like.

<sup>4</sup> This category includes only construction of a residence, and/or accessory residential structures, on a single lot that is part of a subdivision subject to an EPSC plan approved pursuant to this Ordinance. Please see category 4.B. in the table for important variations on this general provision.

<sup>5</sup> "Red flagging" refers to a notation on the approved subdivision plan that a particular individual lot shall be subject to additional restrictions or scrutiny prior to construction.

**SECTION II.** This Ordinance shall take effect upon its passage and approval.

*Kathleen J. Herron*

Kathleen J. Herron  
Metro Council Clerk

*Rick Blackwell*

Rick Blackwell  
President of the Council

*Jerry E. Abramson*

Jerry E. Abramson  
Mayor

*10/1/07*  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

*[Signature]*

**LOUISVILLE METRO COUNCIL  
READ AND PASSED**  
*September 27, 2007*

BY: *[Signature]*

Chapter 159 Reenactment – Erosion Control Draft 1 – 22 Feb 2007 – roc/wtw  
Chapter 159 Reenactment/Amendment – Erosion Control – Final - 2 April 2007 – roc/wtw  
Chapter 159 Reenactment\_Amendment - Erosion Control - Final - 2.1 April 2007.doc

4/3/07 ROC/wtw/bkn