


MEMORANDUM

TO: Mayor Strickland and City Council Members

FROM: Paul Johnson – Public Works Director 

DATE: June 10, 2008

SUBJECT: Ordinance No: 355 – Compliance with the National Pollutant Discharge Elimination System set by the U.S. Environmental Protection Agency

STRATEGIC PLAN TRACKING NO: 07-PE-#4, P1, G1 OB-5

PURPOSE

The purpose of this Ordinance is to establish guidelines for compliance with the NPDES set by the USEPA guiding, regulating, and controlling the design, construction, use and maintenance of any development, disturbances or breaks of the topsoil resulting from the movement of earth on land in Orange City.

BACKGROUND

This ordinance deals with controlling erosion issues as they relate to construction activities. It will help promote public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth within Orange City.

Orange City was issued a generic permit for Stormwater Discharge from Phase II Municipal Separate Storm Sewer Systems (Phase II MS4 GP). The initial operating period for the permit was five years and the current permit expires on November 12, 2009. During the first five years of the permit, Orange City is required to implement Minimum Control Measures. The basics of those requirements are listed in Table 1 (attached). Of the minimum Control Measures required, two are ordinances as indicated in section 3b and all of section 4. The proposed ordinance was developed with the assistance of the City Attorney and covers the items in section 4. This ordinance would be codified within Chapter 12 of our Land Development Code which currently provides for stormwater management and retention, stormwater permits, and penalties for noncompliance.

Additionally, this process will help create an alternative revenue source for the City in the form of permitting, review, and inspection fees. The rates for those fees will be established by a separate resolution as referenced in this ordinance.

RECOMMENDATION

That City Council approve Ordinance No: 355

ORDINANCE NO. 355

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA; ESTABLISHING GUIDELINES FOR COMPLIANCE WITH THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM SET BY THE UNITED STATES AGENCY; ENVIRONMENTAL PROTECTION GUIDING, REGULATING, AND CONTROLLING THE DESIGN, CONSTRUCTION, USE, AND MAINTENANCE OF ANY DEVELOPMENT, DISTURBANCES OR BREAKS OF THE TOP SOIL RESULTING FROM THE MOVEMENT OF EARTH ON LAND IN ORANGE CITY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, during the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat; and

WHEREAS, as a result, the purpose of this local regulation is to safeguard persons, protect property, and prevent damage to the environment in Orange City. This ordinance will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in Orange City; and

WHEREAS, the Land Development Code for Orange City currently provides for stormwater management and retention; requires a stormwater permit; provides for the permit application process and penalties for noncompliance; and

WHEREAS, the City Council of the City of Orange City finds that it is in the public interest to supplement the City's current stormwater management regulations by these new guidelines for compliance with the National Pollutant Discharge Elimination System and codify them within Chapter 12 of the Orange City Land Development Code; and

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

Section 1. Sections 12.11 through 12.17 shall hereinafter be referred to as the Guidelines for Compliance with the NPDES Regulations.

Section 2. The following shall hereinafter be codified as Section 12.11 of the Land Development Code.

Section 12.11 **Definitions.**

Certified Contractor. A person who has received training and is licensed by the State of Florida, to inspect and maintain erosion and sediment control practices.

Clearing. Any activity that removes the vegetative surface cover.

Drainage Way. Any channel that conveys surface runoff throughout the site.

Erosion Control. A measure that prevents erosion.

Erosion and Sediment

Control Plans. A set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

Grading. Excavation or fill of material, including the resulting conditions thereof.

Perimeter Control. A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Site Development. Improvements and structures for the control of erosion, runoff, and grading.

Phasing. Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment Control. Measures that prevent eroded sediment from leaving the site.

Site. A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site Development Permit. A permit issued by Orange City for the construction or alteration of ground.

Stabilization. The use of practices that prevent exposed soil from eroding.

Start of Construction. The first land-disturbing activity associated with a development,

including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Watercourse. Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by Orange City.

Waterway. A channel that directs surface runoff to a watercourse or to the public storm drain.

Section 3. The following shall hereafter be codified as Section 12.12 of the Land Development Code.

Section 12.12. Permits.

- A) No person shall be granted a site development permit for land-disturbing activity that would require the uncovering of greater than 1 acre without the approval of an Erosion and Sediment Control Plan by Orange City's Developmental Services Department.
- B) No site development permit is required for the following activities:
 - 1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
 - 2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.
- C) Each application for a Site Development Permit shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.
- D) Each application for a Site Development Permit shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a certified contractor shall be on site on all days when construction or grading activity takes place.
- E) The applicant for a Site Development Permit will be required to file with Orange City a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the Developmental Services Department to cover all costs of improvements, landscaping, maintenance of improvements for such period as specified by Orange City, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

Section4 The following shall hereafter be codified as Section 12.13 of the Land Development Code.

Section 12.13. **Review and approval.**

- A) The Developmental Services Department will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 30 days after receiving an application, the Developmental Services Department shall, in writing:
- 1) Approve the permit application;
 - 2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
 - 3) Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- B) Failure of the Developmental Services Department to act on an original or revised application for a Site Development Permit within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Developmental Services Department. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by Developmental Services Department.

Section5. The following shall hereafter be codified as Section 12.14 of the Land Development Code.

Section 12.14. **Erosion and Sediment Control Plan.**

- A) The Erosion and Sediment Control Plan shall include the following:
- 1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this code.
 - 2) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

- 3) All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
 - 4) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
 - 5) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- B) Modifications to the plan shall be processed and approved or disapproved in the same manner as Section 12.13 of this Code, may be authorized by the Developmental Services Department by written authorization to the permittee, and shall include:
- 1) Major amendments of the erosion and sediment control plan submitted to Developmental Services Department.
 - 2) Field modifications of a minor nature

Section 6. The following shall hereafter be codified as Section 12.15 of the Land Development Code.

Section 12.15. **Design Requirements.**

- A) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth by the Developmental Services Department, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the Developmental Services Department. Cut and fill slopes shall be *no greater than 2:1*, except as approved by the Developmental Services Department to meet other community or environmental objectives.
- B) Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except when in compliance with all other chapters of this Land Development Code. Clearing techniques that retain natural vegetation and drainage patterns shall be used to the satisfaction of the Developmental Services Department.
- C) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been

stabilized.

- D) Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the Developmental Services Department.
- E) Erosion control requirements shall include the following:
 - 1) Soil stabilization shall be completed within *five days* of clearing or inactivity in construction.
 - 2) If seeding or another vegetative erosion control method is used, it shall become established within *two weeks* or the Developmental Services Department may require the site to be reseeded or a nonvegetative option employed.
 - 3) Special techniques that meet the design criteria established by the Developmental Services Department on steep slopes or in drainage ways shall be used to ensure stabilization.
 - 4) Soil stockpiles must be stabilized or covered at the end of each workday.
 - 5) The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.
 - 6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.
 - 7) Techniques that divert upland runoff past disturbed slopes shall be employed.
- D) Sediment controls requirements shall include:
 - 1) Settling basins, sediment traps, or tanks and perimeter controls.
 - 2) Settling basins that are designed in a manner that allows adaptation to provide long term stormwater management, if required by the Developmental Services Department.
 - 3) Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
- E) Waterway and watercourse protection requirements shall include:
 - 1) A temporary stream crossing approved by the Developmental Services Department if a wet watercourse will be crossed regularly during construction.

- 2) Stabilization of the watercourse channel before, during, and after any in-channel work.
 - 3) All on-site stormwater conveyance channels designed according to the criteria established by the Developmental Services Department.
 - 4) Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
- F) Construction site access requirements shall include:
- 1) a temporary access road provided at all sites.
 - 2) other measures required by the Developmental Services Department in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains

Section 7. The following shall hereafter be codified as Section 12.16 of the Land Development Code.

Section 12.16. Inspection.

A) The Developmental Services Department or its designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Developmental Services Department shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Developmental Services Department at least two working days before the following:

- 1) Start of construction;
- 2) Installation of sediment and erosion measures;
- 3) Completion of site clearing;
- 4) Completion of rough grading;
- 5) Completion of final grading;
- 6) Close of the construction season;
- 7) Completion of final landscaping;

B) The permittee or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Developmental Services Department at the time interval specified in the approved permit.

(C) The Developmental Services Department or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under Section B.

(D) The rates, fees, and charges as specified for permit application, review, and inspections shall be paid by the owner, occupant or tenant of the lot or parcel. The owner, occupant or tenant of each lot or parcel of land to which this section applies shall pay the associated fee(s) according to the current resolution delineating these charges.

Section 9. The following shall hereafter be codified as Section 12.17 of the Land Development Code.

Section 12.17. **Enforcement.**

A) Stop-Work Order; Revocation of Permit

In the event that any person holding a site development permit pursuant to this ordinance violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Developmental Services Director may suspend or revoke the site development permit and may issue a Stop-Work Order.

B) Violation and Penalties

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. In addition to any other penalty authorized by this section, any person, partnership, or corporation violating any of the provisions of this ordinance shall be required to bear the expense of restoration.

Section 9. It is the intention of the City Council of the City of Orange City, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Orange City, Florida; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; that the word, "Ordinance," may be changed to "Section", "Article", or other appropriate word.

Section10. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

Section11. If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

Section12. This ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida, and approval as provided by law.

First Reading this _____ day of _____, 2008.

ROLL CALL VOTE AS FOLLOWS (Ordinance No. ____):

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Jeff H. Allebach	_____	Donald Sandford	_____
Harley Strickland, Mayor	_____		

Second Reading this _____ day of _____, 2008.

ROLL CALL VOTE AS FOLLOWS:

Tom Laputka	_____	Donald C. Sherrill	_____
Tom Abraham	_____	Donald Sandford	_____
Jeff H. Allebach	_____	Jim Mahoney	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this _____ day of _____, 2008.

ATTEST:

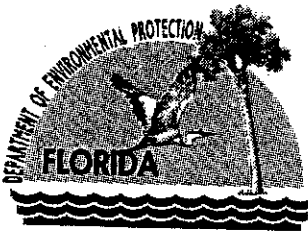
AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney



Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Colleen M. Castille
Secretary

November 12, 2004

Mr. Paul Johnson
Public Works Director
City of Orange City
205 East Graves Avenue
Orange City, FL 32763

Re: Phase II MS4 Permit ID Number FLR04E126
Notice of Issued Permit

Dear Mr. Johnson

The Florida Department of Environmental Protection has received and processed your *Notice of Intent to Use Generic Permit for Stormwater Discharge from Phase II Municipal Separate Storm Sewer Systems* (NOI) and the accompanying processing fee. This letter serves to acknowledge that the NOI is complete and the regulated portion of the MS4 is covered under the *Generic Permit for Discharge from Phase II Municipal Separate Storm Sewer Systems* (Phase II MS4 GP). Coverage under this permit is considered effective as of **11/12/04** and will expire **11/11/09**.

The Phase II MS4 GP was issued under the provisions of Section 403.0885, Florida Statutes, 40 CFR Chapter 122.32-.37, and applicable rules of the Florida Administrative Code. Until the Phase II MS4 GP is terminated, modified or revoked, permittees that have properly obtained coverage under this permit are authorized to discharge to surface waters in accordance with the terms and conditions of this permit.

Your project identification number is FLR04E126. Please make reference to this number on all future correspondence to the Department.

This letter is not a permit. The NOI allows the MS4 to proceed with discharges by complying with the *Generic Permit for Stormwater Discharge from Phase II Municipal Separate Storm Sewer Systems* Rule 62-621.300(7)(a), F.A.C., a copy of which can be obtained online at <http://fac.dos.state.fl.us/> or by contacting the NPDES Stormwater Section.

Key provisions of the permit are (1) development schedules and implementation of Best Management Practices (BMPs) and accompanying Measurable Goals that address elements in each of the six minimum control measures included in both the Phase II MS4 GP and Appendix A of the NOI, (2) retention of records that are required for the permit, including an updated copy of the appropriate Stormwater Management Plan, as well as ordinances, certifications, etc., and (3) submission of annual reports, in accordance with the GP, that report activities and fulfillment of the requirements for each year of the permit.

"More Protection, Less Process"

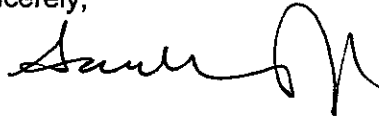
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Mr. Paul Johnson
November 12, 2004
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If the Phase II MS4 permittee wishes to continue coverage beyond the expiration of the current permit coverage, an NOI must be filed at least 180 days prior to the expiration date of the current coverage.

If you have any questions concerning this acknowledgement letter, please contact me at 850/245-7523 or sara.jozwiak@dep.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Jozwiak", with a stylized flourish at the end.

Sarah Jozwiak
Phase II MS4 Coordinator

Table 1: Minimum Control Measure Required Elements

Element ID	Description of Minimum Control Measure Required Elements
1a	<p>1. Public Education and Outreach Minimum Control Measure:</p> <p>a) Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.</p>
2a	<p>2. Public Participation/Involvement Minimum Control Measure:</p> <p>a) Comply with State and local public notice requirements when implementing a public involvement/public participation program.</p>
3a	<p>3. Illicit Discharge Detection and Elimination Minimum Control Measure:</p> <p>a) Develop, if not already completed, a storm sewer system map, showing the location of all known outfalls and the names and location of all surface waters of the State that receive discharges from those outfalls.</p>
3b	<p>b) To the extent allowable under State or local law, effectively prohibit through ordinance, or other regulatory mechanism, of non-stormwater (i.e., "illicit") discharges into the storm sewer system and implement appropriate enforcement procedures and actions.</p>
3c	<p>c) Develop and implement a plan to detect and eliminate non-stormwater discharges, including illegal dumping, to the MS4.</p>
3d	<p>d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.</p>
4a	<p>4. Construction Site Stormwater Runoff Control Minimum Control Measure:</p> <p>a) Develop and implement, to the extent allowable under State or local law, an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to reduce pollutants in any stormwater runoff to the Phase II MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of pollutants associated with stormwater discharges from construction activity disturbing less than one acre must also be included if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.</p>
4b	<p>b) Develop and implement requirements for construction site operators to implement appropriate erosion and sediment control best management practices.</p>
4c	<p>c) Develop and implement requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.</p>
4d	<p>d) Develop and implement procedures for site plan review that incorporate consideration of potential water quality impacts.</p>
4e	<p>e) Develop and implement procedures for receipt and consideration of information submitted by the public.</p>
4f	<p>f) Develop and implement procedures for site inspection and enforcement of control measures.</p>
5a	<p>5. Post-construction Stormwater Management in New Development and Redevelopment Minimum Control Measure: NOT REQUIRED IF USING QUALIFIED ALTERNATIVE PROGRAM</p> <p>a) Use an ordinance or other regulatory mechanism, to the extent allowable under State or local law, to address from post-construction runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the Phase II MS4. The program must require that controls be in place that would prevent or minimize water quality impacts from new development or redevelopment.</p>
5b	<p>b) Develop and implement strategies that include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community.</p>
5c	<p>c) Require adequate long-term operation and maintenance of BMPs.</p>
6a	<p>6. Municipal Operation Pollution Prevention and Good Housekeeping Minimum Control Measure:</p> <p>a) Develop and implement an operation and maintenance program that has the ultimate goal of preventing or reducing pollutant runoff from MS4 operator activities, such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.</p>
6b	<p>b) Using training materials that are available from EPA, the Department, or other organizations, include employee training to prevent and reduce stormwater pollution from MS4 operator activities.</p>

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