

Bill No. 28-06

ORDINANCE NO. 33-06

AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL  
REGULATING SEDIMENT AND EROSION CONTROL – AND  
STORM WATER POLLUTION PREVENTION AND ESTABLISHING  
PENALTIES FOR THE VIOLATIONS THEREOF

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.* and 327 IAC 15-13, referred to as “Rule 13”, designates and requires St. Joseph County, Indiana, as a part of its Storm Water Quality Management Plan, develop, implement, manage, and enforce a program to reduce, minimize, or eliminate pollutants in storm water runoff from construction activities that result in land disturbance equal to or greater than one acre. Said designation also includes controlling storm water discharges from construction activities disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb one or more acres.

WHEREAS, during the construction process, soil is 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/maintenance of sewers, drainage channels, and the dredging of ponds and lakes.

WHEREAS, the purpose of this Sediment and Erosion Control Ordinance is to safeguard persons, protect property, and prevent damage to the environment.

WHEREAS, the Ordinance promotes the public welfare by guiding, regulating, and controlling the design, construction, inspection, use, and maintenance of development or other activity that disturbs or breaks the topsoil as described herein.

WHEREAS, the Ordinance hereby grants the County Engineer and County Engineering Department Staff, the MS4 Operator, and any approved designated agent acting on behalf of the Board of Commissioners of St. Joseph County, the authority to administer and enforce this Ordinance. The enforcement sections of this Ordinance shall also be applicable for the information and requirements for Sediment and Erosion Control- Storm Water Pollution Prevention Plans, outlined in the latest edition of the “St. Joseph County Design Guide and Standards” Manual.

NOW, THEREFORE IT IS HEREBY ORDAINED BY THE ST. JOSEPH COUNTY COUNCIL THAT:

**SECTION 1 DEFINITIONS.**

For the purposes of clarification, the following definitions are applicable to the purposes, policies, regulations, requirements, provisions, and specifications of this Ordinance. In some instances, a definition incorporated herein establishes policy within the definition, and such establishment of policy shall have the same effect as if the policy were established in another section of this Ordinance. The definitions that apply throughout this ordinance are as contained in 327 IAC 15-5-4, 327 IAC 15-13-5, and as follows:

A. COUNTY- defined as the St. Joseph County Engineer, County Engineering Department Staff, MS4 Operator, and any approved designated agent acting on behalf of the St. Joseph County Board of Commissioners.

B. IDEM- refers to the Indiana Department of Environmental Management

C. MS4 DESIGNATION- defined for the purposes of this Ordinance only, the MS4 designated area consists of all unincorporated areas of St. Joseph County, Indiana.

D. PARTNERING ENTITIES- defined as the entities that have MS4 Partnering Agreements, as approved by the St. Joseph County Board of Commissioners, with St. Joseph County to complete the requirements established in 327 IAC 15-13. Entities include the Town of Osceola and the Town of Roseland. The Legislative Authority of each entity shall adopt the policies outlined in this Ordinance to make the Ordinance binding in their respective jurisdictions.

E. PERMITTEE- refers to the "Project Site Owner" as defined in 327 IAC 15-5-4.

F. STORM WATER POLLUTION PREVENTION PLAN- hereinafter referred to as SWPPP and defined as a sediment and erosion control plan in compliance with RULE 5 and this Ordinance.

G. RULE 5- refers to 327 IAC 15-5-1 through 15-5-12 "Rule 5. Storm Water Run-Off Associated with Construction Activity". The rule establishes specific minimum requirements for control of storm water run-off associated with construction activity. The requirements of RULE 5 shall be met except as specifically noted herein.

H. RULE 13- refers to 327 IAC 15-13-1 through 15-13-22 "Rule 13. Storm Water Run-Off Associated with Municipal Separate Storm Sewer System Conveyances".

**SECTION 2 CONSTRUCTION SITE STORM WATER RUN-OFF & LAND DISTURBANCE.**

A. Any person performing land disturbing activities, as defined herein, in the MS4 DESIGNATED portions of St. Joseph County and its PARTNERING ENTITIES shall be

required to adhere to the provisions set out in this Ordinance and subject to penalty when necessary to ensure compliance with regulations under this Ordinance.

- B. The requirements under this Ordinance apply to all persons who do not obtain an individual NPDES permit under 327 IAC 15-2-6, meet the general permit rule applicability requirements under 327 IAC 15-2-3 and 15-5-3, and are involved in new construction activity that results in land disturbance equal to or greater than one acre or is less than one acre and a part of a larger common plan of development or sale that will disturb land equal to or greater than one acre or as otherwise noted within this Ordinance.

### **SECTION 3 STORM WATER POLLUTION PREVENTION PLANS (SWPPP).**

- A. The intent of the SWPPP requirements is to comply with existing State programs and rules. SWPPP requirements shall be as stated in 327 IAC 15-5-6.5 and conform to the "St. Joseph County Design Guide and Standards" Manual. Stormwater quality control measures included in the SWPPP must achieve minimum project site requirements specified in 327 IAC 15-5-7 and 15-5-7.5 and conform to the "St. Joseph County Design Guide and Standards" Manual.
- B. All SWPPP shall be submitted in triplicate to the St. Joseph County Engineering Department, Attn: MS4 Operator, County-City Building Room 732, 227 West Jefferson Boulevard, South Bend, Indiana, 46601 for comments, recommendations, and review of sufficiency.
- C. The MS4 Operator shall provide copies to the local Soil and Water Conservation District (SWCD) and to the applicable PARTNERING ENTITIES for their review and the opportunity to offer comments and make technical recommendations, where applicable. All comments received shall be made available to the Project Site Owner.
- D. SWPPP shall bear the name(s) and address (es) of the Owner and/or Developer of the site and any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm. All SWPPP shall be accompanied by a \$150.00 filing fee, made payable to St. Joseph County, Indiana.
- E. SWPPP shall include a statement that any land disturbing activity, construction, or development involving the movement of earth by any party on the project site shall be in accordance with the sufficient SWPPP.
- F. Project Site Owner shall submit a copy of the SWPPP to IDEM with the IDEM filing fee as stated in 327 IAC 15-13-15.
- G. The "Notice of Intent Letter" (NOI) submittal and SWPPP submittal requirements shall be as described in 327 IAC 15-5-5 and 327 IAC 15-5-6. The Project Site Owner shall

also submit a copy of the NOI to the MS4 Operator and any other entity as required in RULE 5.

- H. COUNTY has 28 days from the date of receipt to review SWPPP and notify the Project Site Owner whether the SWPPP is sufficient or deficient. If the COUNTY does not respond within said time period, then the Project Site Owner may send the NOI letter information to IDEM.
- I. On residentially zoned land, this Ordinance does not require individual builders involved in construction activities associated with a larger common plan of development to file individual SWPPP for each building lot. This Ordinance requires each individual builder to comply with the larger common plan of development's sufficient SWPPP and policies, regulations, requirements, provisions, and specifications contained in this Ordinance for the SWPPP.
- J. A SWPPP is required for all sites that meet the requirements of "RULE 5", and as follows:
  - 1. Any Commercial/Office/Office-Business or Industrial zoned site involving land disturbing construction activities less than one acre but containing a minimum of 80 percent imperviousness.
  - 2. The County Engineer or MS4 Operator deems it is necessary for a site to comply and notifies the site owner/operator/developer in writing to comply.
- K. No SWPPP 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 operations conducted as a permitted main or accessory use.
  - 3. For sites exempted as stated in 327 IAC 15-5-2 (b.) and (c.).
  - 4. Utility work covered under a County Utility Permit.
- L. A SWPPP Term is five years or until a Project Site Owner files for Permit Termination. Permit Termination and/or Extension shall follow the same procedures as set out in 327 IAC 15-5-8.
- M. With the submission of SWPPP, the Project Site Owner grants the COUNTY the authority to enter the property covered under the SWPPP for the purpose of plan review and inspection throughout the duration of the permit coverage.

**SECTION 4 INSPECTION.**

- A. COUNTY shall make inspections as hereinafter required and either shall accept that portion of the work completed that is in general agreement with the SWPPP or shall notify the permittee wherein the work fails to comply with the intent of the SWPPP.
- B. The permittee shall notify the MS4 Operator in writing at least five working days before the following: Start of Construction (each season where applicable) and the Close of Construction Season.
- C. The permittee or his/her agent shall make regular inspections of all control measures in accordance with "RULE 5" or as set out in the SWPPP. The purpose of such inspections will be to determine the overall effectiveness of the measures identified in the SWPPP and the need for additional correctional measures or adjustments. All permittee inspections shall be documented in written form and submitted to the MS4 Operator at the time interval specified in the SWPPP.
- D. COUNTY shall have the authority to enforce this Ordinance.

All persons engaging in construction activities on a project site must comply with its SWPPP and with the requirements, provisions, and regulations of this Ordinance. Any person causing or contributing to a violation of any requirement, provision, or regulation of this Ordinance may be subject to enforcement and penalty under terms of this Ordinance, and additionally under I.C. 13-14-10, I.C. 13-15-7, and I.C. 13-30.

**SECTION 5 VIOLATIONS AND PENALTIES.**

- A. If any person responsible for compliance with a SWPPP 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 or injurious to property or improvements in the neighborhood, the COUNTY may place an immediate "Stop Work Order" for the site.
- B. No person shall construct, enlarge, alter, repair, contradict, or maintain any grading excavation or fill that violates the terms of this Ordinance without recourse. Each act or condition that violates a requirement, provision, or regulation of this Ordinance may be construed as a separate violation and subject to penalty or prosecution.
- C. Any person performing land disturbing activities as described herein without a sufficient SWPPP and properly notifying IDEM per "RULE 5" shall be subject to prosecution as set out in "RULE 5" and a One Thousand Dollar (\$1,000.00) fine, made payable to St. Joseph County Indiana. This penalty shall not apply to persons who have submitted a SWPPP to the COUNTY and properly notified IDEM pursuant to "RULE 5". Any persons violating a site's SWPPP shall be subject to penalties as outlined below.

1. If any penalty fee is not paid within thirty (30) calendar days of the citation notification, the citation may be enforced in Court in St. Joseph County by any remedy allowed by Law, and an action may be maintained to recover the costs of corrective measures employed by the COUNTY in addition to the fine or penalty referred to herein.
  2. "First Offense" means the initial determination of a violation or group of violations at a project site. Upon determining and documenting the first violation at a project site, the COUNTY shall notify the permittee in writing of the violation and make a recommendation of the necessary correction. All corrections shall be made within the time frame identified in the citation. A minimum ten (10) working days shall be granted to make necessary corrections, after the issuance of the notice to prevent the citation of a second violation regarding the same condition.
  3. "Second Offense" means the determination the deadline established in the first violation is past and the condition or conditions constituting the first violation remain uncorrected or are otherwise not compliant with the requirements, provisions, or regulations of this Ordinance. Upon determining and documenting the second violation at a project site, the COUNTY shall again notify the permittee in writing of the violation, shall enforce a civil penalty of \$250.00, and make a recommendation of the necessary correction. All corrections shall be made within the time frame identified in the citation. A minimum five (5) working days shall be granted to make necessary corrections, after the issuance of the second notice to prevent the citation of a third violation regarding the same condition.
  4. "Third Offense" means the determination the deadline established in the second violation is past and, the condition or conditions constituting the second violation remain uncorrected or are otherwise not compliant with the requirements, provisions, or regulations of this Ordinance. Upon determining and documenting the third violation at a project site, the COUNTY shall again notify the permittee in writing of the violation, shall enforce a civil penalty of \$500.00, and shall issue an immediate "Stop Work Order" through the authority of the Building Commissioner. If permittee does not perform or cause to be performed the necessary corrective measures, then the COUNTY may either perform the work or hire a contractor to correct the violation and seek reimbursement through the extent of the Law for all costs incurred by the COUNTY necessary to correct the violation.
  5. "Stop Work Orders" shall not be rescinded until all recommended corrective measures have been completed, and the COUNTY has been paid for all costs incurred and any fines assessed, if applicable.
- D. Any project site owner, individual lot operator, contractor, subcontractor, property owner, or other person or persons responsible for construction activities at a project site regulated under this Ordinance who violates the terms, requirements, provisions, or regulations of this Ordinance are liable for the costs of removal of sediment and other storm water pollutants deposited in any right-of-way, drain, storm sewer, drainage

easement, or county maintained or controlled property and any and all other corrective action required to restore the property to a condition equal to or better than the condition prior to a violation. Such costs may be pursued in Court in St. Joseph County and/or filed as a lien against the property pursuant to I.C. 36-1-6-2, or under any other applicable State Law or Ordinance.

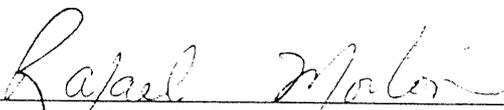
- E. All fines, penalties, and filing fees shall be utilized to support St. Joseph County's Storm Water Quality Management Plan and implementation. All such funds shall be deposited in the Auditor's dedicated accounts for said program.

**SECTION 6 SEVERABILITY.**

If any sections, sentence or provision of this Ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions or applications of this Ordinance which can be given effect without the invalid provision or application. The provisions of this Ordinance are deemed to be severable.

**SECTION 7 EFFECTIVE DATE.**

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

  
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Member, St. Joseph County Council

**FILED**  
MAR 07 2006  
AUDITOR  
ST. JOSEPH COUNTY INDIANA

1st READING MAR 14 2006  
PUBLIC HEARING APR 11 2006  
2nd READING APR 11 2006  
NOT APPROVED  
REFERRED ENG STRAUS  
PASSED APR 11 2006; 8-0-1

**FILED**  
MAR 7 2006  
COUNTY COUNCIL  
ST. JOSEPH COUNTY INDIANA

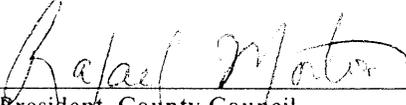
Bill No. 28-06

AMENDMENT NO. \_\_\_\_\_

ORDINANCE NO. 33-06

AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL REGULATING SEDIMENT AND EROSION CONTROL - AND STORM WATER POLLUTION PREVENTION AND ESTABLISHING PENALTIES FOR THE VIOLATIONS THEREOF.

This bill came before the St. Joseph County Council the 11 th day of April, 2006, and was voted to duly pass/~~not to pass~~, this Ordinance.

  
\_\_\_\_\_  
President, County Council

VOTES

YES 8

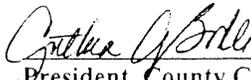
NO 0  
1 Absent - Baldoni

ATTEST:

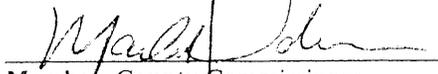
  
\_\_\_\_\_  
Auditor, St. Joseph County

Presented by me to the Board of Commissioners of the County of St. Joseph, Indiana, this 12 th day of April, 2006, at the hour of 2:00 o'clock P. M.

This Ordinance approved and signed by the Board of County Commissioners of St. Joseph County, Indiana, on the 18 th day of April, 2006, at the hour of 10 o'clock \_\_\_\_\_ M.

  
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President, County Commissioners

  
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Vice President, County Commissioners

  
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Member, County Commissioners