

**TITLE 8**  
**BUILDING CODE**

**CHAPTER 860**  
**SURFACE WATERS**

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## I. GENERAL PROVISIONS

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### 860.005 Title

This Chapter, LCC 860.000 to 860.999, shall be known and may be cited as the “Linn County Surface Waters Code” or simply as the “Surface Waters Code.”

[Adopted 23-327 eff 09/01/23]

### 860.010 Purpose

The intent and purpose of this title is to enable Linn County to comply with applicable state and Federal laws; to provide for the effective management of stormwater to protect the health, safety, and general welfare of the citizens of Linn County; to protect the health and safety of County employees working in the stormwater system; to facilitate the orderly development and extension of the stormwater system; to protect and enhance the water quality and natural functions of watercourses and water bodies through the regulation of stormwater; to set forth uniform requirements for direct and indirect contributors to the stormwater system; to help meet the County’s environmental stewardship responsibilities; and to reduce pollutants in stormwater discharges and to prohibit non-stormwater discharges to the public stormwater drainage, groundwater and surface water systems, underground injection control or waterways and to minimize the amount of sediment reaching waterways, wetlands, and the public storm drainage and surface water system for the duration of construction site activities.

[Adopted 23-327 eff 09/01/23]

### 860.015 Definitions

For the purposes of this chapter, the following words shall have the following meanings:

(A) “**Agricultural activities**” means those activities over which the Oregon Department of Agriculture has enforcement authority.

(B) “**Applicant**” means the owner of real property or the owner’s authorized agent. “Applicant” includes any person who would be required to obtain a Linn County permit or exemption

approval, but who neglects or otherwise fails to do so.

(C) “**Authorized agent**” means the developer, architect, contractor, engineer, builder, personal representative, or anyone designated by the owner to have control or supervision of a site involving construction site activity.

(D) “**Bank**” means that portion of a waterway that is exposed from the ordinary high water mark (OHWM) and extends upland.

(E) “**BMP**” means best management practices.

(F) “**Common plan of development**” means a contiguous construction project or projects where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan.

(G) “**Construction activity**” means activities that include, but is not limited to, clearing, grading, excavating, and other site preparation work related to the construction of residential buildings, non-residential buildings, and heavy construction.

(H) “**Construction site**” means a location where a Linn County land use or building permit, encroachment permit, or exemption approval is required.

(I) “**Construction site activity**” means any ground disturbing activities at a location where a Linn County permit or exemption approval is required.

(J) “**Director**” means the Director of the Road Department or the Director’s designee.

(K) “**Emergency**” has the same meaning as found in ORS 401.025.

(L) “**Erosion**” means the wearing away of the ground surface, or the movement, detachment or dislocation and transport of sediment including soil particles by the action of water or wind.

(M) “**Exemption approval**” means an exemption from the requirement to obtain a building permit for an agricultural building.

(N) “**Final stabilization**” is determined by satisfying the following criteria:

(1) There is no reasonable potential for

discharge of a significant amount of construction related sediment or turbidity to surface waters; and,

(2) Construction materials and waste have been removed and disposed of properly. This includes any sediment that was being retained by temporary erosion and sediment controls; and,

(3) All temporary erosion and sediment controls have been removed and disposed of properly, unless doing so conflicts with local requirements; and,

(4) All ground disturbing activities have stopped and all stormwater discharges from construction activities that are authorized by the appropriate permit have ceased; and,

(5) All disturbed or exposed areas of the site are covered by either final vegetative stabilization or permanent stabilization measures. However, temporary or permanent stabilization measures are not required for areas that are intended to be left unvegetated or unstabilized following construction (such as dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials); provided that, measures are in place to eliminate or minimize erosion.

(O) “**Ground disturbing activities**” means any activity that exposes soil, including, but not limited to, construction, landscaping, removal of vegetation, stockpiling of soil or construction debris, grading, excavating, filling, clearing, trenching, drilling, transport or fill, or utility work, or working of land at a particular location.

(P) “**Hazardous materials**” mean any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged.

(Q) “**Hearings Officer**” means the Linn County Administrative Officer or their designee.

(R) “**Illicit connection**” means either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the public storm drainage and surface water system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash-water to enter the public storm drainage and surface water system and any connections to the public storm drainage and surface water system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted, or approved by a government agency; or,

(2) Any drain or conveyance connected from a commercial or industrial land use to the public storm drainage and surface water system that has not been documented in plans, maps, or equivalent records and approved by the County.

(S) “**Illicit discharge**” means any direct or indirect non-stormwater discharge to the public storm drainage and surface water system, except as exempted in LCC 860.105(B). “Illicit discharge” as used in this chapter shall have the same meaning as the term “illegal dumping” as used by the Department of Environmental Quality.

(T) “**Industrial activity**” means activities which require an NPDES industrial permit.

(U) “**Major Land Disturbance Activities**” means activities which:

(1) Affect an area over one acre in size; or,

(2) Contain average slopes throughout the disturbed area that exceed 10 percent; or,

(3) Contain slopes greater than 3H:1V which exceed six feet in height; or,

(4) Have concentrated runoff through the disturbed area that comes from over one acre off-site; or,

(5) Contain sensitive areas (wetlands, streams, etc.) located on, or adjacent to, the site work.

(V) “**National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit**” means general, group, and individual stormwater discharge permits that regulate facili-

ties defined in federal NPDES regulations and regulated through the Oregon Department of Environmental Quality.

(W) “**Nonresidential development**” means a development in which living units are not included or individual living units are not separately owned.

(X) “**Non-stormwater discharge**” means any discharge to the public storm drainage, groundwater and surface water systems that is not composed entirely of stormwater.

(Y) “**Operations and maintenance plan**” means a written document containing policies and procedures related to the operation, maintenance, repair and replacement requirements for all structural, vegetative, and management practices installed and relating to stormwater control systems for a development.

(Z) “**Ordinary high water mark**” (OHWM) means the line on the bank or shore to which the high water ordinarily rises in the average runoff year. The OHWM excludes exceptionally high water levels caused by large flood events such as the five-year or 100-year events.

(AA) “**Owner**” means a person who is the sole fee simple owner of the real property, all joint owners whose interests add up to a fee simple interest in the property, or the owner of an equitable interest in the property pursuant to a land sales contract.

(BB) “**Person responsible**” or “**responsible person**” means the equitable or legal owner of the subject property, a lessee, tenant or person in possession of the property, or the person or persons directly or indirectly responsible for an act.

(CC) “**Pollutant**” means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate

metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

(DD) “**Pollution**” means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wildlife, fish, other aquatic life or the habitat thereof.

(EE) “**Premises**” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(FF) “**Public storm drainage and surface water system**” means natural or manmade drainage courses for the conveyance of surface water.

(GG) “**Residential development**” means a development in which individual living units are separately owned.

(HH) “**Sediment**” means finely divided loose material that can be suspended and transported in water or air and may originate from disturbed soil, landscaping, or construction activities or materials.

(II) “**Stormwater**” means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(JJ) “**Stormwater management area**” means an area designated as a stormwater management area by the Department of Environmental Quality under Linn County jurisdiction.

(KK) “**Stormwater treatment facilities**” means a storm collection and conveyance system, operated and maintained by the County or by a private property owner, located outside the build-

ing envelope which serves one or multiple building storm drains, catch basins, area drains, or other drainage facilities.

(LL) “**Storm event**” means a storm event (as defined at 40 CFR § 122.21(g)(7)(ii)) with greater than 0.1 inch of rainfall and at least 72 hours after the previously measurable storm event with greater than 0.1 inch of rainfall.

(MM) “**UIC**” means underground injection control. A UIC structure is a subsurface distribution system for stormwater; usually an assemblage of perforated pipes, drain tiles or other mechanisms intended to distribute stormwater below the surface of the ground.

(NN) “**Waters of the State**” means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(OO) “**Waterway**” means a body of water (whether natural or manmade) that periodically or continuously contains waters of the state and has a definite bed and banks that serve to confine the water.

[Adopted xx-xxx eff xx/xx/xx]

### **860.020 Applicability**

This chapter applies to all water entering the public storm drainage and surface water system generated on any developed and undeveloped lands inside a stormwater management area.

[Adopted 23-327 eff 09/01/23]

### **860.025 Regulation of agricultural activities prohibited**

Linn County shall not enforce the terms of this chapter against agricultural activities regulated by the Oregon Department of Agriculture.

[Adopted 23-327 eff 09/01/23]

### **860.030 Ultimate responsibility of property owner**

The standards set forth in this chapter are minimum standards. This chapter does not mean or imply that compliance with this chapter by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state by a responsible person. The property owner is ultimately responsible for all conditions on or created by the owner’s property. This chapter shall not create liability on the part of Linn County, or any agent or employee of Linn County, for any damages that result from a responsible person’s or property owner’s reliance on this chapter or any administrative decision lawfully made under this chapter.

[Adopted 23-327 eff 09/01/23]

### **860.035 Requirement to prevent, control, and reduce stormwater pollutants be the use of best management practices**

The Director may require best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to the introduction of pollutants to rights-of-way, wetlands, drainage ways, the municipal stormwater system, receiving waters, and/or areas that include or contribute directly to the Waters of the State. Where BMP requirements are promulgated by the Director, the owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from the discharge of pollutants, as described above, through the use of these structural and/or nonstructural BMPs.

Further, any person responsible for a property or premises that is, or which may reasonably be expected to be, the source of an illicit or prohibited discharge may be required to implement, at said person’s expense, additional structural and nonstructural BMPs to prevent any further discharges of pollutants.

[Adopted 23-327 eff 09/01/23]

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## II. PROHIBITED DISCHARGES

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### 860.105 Prohibition of illicit discharges

(A) No person shall discharge or cause to be discharged into the public stormwater drainage, groundwater and surface water system, UICs, or waterways any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of DEQ and/or other applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illicit discharge to the public storm drainage and surface water system is prohibited except as set forth in this section.

(B) Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the state when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illicit discharges under the Clean Water Act, Oregon Revised Statutes, Oregon Administrative Rules or this chapter:

(1) Non-stormwater discharge that is regulated under a separate NPDES permit.

(2) Non-stormwater discharge that originates from emergency firefighting activities.

(3) The following non-stormwater discharge that is categorized as an authorized or allowable non-stormwater discharge:

(a) Uncontaminated water line flushing.

(b) Landscape irrigation.

(c) Diverted stream flows.

(d) Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers.

(e) Rising groundwaters.

(f) Uncontaminated pumped ground water.

(g) Potable water sources (including potable groundwater monitoring wells and

draining and flushing of municipal potable water storage reservoirs).

(h) Startup flushing of groundwater wells.

(i) Foundation, footing and crawlspace drains (where flows are not contaminated [i.e., process materials or other pollutant]).

(j) Uncontaminated air conditioning or compressor condensate.

(k) Irrigation water.

(l) Springs.

(m) Lawn watering.

(n) Individual residential car washing.

(o) Charity car washing (provided that chemicals, soaps, detergents, steam or heated water are not used. Washing is restricted to the outside of the vehicle, no engines, transmissions or undercarriages).

(p) Flows from riparian habitats and wetlands.

(q) Dechlorinated swimming pool discharges including hot tubs (heated water must be cooled for at least 12 hours prior to discharge).

(r) Fire hydrant flushing.

(s) Street and pavement washwaters (provided that chemicals, soaps, detergents, steam or heated water are not used).

(t) Routine external building wash-down (provided that chemicals, soaps, detergents, steam or heated water are not used).

(u) Water associated with dye testing activity.

(v) Discharges of treated water from investigation, removal and remedial actions selected or approved by DEQ pursuant to Oregon Revised Statute (ORS) Chapter 465.

(C) The prohibition set forth in subsection (A) of this section shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the Oregon Department of Environmental Quality under the authority of the Federal Environmental Protection Agency; provided, that the discharger is in full compliance with all requirements of the

permit, waiver, or order and other applicable laws and regulations; and provided, that Linn County has granted written approval for any discharge to the public storm drainage and surface water system.

[Adopted 23-327 eff 09/01/23]

#### **860.110 Prohibition of illicit connections**

The construction, use, maintenance or continued existence of illicit connections to the public storm drainage and surface water system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

[Adopted 23-327 eff 09/01/23]

#### **860.115 Waste disposal prohibitions**

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drainage and surface water system, UICs, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

[Adopted 23-327 eff 09/01/23]

#### **860.120 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of the permit. Failure to comply with all provisions shall constitute a violation of this chapter. Proof of compliance with the permit may be required in a form acceptable to the Director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any en-

forcement proceeding or action; or for any other reasonable cause.

[Adopted 23-327 eff 09/01/23]

#### **860.125 Waterway protection**

Every person responsible for property through which a waterway passes shall maintain and stabilize that portion of the waterway that is within the responsible person's property lines in order to protect against erosion and degradation of the waterway originating from the property. "Maintain" and "stabilize" as used in this section means keeping that portion of the waterway that is within the property lines free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the waterway. "Maintain" also includes the maintenance of existing privately owned structures within or adjacent to a waterway, so that the structures will not become a hazard to the use, function, or physical integrity of the waterway. "Erosion" as used in this section includes the removal of bank vegetation that will result in bare slopes subject to erosion. This chapter shall not be interpreted to restrict a person responsible for property from enhancing or establishing the planting of riparian buffers or to perform maintenance within those areas.

[Adopted 23-327 eff 09/01/23]

#### **860.130 Requirement to monitor and analyze**

The Director may require by written notice to the property owner that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution, illicit discharges, and/or non-stormwater discharges to the public stormwater drainage, groundwater and surface water systems, UICs, or waters of the state, to undertake at the owner's expense any monitoring and analyses and furnish any reports to the Director as deemed necessary to determine compliance with this chapter.

[Adopted 23-327 eff 09/01/23]

#### **860.135 Illicit discharge procedure**

Notwithstanding any other requirements of law, as soon as any person responsible for a

facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into the public stormwater drainage, groundwater and surface water systems, or waters of the state from the facility, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of the release. Upon discovery of any illicit discharge, the responsible person shall immediately notify the Director.

[Adopted 23-327 eff 09/01/23]

#### **860.140 Authority to inspect**

When the Director determines it is necessary to make an inspection to enforce any provision of this chapter, the Director may enter those premises to inspect them and to inspect and copy records related to stormwater compliance. The Director shall provide a written request to enter and inspect the premises by delivering the request to a responsible person or by posting the request at a conspicuous location on the premises. If a responsible person refuses entry or fails to respond to the request, the Director may seek warrant or other assistance from any court of competent jurisdiction in obtaining entry.

[Adopted 23-327 eff 09/01/23]

#### **860.145 Suspension of access**

Linn County may, without prior notice, suspend access to the stormwater system when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the stormwater system, or Waters of the State.

If the violator fails to comply with a suspension order, the County may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, prevent or minimize danger to the environment, or to prevent or minimize danger to persons.

[Adopted 23-327 eff 09/01/23]

#### **860.150 Authority to sample, establish sampling devices, and test**

During any inspection, pursuant to this chapter, the Director may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

[Adopted 23-327 eff 09/01/23]

#### **860.155 Requirement to eliminate illicit discharges**

Notwithstanding the requirements of LCC 860.420, the Director may require by written notice that a person responsible for an illicit discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges. Failure to comply with the requirements of the notice within the time stated shall constitute a violation of this chapter.

[Adopted 23-327 eff 09/01/23]

#### **860.160 Requirement to eliminate or secure approval for illicit connections**

(A) The Director may require by written notice that the property owner with an illicit connection to the public stormwater drainage, groundwater and surface water systems comply with the requirements of this chapter to either eliminate the connection or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of the ordinance codified in this chapter.

(B) If, subsequent to eliminating a connection found to be in violation of this chapter, the property owner can demonstrate that an illicit discharge will no longer occur, the owner may request Linn County's approval to reconnect. The reconnection or reinstallation of the connection shall be at the property owner's expense.

[Adopted 23-327 eff 09/01/23]

#### **860.165 Requirement to remediate**

Whenever the Director finds that a discharge of pollutants is taking place or has occurred that

will result in or has resulted in pollution of stormwater, the stormwater drainage, groundwater and surface water systems, or waters of the state, the Director may require by written notice to the property owner that the pollution be remediated and the affected property restored within a specified time. Failure to comply with the requirements of the notice within the time stated shall constitute a violation of this chapter.

[Adopted 23-327 eff 09/01/23]

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### III. POST-CONSTRUCTION RUNOFF CONTROL

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#### **860.205 Engineering standards**

The stormwater quantity and quality treatment engineering standards (“the Linn County Stormwater Management Program Manual”) shall specify exactly what kinds of permanent stormwater treatment facilities are required (if any) for a developed site.

[Adopted 23-327 eff 09/01/23]

#### **860.210 Stormwater management and design**

Stormwater management and design calculations are required for project sites inside a stormwater management area if construction site activity(ies) will create or replace at least 1/4 acre (10,890 square feet) of impervious surface, either in isolation or as part of a common plan of development.

[Adopted 23-327 eff 09/01/23]

#### **860.215 Permit required**

(A) The Linn County Stormwater Management Program shall establish under what circumstances an on-site stormwater drainage permit is required inside a stormwater management area. The permit shall require an applicant to install any applicable stormwater treatment facilities as required by the Linn County Stormwater Quality Treatment Engineering Standards in effect on the date of the applicant’s application for a stormwater permit.

(B) For project sites discharging stormwater

to the stormwater management area that create 1 acre (43,560 square feet) or more of land disturbance area, the permit shall include a required operation and maintenance plan and checklist, and an operation and maintenance agreement.

[Adopted 23-327 eff 09/01/23]

#### **860.220 Permit fee**

The County may establish a fee for review of plans and inspections required by this chapter by order of the Board of Commissioners. The Board of Commissioners shall set the fee to recover the engineering department costs of providing an applicant’s stormwater permit, inspections, and plan review.

[Adopted 23-327 eff 09/01/23]

#### **860.225 On-site stormwater drainage plan**

(A) An on-site stormwater drainage plan is required for all on-site stormwater drainage permits. The plan must be submitted by the applicant and approved by the Director for issuance of the on-site stormwater drainage permit, prior to the issuance of a stormwater permit and commencement of work at the construction site. The plan must contain protection techniques that will eliminate runoff siltation created after the completion of the development. Site-specific considerations shall be incorporated.

(B) If landscaping is part of the stormwater treatment facilities, then the applicant must prepare and submit for approval with the on-site stormwater drainage plan a detailed landscaping plan for management of vegetation at the site after construction, which shall be attached to the maintenance agreement and the operations and maintenance plan. The landscaping plan shall include a description of what practices will be employed to ensure that adequate vegetation cover is preserved.

(C) The Road Department shall perform at least one inspection of stormwater treatment facilities required under an on-site stormwater drainage permit during installation to ensure compliance with this chapter and the permit. The Road Department shall perform at least one inspection of stormwater treatment facilities

required under an on-site stormwater drainage permit shortly after completion of installation to ensure compliance with this chapter and the permit.

[Adopted 23-327 eff 09/01/23]

**860.230 Maintenance responsibilities**

Unless otherwise approved by the County, the owner shall maintain stormwater treatment facilities which serve a single-family residence or serves a residential development or local access road(s) created pursuant to a stormwater permit application submitted after the effective date of the ordinance codified in this chapter.

[Adopted 23-327 eff 09/01/23]

**860.235 Operation & maintenance agreement**

(A) An applicant for a nonresidential development or a single-family residence with a stormwater treatment facility that serves the residence exclusively, which is required to obtain an on-site stormwater drainage permit, shall execute an Operation and Maintenance Agreement, found in Appendix A, to ensure that the stormwater treatment facilities function consistently with the Linn County stormwater quality treatment engineering standards in effect on the date of the applicant’s application for a stormwater permit. This agreement will:

- (1) Authorize Linn County Road

Department staff to access the stormwater treatment facilities at the site for the purpose of inspection to ensure continued compliance with the Linn County engineering design standards in effect on the date of the applicant’s application for stormwater permit.

(2) For a nonresidential development, require the current owner to have an operations and maintenance plan available on site at all times. The current owner shall keep a record of maintenance and repairs for the last five years, which shall be available for inspection at a reasonable time and in a reasonable manner by Linn County Road Department staff.

(3) Expressly run with the land and be binding on applicant’s successors and assigns.

- (4) Authorize Linn County Road

Department staff to enter the subject property in order to make any repairs necessary, at the owner’s expense, to restore the stormwater treatment facilities at the site to a condition consistent with the Linn County stormwater quality treatment engineering standards in effect on the date of the applicant’s application for stormwater permit in the event that the present condition of the stormwater treatment facilities poses an imminent threat to the public health, safety, or welfare.

(B) Appendix A, found at the end of this Chapter, is not adopted as part of this Chapter and may be revised for legal content and approved by Board resolution from time to time

(C) After an applicant executes a maintenance agreement, the applicant shall record the maintenance agreement in the Linn County real property deed records at property owners expense.

(D) Any violation of an executed maintenance agreement shall constitute a violation of this chapter.

[Adopted 23-327 eff 09/01/23]

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**IV. CONSTRUCTION EROSION AND SEDIMENT CONTROL**

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**860.305 Erosion and sediment control manual**

The County Engineer is authorized to develop, implement, and maintain an Erosion and Sediment Control Manual. This manual, and such other resources as the County Engineer may deem necessary, will provide technical guidance for the design, installation, maintenance, and inspection of temporary and permanent erosion prevention and sediment control best management practices.

[Adopted 23-327 eff 09/01/23]

**860.310 Permit required**

An erosion prevention and sediment control permit is required inside a stormwater management area if construction site activity(ies) will disturb at least one quarter of an acre (10,890

square feet) of land, either in isolation or as part of a common plan of development.

[Adopted 23-327 eff 09/01/23]

### **860.315 Permit fee**

The County may establish a fee for review of plans and inspections required by this chapter by order of the Board of Commissioners. The Board of Commissioners shall set the fee to recover the Road Department costs of providing an applicant's erosion prevention and sediment control permit, inspections, and plan review.

[Adopted 23-327 eff 09/01/23]

### **860.320 Erosion prevention and sediment control plan**

(A) An erosion prevention and sediment control plan is required for all erosion prevention and sediment control permits. The plan must be submitted by the applicant and approved by the County Engineer for issuance of the erosion prevention and sediment control permit, prior to the issuance of a Linn County permit or exemption approval and commencement of ground disturbing activities. The plan must contain protection techniques that will eliminate runoff siltation created from the construction activity both during and after construction. Site-specific considerations shall be incorporated.

(B) For Major Land Disturbance Activities, the erosion prevention and sediment control plan must include sizing criteria, performance criteria, design specifications, guidance on selection and placement of controls, and specifications for long-term operation and maintenance, including appropriate inspection intervals and a self-inspection checklist.

(C) The County may require that the applicant design and construct a temporary drainage system that will ensure any off-site impacts caused by the construction site activity can be mitigated.

(D) The County may perform inspections to ensure compliance with this chapter at the discretion of the County Engineer.

(E) The erosion prevention and sediment control plan is required to be kept on site and

available for review by inspectors.

(F) The erosion prevention and sediment control plan must include clear steps for project phase completion, final stabilization, and permit closure.

[Adopted 23-327 eff 09/01/23]

### **860.325 Construction site deposits on public streets and into storm drains**

No person shall cause or allow visible and measurable erosion or sediment related to construction site activity inside a stormwater management area as defined herein to enter the public storm drainage and surface water system. Any person causing visible and measurable erosion or sediment shall immediately abate or remove it. The removal shall be accomplished by hand labor or approved mechanical means.

[Adopted 23-327 eff 09/01/23]

### **860.330 Maintenance**

(A) The applicant shall maintain all erosion and sediment control measures in proper functioning order for the duration of the ground disturbing activities or until adequate ground cover has been established.

(B) The applicant shall inspect, maintain, adjust, repair, and replace erosion and sediment control measures as necessary within 24 hours following a storm event to ensure that the measures are functioning properly.

(C) During active ground disturbing activity, the applicant shall inspect and maintain erosion and sediment control measures weekly or within 24 hours of a storm event.

(D) The erosion prevention and sediment control plan must be maintained and updated as site conditions change, to prevent sediment or pollutant contaminated water from leaving the site.

(E) Permit finalization requires one of the following to be achieved:

(1) Individual lots or phases of a qualifying common plan of development obtain individual erosion prevention and sediment control permit coverage prior to the issuance of Linn County permit(s) or exemption approval(s). The

Director shall be notified of sale of individual lots or phases of a common plan of development no less than 14 calendar days prior to the date of closing. Until such time as an individual erosion prevention and sediment control permit is obtained, the lot or phases sold shall continue to be the responsibility of the overall development's erosion prevention and sediment control permit; or,

(2) Final stabilization.

[Adopted 23-327 eff 09/01/23]

### **860.335 Stop work orders**

(A) In the event there is a violation of this chapter and it is necessary to obtain compliance with this chapter, the Director may issue a stop work order requiring that all work, except work directly related to the elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, the applicant shall not resume work until such time as the Director gives specific approval in writing. The stop work order shall include:

- (1) The date of the stop work order;
- (2) The erosion prevention and sediment control permit and/or permit or exemption approval number if applicable;
- (3) The site address, legal description or location applicable to the stop work order;
- (4) A description of all violations; and
- (5) The conditions under which the work may resume.

(B) The stop work order shall be in writing and posted in a conspicuous location at the site. Other means of communication of the stop work order may be exercised in the discretion of the Director.

(C) No person may remove, obscure, mutilate or otherwise damage a stop work order.

(D) A stop work order shall be effective upon posting or upon verbal delivery under subsection (E) of this section.

(E) When an emergency condition exists, the Director may issue a stop work order verbally. A written stop work order shall be posted in a conspicuous location at the site within 24 hours of

the verbal order.

[Adopted 23-327 eff 09/01/23]

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## **V. ENFORCEMENT**

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### **860.405 Falsifying information**

No person shall knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter.

[Adopted 23-327 eff 09/01/23]

### **860.410 Notice of violation**

(A) Whenever the Director finds that a person has violated a provision of this chapter, the Director may order compliance by written notice of violation to the property owner. The notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) The cessation of all violating discharges, practices, or operations;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (5) The implementation of source control or treatment BMPs supplied by the Director.

(B) The notice shall:

- (1) Describe the property by street address or tax lot number;
- (2) Describe the nature of the violation;
- (3) State by a date certain when the property owner must correct the violation in a manner acceptable to the Director;
- (4) Inform the owner that if the violation is not corrected the County shall either complete the repairs, pursue abatement or cite the owner, as appropriate;
- (5) Inform the property owner that if the County performs the necessary abatement or

repairs, the County will bill the property owner for the costs;

(6) Include an estimate of the costs anticipated for the County to cause abatement or repair for the correction of the violation;

(7) Inform the property owner that failure to pay the County for its costs to correct the violation will result in filing of a lien on the property;

(8) Inform the property owner of the rights spelled out in LCC 860.430 and 860.435, including the right to a hearing, and individuals the property owner may contact for additional information.

(C) The notice shall be served on the property owner by personal service consistent with ORCP 7D(2)(a).

(D) If a stormwater treatment facility is maintained by the County pursuant to LCC 860.105, the owner is not responsible for violations of this chapter other than violations caused by the owner.

[Adopted 23-327 eff 09/01/23]

#### **860.415 Abatement and/or repair of violation**

If the property owner has not corrected the violation as directed within the time allowed in the notice given pursuant to LCC 860.120, the Director may take all measures necessary to abate the violation and/or restore the property. The Director or persons authorized by the Director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court-issued warrant.

[Adopted 23-327 eff 09/01/23]

#### **860.420 Emergency abatement**

The Director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public. The Director or persons authorized by the Director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court issued warrant.

[Adopted 23-327 eff 09/01/23]

#### **860.425 Collections of costs**

(A) The County may collect all costs associated with the repair or abatement of a violation, or both, from the property owner.

(B) The County shall keep detailed records of all costs associated with the abatement or repair due to a violation of this chapter.

(C) Upon completion of the abatement or repair of the violation by the County, a notice of final costs shall be served on the owner by personal service consistent with ORCP 7D(2)(a). Payment must be made within 30 days from the date of the notice of final costs. The notice must contain the following:

(1) The total cost of repair or abatement, or both;

(2) A statement that the total cost may be filed as a lien with the County Clerk unless paid within 60 days from the date of the hearings officer's order described in LCC 860.440; and

(3) A statement that the owner may contest the charges at a hearing that will be scheduled on the matter pursuant to LCC 860.440.

[Adopted 23-327 eff 09/01/23]

#### **860.430 Hearing request**

A property owner who is served with a notice of violation as described in LCC 860.410, may request a hearing before the Linn County hearings officer. Hearing requests must be filed in writing with the Linn County hearings officer within five business days from the date the notice was served.

[Adopted 23-327 eff 09/01/23]

#### **860.435 Hearing on notice of violation**

(A) Upon receiving a written request for a hearing pursuant to LCC 860.430, the hearings officer, or their designee, shall set a time and place for a hearing that shall be no more than seven days from the date of filing of the hearing request, or as soon as practicable. The hearings officer, or their designee, shall notify the person requesting a hearing of the time and date of the hearing. The Director, or their designee, shall appear and present evidence pertinent to the alleged violation and its abatement or repair. The owner of the property may also present evidence

before the hearings officer, or their designee, pertinent to the alleged violation and its abatement or repair. The County shall have the burden of proving by a preponderance of the evidence that a violation exists and must be abated or repaired.

(B) Failure of the person requesting hearing to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.

(C) After the hearing, the hearings officer, or their designee, shall issue an order containing findings as to whether the alleged violation does not or does in fact exist, the extent to which the violation exists and (if abatement or repair is required) shall set a date for abatement or repair to be accomplished by the owner. The hearings officer, or their designee's, order shall be issued within 10 days of the date of the hearing or as soon as practicable.

(D) The decision of the hearings officer, or their designee, is final. Appeal shall be only by writ of review under ORS Chapter 34.

[Adopted 23-327 eff 09/01/23]

#### **860.440 Hearing on final costs**

(A) At the time the notice of final costs is sent to the property owner as described in LCC 860.425, a copy shall also be sent to the hearings officer, or their designee. The hearings officer, or their designee, shall set a time and place for a hearing that shall be no more than seven days from the date of receipt of the notice of final costs by the hearings officer, or their designee, or as soon as practicable. The hearings officer, or their designee, shall notify the property owner and the Director of the time and date of the hearing. The only issue at the hearing shall be the reasonableness of the cost of abatement or repairs.

(B) Failure of the property owner to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.

(C) After the hearing, the hearings officer, or their designee, shall issue an order within 10 days of the date of the hearing, or as soon as practicable, detailing the amount of the final costs that the owner must pay, if any. The hearings officer, or their designee's, order shall also indi-

cate that the final costs must be paid within 30 days and if they are not paid within 60 days, the County may record a lien in the County Clerk lien record.

(D) The hearings officer, or their designee's, order of determination shall be final and binding. Appeal shall be only by writ of review under ORS Chapter 34.

[Adopted 23-327 eff 09/01/23]

#### **860.445 Lien record filing**

If final costs are not paid within 60 days of the hearings officer, or their designee's, order requiring payment of final costs, the enforcement officer shall record a lien with the Linn County Clerk or any other county clerk of this state. The total amount of final costs shall be recorded as a lien in the County Clerk lien record. The lien provided for herein shall be foreclosed in the manner prescribed by state law for the enforcement of liens. Nothing in this section precludes the County from taking other action to collect the final costs.

[Adopted 23-327 eff 09/01/23]

#### **860.455 Enforcement**

The provisions of this chapter are enforceable pursuant to Chapter 240 LCC.

[Adopted 23-327 eff 09/01/23]

#### **860.460 Other remedies**

The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law including equitable relief and damages.

[Adopted 23-327 eff 09/01/23]

#### **860.465 Fees**

The board of commissioners may adopt fees necessary to support the stormwater program by board order.

[Adopted 23-327 eff 09/01/23]

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## VI. PENALTIES

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### 860.905 Penalties

(A) Any person who is cited for a violation of this chapter shall be subject to a Class A violation under LCC 240.900 (C) - (D).

(B) Each day that this chapter is violated shall constitute a separate violation under LCC 240.900 (F).

[Adopted 23-327 eff 09/01/23]

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### Statutory References and Other Authorities:

40 CFR § 122.34, § 35.2005; ORS Ch. 203, Ch. 465; LCC Ch. 240

### Legislative History of Chapter 400:

Adopted 23-327 eff 09/01/23

Amendments to \_\_\_\_\_:

#1

#2

#3

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