

ARTICLE V. - STANDARDS FOR EROSION CONTROL

Sec. 32-301. - Soil and water erosion control.

Sec. 32-302. - Wind erosion control.

Secs. 32-303—32-399. - Reserved.

Sec. 32-301. - Soil and water erosion control.

- (a) Under this chapter, temporary ponding and terracing is recommended for construction sites during grading operations and measures should be continued until final paving, wall construction and landscaping is in place.
- (b) Ponding below natural grade is encouraged (depressed storage). Construction of dikes to control runoff is not acceptable due to possible dike failure resulting in washouts and greater drainage problems than the original runoff presented.

(Ord. No. 1789, § I, 4-3-00)

Sec. 32-302. - Wind erosion control.

- (a) *Purpose and intent of this article.* The purpose of this section of article V is to protect and maintain the natural environment and to reduce the health effects caused by the creation of fugitive dust, more specifically PM10, consistent with the policies of the city's comprehensive plan and the natural events action plan for Dona Ana County. This article shall accomplish the requirements of these planning documents by preventing or limiting the activities that create fugitive dust, more specifically the operations and activities associated with new or existing construction and development.

The intent of this section of article V is to prevent the contribution of man-made dust production on a regular basis. This chapter is also intended to realize that **fugitive dust creation does occur due to the natural environment and natural events however when careful and effective dust control measures are implemented on those sources which by their nature are prone to dust creation, the overall impact from these natural events can be lessened.** ~~when natural events do occur, such as fugitive dust creation through high winds, the contribution of man-made dust is limited in its negative health and safety impacts. Also, the actions required within this article are not intended to cease all man-made dust generation activities when such natural events occur and the actions taken to reduce dust generation may be overcome by the natural occurrence.~~

- (b) *Applicability.* The provisions of this ordinance shall apply to any activity, equipment, operation and/or practice, man-made or man-caused, capable of generating fugitive dust.
 - (1) Exemptions: Any person seeking an exemption from any of the provisions of this article shall submit a petition to the city building official for approval. The following activities are automatically exempted from the provisions of this article:
 - a. Regular agricultural operations, including cultivating, tilling, harvesting, growing, the raising of farm animals or fowl, excluding unpaved roads associated with such

operations.

- b. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.
- c. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water and sewage during service outages and emergency disruptions.
- d. Temporary use of unpaved roads and parking lots which generate less than 20 vehicle trips per day for less than three successive calendar days.
- e. This article shall not apply when wind speeds exceed twenty-five (25) miles per hour as recorded by the National Weather Service. NOTE: this exception does not apply if control measures have not been taken and maintained or were not commensurate with the size or scope of the emission source.**
- f. This article shall not apply to the generation of airborne particulate matter from undisturbed lands.**

(2) **Dust Control Plan** *submittal and requirements.* In addition to standards established in subsequent sections of this article, if the construction, and demolition operation or activity are subject to this article V, a **Dust Control Plan (DCP)** shall be required. ~~The **DCP** control plan or description requirements may be separate documents or incorporated as part of required building and/or construction plans.~~ **shall be submitted as a separate document.** The following shall constitute the minimum information required within the control plan **DCP** or **and** description for reasonably available control measures (RACMs) as part of building and/or subdivision construction.

- a. Name(s), address(es) and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the control plan and responsible for the dust generating operations.
- b. A plot plan or plat of survey of the site which describes:
 - 1. The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
 - 2. The operation(s) and activities to be carried out on the site;
 - 3. All actual and potential sources of fugitive dust emissions on the site;
 - 4. Delivery, transport and storage areas for the site, including types of materials stored and size of piles.
- c. A description of RACMs or combination thereof to be applied during all periods of dust generating operations **and periods of inactivity** to each of the fugitive dust sources described on the plot plan or plat. For each source identified **a primary and contingency control measure must be identified and** at least one control measure must be implemented. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:

1. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;
 2. The specific surface treatment(s) and/or other RACMs utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces; and
 3. For each fugitive dust source at least one auxiliary RACM designated as a contingency measure shall be described in the original control plan. Should the original RACM in the control plan prove ineffective, immediate and effective implementation of the contingency measure shall obviate the requirement of submitting a revised control plan.
- (3) ***Dust Control Plan review and approval.*** Review and approval of the RACMs shall be the responsibility of the building official or designee. Approval may be conditioned to requiring additional measures, actions, or other activities, in addition to those actions proposed within the control plan documentation.
- (4) ***Implementation.*** Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined RACMs contained within the ~~DCP control plan~~ or description shall mandate the implementation of said RACMs by the developer, contractor, builder, owner, and/or agents as part of construction activities.
- (5) ***Other violation prohibited.*** Implementation of RACMs shall not allow the creation of other violations of these design standards or other provisions of the Municipal Code.
- (c) ***General and non-construction activity standards.***
- (1) No person shall cause, allow, or permit diffusion of visible emissions of fugitive dust, beyond the property boundary line within which the emissions become airborne, without taking reasonably necessary and feasible precautions to control generation of airborne particulate matter. Sources may be required to temporarily cease the activity or operation which is causing or contributing to the emissions until reasonably necessary and feasible precautions are taken.**
- ~~(42)~~ ***Ground cover removal prohibited.*** No person shall disturb the topsoil or remove ground cover on any real property within the city limits and thereafter allow the property to remain unoccupied, unused, vacant or undeveloped **for more than seven (7) days** unless ~~reasonable actions~~ **reasonably necessary and feasible precautions** are taken to prevent generation of dust **in accordance with section 1 above.**
- ~~(23)~~ ***Vacant land—Weed eradication and dust suppression.***
- a. For all vacant or undeveloped lots, weed eradication is limited to removal of specific weeds only through mowing or ~~hoeing~~ and not the removal of natural vegetation. Clearing of the entire lot is prohibited. **Water or a dust suppressant**

shall be applied before and during the activity.

- b. Once weeds are removed or mowed, dust suppression ~~shall~~ can be achieved through watering, chemical suppressant application, **application of gravel**, or the expansion of natural, non-weed vegetation areas on the site. Expansion of natural vegetation areas is encouraged.
- c. Natural vegetation shall consist of those plant varieties that are indigenous to New Mexico or that are determined to be native or natural plant varieties by the city's community development department.
- (34) *Storage of materials and material transport.* **No person shall cause, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions to prevent the creation of fugitive dust.** Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, **or applied with a chemical dust suppressant**, or otherwise treated to prevent fugitive dust creation. **Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.**
- (45) *Parking time delay agreements.* For businesses that require an approved parking time delay agreement and corresponding business license with the city, the agreement shall include **submission of a DCP and** implementation of RACMs during the two year delay period prior to pavement installation. **All parking areas with an approved parking time delay must be surfaced in accordance with the provisions of Section 38-58 (e)(4) of the Las Cruces Municipal Code.**
- (56) *Unpaved parking lots and roadways.* **No person shall cause, allow or permit the use, repair, construction or reconstruction of an unpaved parking lot or roadway without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.** Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or otherwise treated to prevent fugitive dust creation. Existing, non-conforming, unpaved parking lots and roadways shall be brought into conformance in accordance with the provisions established for the expansion of non-conforming uses and structures within the zoning code, as amended, and the **DCP** ~~control plan~~ requirements of this article. **At a minimum all unpaved parking lots shall be covered with gravel or crusher fines on top of compacted base course.**
- (67) *Existing operations.* For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations which may continuously generate fugitive dust, individual **DCP's** ~~control plans~~ with corresponding RACMs shall be submitted to the community development department for approval. Approval shall be made by the building official/community development director or designee and shall be communicated in writing to the property/business owner. Letters of approval and approved control plans shall be kept at the property subject to this provision. **A new DCP shall be submitted**

annually and reviewed for effectiveness. The provisions of the approved DCP shall be implemented as needed to eliminate the creation of excessive amounts of airborne fugitive dust or particulate matter.

- (d) *Design and construction standards.* These standards shall apply for all design and construction activities on real property within the city limits including, but not limited to, subdivisions, large lot residential, office, commercial, and industrial building construction.

No person shall cause, allow, or permit a building or its appurtenances, or a building or subdivision site to constructed, used altered, repaired, demolished, cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust shall be kept to a minimum by good modern practices such as using an approved dust suppressant or soil stabilizer, paving, covering, landscaping, continuous wetting, controlling access and speeds, or other acceptable means.

(1) *Subdivision requirements.*

- a. For all subdivisions, **a DCP** RACMs shall be **prepared, submitted** outlined and approved as part of the overall review of the subdivision construction drawings through the community development department.
- b. Developers of the subdivision shall be allowed to grade for the subdivision only after complete subdivision construction drawing approval and permit issuance. No separate grading permits shall be allowed **nor shall any grading be allowed beyond the phase of the development that is under construction.**

Exception: An expanded scope of grading may be considered provided the developer submits a DCP for the area of grading outside of the phase of development which outlines effective dust control methods and provides a bond to cover the expense of implementation and maintenance of the DCP.

- c. **The developer shall construct all perimeter walls to a minimum height of four (4) feet for the subdivision as part of the infrastructure requirements for the development to control fugitive dust. In addition any interior walls that run predominantly north-south should be constructed to create wind breaks and buffers.**

Exception: The perimeter and interior walls may be omitted from the subdivision infrastructure requirement if the developer can provide an alternative method of controlling erosion and fugitive dust that is at least as effective as the permanent walls would provide. This exception may be considered by the Development Review Committee with the recommendation of the Building Official or designee.

- d. **Trackout control is required to be placed at the designated exits for all developments with two (2) acres or more of disturbed surface or any development in which bulk material of 100 cubic feet or more is being hauled off-site. Trackout controls may be provided using the following:**

- i. Gravel pad, consisting of a layer of washed gravel, rock or crushed rock at least one inch in diameter; 30 feet wide, 50 feet long (or as long as the longest haul truck).
- ii. Grizzly, 20 feet long with bars being at least 3 inches tall and spaced 6 inches apart.
- iii. Wheel washers or pressure sprayers.
- iv. Other approved method.

Trackout devices shall be routinely cleaned or replaced as necessary to maintain effectiveness. Any bulk material or dirt tracked onto a public right-of-way shall be cleaned up within 24 hours.

- e. The developer shall be responsible for ensuring that dust control measures in accordance with the approved DCP are maintained until such time as the development is 90% built out. A bond shall be provided sufficient to cover the cost of maintaining the control measures.
- ef. Letters of credits **or bonds** for all construction activities of the subdivision shall reflect the necessary cost of implementing RACMs for dust suppression.

(2) *Large lot residential, office, commercial, and industrial construction requirements.*

For all large lot residential properties, in which the total area is greater than or equal to one-half acre, and for all office, commercial, industrial, institutional, or governmental construction activities, **a DCP shall be prepared, submitted and reviewed** RACMs shall be outlined and approved as part of the building permit by the community development department.

- a. Trackout control is required to be placed at the designated exits for all construction sites with two (2) acres or more of disturbed surface or any development in which bulk material of 100 cubic feet or more is being hauled off-site. Trackout controls may be provided using the following:
 - i. Gravel pad, consisting of a layer of washed gravel, rock or crushed rock at least one inch in diameter; 30 feet wide, 50 feet long (or as long as the longest haul truck).
 - ii. Grizzly, 20 feet long with bars being at least 3 inches tall and spaced 6 inches apart.
 - iii. Wheel washers or pressure sprayers.
 - iv. Other approved method.

Trackout devices shall be routinely cleaned or replaced as necessary to maintain effectiveness. Any bulk material or dirt tracked onto a public right-of-way shall be cleaned up within 24 hours.

- ba.** Grading activities shall only be allowed to commence after building plan approval and permit issuance. ~~No separate grading or site only development permits shall be granted.~~ **Site only development permits may be considered pursuant to the following:**
- i.** **The site is three (3) acres or less.**
 - ii.** **Dust emissions on the affected lot must be permanently suppressed by providing the required landscaping and paving all required parking areas and driving aisles. All disturbed building pads must be suppressed as to prevent the creation of fugitive dust until such time as building placement occurs.**
 - iii.** **The anticipated amount of time between site development and building construction is thirty (30) days or less. If more than thirty days passes the building pad sites shall be vegetated or covered with gravel at least one inch in diameter or as sufficient to suppress the creation of fugitive dust.**
- cb.** Letters of credits **or bonds sufficient to cover the anticipated costs** for dust control plan implementation for the building **or property** may be necessary to ensure implementation **and maintenance** of RACMs for dust suppression.
- (3) *Cessation of operations.* Once construction has commenced, ~~the disturbed area cannot sit for more than ten successive calendar days. RACMs must be outlined and implemented for all disturbed areas during periods of ceased operations more than two successive calendar days and less than ten successive calendar days.~~ **stabilization measures must be taken to ensure that fugitive dust creation is suppressed during any period of inactivity; to include weekends, after-hours and holidays. Permanent stabilization via re-vegetation, landscaping, paving or the provision of chemical dust suppressants or wetting shall be required for properties once the inactive period exceeds thirty (30) days.**
- (4) *City construction projects.* Construction activities by the city shall require **the provision of a DCP** ~~RACMs outlined within~~ **with** the construction drawings. This applies to those projects not part of a subdivision, i.e., road reconstruction or utility replacements, or buildings not issued building permits by the city, i.e., new city buildings or utility substations. Compliance to **the** DCP and outlined ~~such~~ RACMs shall be the responsibility of the contractor and subject to verification by the public works department, utilities department or community development department's building/project inspectors or the city architect's staff.
- (e) *Reasonably available control measures (RACMs).* Reasonably available control measures **are methods which can be utilized to effectively limit the creation of fugitive dust and dust emissions. RACMs are to be identified within the Dust Control Plan and once**

approved need to be implemented in accordance with this article for all **dust generating activities** ~~construction activities~~ within the city limits. **RACMs** shall include, but not be limited to:

- (1) Designing subdivisions or building sites to utilize existing, pre-development grades;
 - (2) Watering disturbed areas on a regular and minimum basis throughout daily construction activities, **including periods of inactivity**;
 - (3) Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
 - (4) Constructing wind barrier ~~snow and/or wind~~ fences. **Such fencing should be between three (3) feet and five (5) feet in height with 50% or less porosity and be placed adjacent to roadways or property boundaries to reduce the amount of windblown material leaving a site. The barriers may also be placed within a site to create wind buffers. Unreinforced silt fencing will not be accepted as an effective wind barrier**;
 - (5) Re-seeding or re-vegetation of graded or disturbed areas;
 - (6) Grading for street and utility placement only as part of subdivision construction;
 - (7) Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of all subdivisions and not part of the individual building permit for each lot. Walls shall serve as wind break and help to reduce the entrainment of dust;
 - (8) Grading the building pad site only plus five feet in all directions of the pad site;
 - (9) Retaining natural vegetation during the construction phase of buildings excluding the building pad site;
 - (10) Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
 - (11) Installing non-natural landscaping or vegetation in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation;
 - (12) Implementing any other proposed dust suppressing agent or activity approved by the building official or designee; or
 - (13) Combining any two or more of the above items.
- (f) *Corrections, effective date, and enforcement.*
- (1) *Correction of condition.* If the community development department, code enforcement section of the police department, or other personnel document that a person is in non-compliance with any of the provisions contained within the article above, he or she will notify the person of that fact and specify a period of time in which the person must achieve compliance. Failure to comply within 24 hours or as the time determined by the city constitutes grounds for a notice of violation per the city's enforcement ordinances. Correction of condition may include the amendment

of plans to reflect additional or new control measures to be taken in the event that original measures prove to be insufficient or ineffective.

- (2) *Remedial action.* The city community development department, its designated agent and any other authorized city representative, after proper notice, may enter upon any real property where dust is being generated and take such remedial and corrective action as he or she deems necessary when the owner, occupant, operator, or any tenant, lessee, or holder of any possessory interest or right in the involved land fails to do so.
- (3) *Costs.* Any costs incurred in connection with any remedial or corrective action taken by the city, pursuant to this section, shall be assessed against the owner of the property involved. Failure to pay the full amount of such incurred costs shall result in a lien against the property. The lien shall remain in full force and effect until all costs have been fully paid, which may include cost of collection and reasonable attorney fees.
- (4) *Effective date.* For all existing emission sources governed by this article, the activity must be completed within ~~six months~~ **one month** of the effective date or be brought into full compliance. For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations, the dust control provisions of this article shall be submitted in writing, approved, and implemented within ~~six months~~ **one month** of the effective date of this article.
- (5) *Liability.* All persons owning, operating, or in control of any equipment or property who shall cause, permit, or participate in, any violation of this article shall be individually and collectively liable to any penalty or punishment imposed by and under the municipal code for the city.
- (6) *Offenses.* Any person who violates any provision of this article, including, but not limited to, any application requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, or any requirements by the city is guilty of a misdemeanor and shall pay civil penalty levied by the court of competent jurisdiction. Each day of violation constitutes a separate offense.

(Ord. No. 1789, § I, 4-3-00; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 32-303—32-399. - Reserved.