

ORDINANCE NO. 09-06

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF THE CITY OF EMPORIA, KANSAS, 1983, AS AMENDED, BY ADDING ARTICLE V PERTAINING TO STORMWATER POLLUTION PREVENTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS:

SECTION 1. That the Code of Ordinances of the City of Emporia, Kansas, 1983, as amended is hereby amended by adding Article V, to Chapter 28 of the Code of the City of Emporia, Kansas which shall read as follows:

“ARTICLE V. STORMWATER POLLUTION PREVENTION

DIVISION 1. GENERAL PROVISIONS.

Sec. 28-193 Purposes.

The purpose and objectives of this Article are as follows:

- (a) To maintain and improve the quality of water impacted by the storm drainage system within the City of Emporia.
- (b) To prevent the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential, and construction sites into the storm drainage system within the City of Emporia.
- (c) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
- (d) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
- (e) To facilitate compliance with state and federal standards and permits by owners of construction sites within the City.
- (f) To enable the City to comply with all federal and state laws and regulations applicable to the National Pollutant Discharge Elimination System (NPDES) permitting requirements for stormwater discharges.

Sec. 28-194. Administration.

Except as otherwise provided herein, the City Engineer shall administer, implement, and enforce the provisions of this Article.

Sec. 28-195. Abbreviations.

The following abbreviations when used in this Article shall have the designated meanings:

- BMP - Best Management Practices
- CFR - Code of Federal Regulations
- EPA - U.S. Environmental Protection Agency
- HHW - Household Hazardous Waste
- KDHE - Kansas Department of Health and Environment
- MS4 - Municipal Separate Storm Sewer System
- NPDES - National Pollutant Discharge Elimination System
- SWP3 - Stormwater Pollution Prevention Plan

Sec. 28-196. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases as used in this Article, shall have the meanings hereinafter designated.

Best Management Practices (BMP's) here refers to management practices and methods to control pollutants in stormwater. BMP's are of two types: "source controls" (nonstructural) and "treatment controls" (structural.) Source controls are practices that prevent pollution by reducing potential pollutants at their source, before they come into contact with stormwater. Treatment controls remove pollutants from stormwater. The selection, application and maintenance of BMP's must be sufficient to prevent or reduce the likelihood of pollutants entering the storm drainage system. Specific BMP's may be imposed by the City and are discussed further in Sec. 28-203.

City means the City of Emporia, Kansas.

City Engineer – The person appointed to the position of City Engineer by the City Manager of the City of Emporia, KS or his or her duly authorized representative.

Commercial means pertaining to any business, trade, industry, or other activity engaged in for profit.

Construction Site means any location where construction activity occurs.

Contaminated means containing harmful quantities of pollutants.

Contractor means any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors, and material suppliers delivering materials to the site.

Discharge means any addition or release of any pollutant, stormwater or any other substance whatsoever into storm drainage system.

Discharger means any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any owner of a construction site or industrial facility.

Domestic Sewage means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

Earthwork means the disturbance of soils on a site associated with clearing, grading, or excavation activities.

Environmental Protection Agency (EPA) means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of the EPA or such successor agency.

Facility means any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

Fertilizer means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

Fire Protection Water means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.

Garbage means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Groundwater means any water residing below the surface of the ground or percolating into or out of the ground.

Harmful Quantity means the amount of any substance that the City Engineer determines will cause an adverse impact to storm drainage system or will contribute to the failure of the City to meet the water quality based requirements of the NPDES permit for discharges from the MS4.

Hazardous Substance means any substance listed in Table 302.4 of 40 CFR Part 302.

Hazardous Waste means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

Household Hazardous Waste (HHW) means any material generated in a household (including single and multiple residences) that would be classified as hazardous pursuant to K.A.R. 28-29-23b.

Illegal Discharge see illicit discharge below.

Illicit Discharge means any discharge to the storm drainage system that is prohibited under this Article.

Illicit Connection means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system. Industrial Waste (or commercial waste) means any wastes produced as a byproduct of any industrial, institutional or commercial process or operation, other than domestic sewage.

Mechanical Fluid means any fluid used in the operation and maintenance of machinery, vehicles and any other equipment, including lubricants, antifreeze, petroleum products, oil and fuel.

Mobile Commercial Cosmetic Cleaning (or mobile washing) means power washing, steam cleaning, and any other method of mobile cosmetic cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the City and designed or used for collecting or conveying stormwater, and not used for collecting or conveying sanitary sewage.

NPDES means the National Pollutant Discharge Elimination System.

NPDES Permit means a permit issued by EPA that authorizes the discharge of pollutants to Waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Notice of Violation means a written notice detailing any violations of this Article and any action expected of the violators.

Oil means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

Owner means the person who owns a facility, part of a facility, or land.

Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest.

Pet Waste (or Animal Waste) means excrement and other waste from domestic animals.

Petroleum Product means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

Pollutant means any substance attributable to water pollution, including but not limited to rubbish, garbage, solid waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, pet waste, animal waste, domestic sewage, industrial waste, sanitary sewage, wastewater, septic tank waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances, hazardous waste, soil and sediment.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Potable Water means water that has been treated to drinking water standards and is safe for human consumption.

Private Drainage System means all privately or publicly owned ground, surfaces, structures or systems, excluding the MS4, that contribute to or convey stormwater, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface.

Public Improvement Plans means engineering drawings subject to approval by the City Engineer for the construction of public improvements.

Qualified Person means a person who possesses the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements & generally accepted industry standards for such activity.

Release means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

Rubbish means non-putrescible solid waste, excluding ashes, that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Sanitary Sewage means the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the City sewage treatment plant for treatment.

Sanitary Sewer means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

Sediment means soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

Septic Tank Waste means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and aerated tanks.

Shall mean mandatory; may means discretionary.

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Small Quantity Generator Waste means any hazardous waste generated by a small quantity generator as defined in K.A.R. 28-31-2.

Solid Waste means any garbage, rubbish, refuse and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations, and residential, community and institutional activities.

State means The State of Kansas.

Storm Drainage System means all surfaces, structures and systems that contribute to or convey stormwater, including private drainage systems, the MS4, surface water, groundwater, Waters of the State and Waters of the United States.

Stormwater means runoff resulting from precipitation.

Stormwater Pollution Prevention Plan (SWP3) means a document that describes the Best Management Practices to be implemented at a site, to prevent or reduce the discharge of pollutants.

Subdivision Development includes activities associated with the platting of any parcel of land into two or more lots and includes all construction activity taking place thereon.

Surface Water means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow and runoff.

Uncontaminated means not containing harmful quantities of pollutants.

Used Oil (or Used Motor Oil) means any oil that as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties.

Utility Agency means private utility companies, City departments or contractors working for private utility companies or City departments, engaged in the construction or maintenance of utility distribution lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Water of the State (or water) means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

Water Quality Standard means the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or Federal regulatory standards to be necessary to protect those uses.

Waters of the United States means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act. Wetland means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard Waste means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

DIVISION 2. PROHIBITIONS AND REQUIREMENTS.

Sec. 28-201. Prohibitions.

- (1) No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed

in Sec. 28-202. Common stormwater contaminants include trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste and sediment.

- (2) Notwithstanding the provisions of Sec. 28-202, any discharge shall be prohibited by this Section if the discharge in question has been determined by the City Engineer to be a source of pollutants to the storm drainage system.
- (3) The construction, use, maintenance or continued existence of illicit connections to the storm drain system are 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.
- (4) No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste, to the storm drainage system, or allow such a connection to continue.
- (5) No person shall maliciously destroy or interfere with BMP's implemented pursuant to this Article.

Sec. 28-202. Exemptions.

The following non-stormwater discharges are deemed acceptable and not a violation of this Section:

- (1) A discharge authorized by an NPDES permit other than the NPDES permit for discharges from the MS4;
- (2) Uncontaminated waterline flushing and other infrequent discharges from potable water sources;
- (3) Infrequent uncontaminated discharge from landscape irrigation or lawn watering;
- (4) Discharge from the occasional non-commercial washing of vehicles on properties zoned or used for residential purposes.
- (5) Dechlorinated discharge of swimming pool water;
- (6) Uncontaminated discharge from foundation, footing or crawl space drains, sump pumps and air conditioning condensation drains;
- (7) Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs;
- (8) Diverted stream flows and natural riparian habitat or wetland flows;
- (9) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials.

Sec. 28-203. Requirements Applicable to Certain Dischargers.

- (1) Private Drainage System Maintenance. The owner of any private drainage system shall maintain the system to prevent or reduce the discharge of pollutants. This maintenance shall include, but is not limited to, sediment removal, bank erosion repairs, maintenance of vegetative cover, and removal of debris from pipes and structures.
- (2) Minimization of Irrigation Runoff. A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation systems shall be managed to reduce the discharge of water from a site.
- (3) Cleaning of Paved Surfaces Required. The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Article. This section does not apply to pollutants discharged from construction activities, which are regulated under Division 3 of this Article.
- (4) Mobile commercial cosmetic cleaning operations shall not discharge to the storm drainage system in violation of this Article.
- (5) Maintenance of Equipment. Any leak or spill related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants. Vehicles, machinery and equipment must be maintained to reduce leaking fluids.
- (6) Materials Storage. In addition to other requirements of this Code, materials shall be stored to prevent the potential release of pollutants. The uncovered, outdoor storage of unsealed containers of hazardous substances is prohibited.
- (7) Pet Waste. Pet waste shall be disposed of as solid waste or sanitary sewage in a timely manner, to prevent discharge to the storm drainage system.
- (8) Pesticides, Herbicides and Fertilizers. Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.
- (9) Prohibition on Use of Pesticides and Fungicides Banned from Manufacture. Use of any pesticide, herbicide or fungicide, the manufacture of which has been either voluntarily discontinued or prohibited by the Environmental Protection Agency, or any Federal, State or City regulation is prohibited.
- (10) Open Drainage Channel Maintenance. Every person owning or occupying property through which an open drainage channel passes shall keep and maintain that part of the drainage channel within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the drainage channel. In

addition, the owner or occupant shall maintain existing privately owned structures adjacent to a drainage channel, so that such structures will not become a hazard to the use, function, or physical integrity of the drainage channel.

Sec. 28-204. Release Reporting and Cleanup.

Any person responsible for a known or suspected release of materials which are resulting in or may result in illegal discharges to the storm drainage system shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a hazardous material, said person shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release. In the event of such a release of non-hazardous materials, said person shall notify the City Engineer no later than 5:00 p.m. of the next business day.

Sec. 28-205. Authorization to Adopt and Impose Best Management Practices.

The City may adopt and impose requirements identifying Best Management Practices for any activity, operation, or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMP's are required, every person undertaking such activity or operation, or owning or operating such facility shall implement and maintain these BMP's at their own expense.

DIVISION 3. STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

Sec. 28-301. General Requirements for Construction Sites.

- (1) The owner of a site of construction activity shall be responsible for compliance with the requirements of Sec. 28-201.
- (2) Waste Disposal. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of Best Management Practices. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited.
- (3) Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained on construction sites for proper disposal. Release of these materials is prohibited.
- (4) Erosion and Sediment Control. Best Management Practices shall be implemented to prevent the release of sediment from construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately if the sediment presents a traffic hazard or public safety concern.
- (5) Upon completion of permitted construction activity on any site, the property owner and subsequent property owners will be responsible for continued compliance with the

requirements of Sec. 28-201, in the course of maintenance, reconstruction or any other construction activity on the site.

Sec. 28-302. Construction Sites Requiring an Approved SWP3

This section applies to all construction sites excluding subdivision developments. Where construction on a site will disturb soil or remove vegetation on one (1) or more acres of land during the life of the construction project, an approved Stormwater Pollution Prevention Plan (SWP3) for the project must be provided and implemented by the construction site owner as follows:

- (1) The area disturbed shall be assumed to include the entire property area unless all applicable plans specifically exclude certain areas from disturbance.
- (2) The SWP3 must be provided by the owner and submitted to the City for approval. Two copies of the SWP3 shall be submitted to the City Engineer. For sites subject to plan review by the Planning Office, the plan will not be released for construction until an approved SWP3 has been obtained.
- (3) The preparation and implementation of the SWP3 must comply with Sec. 28-304.
- (4) The City Engineer will review the SWP3 submitted for the site and will return either a letter of SWP3 approval or a request for revisions within 14 days of submission of the SWP3.
- (5) Construction activity, including any soil disturbance or removal of vegetation, shall not commence on the site until the City Engineer has issued a letter of SWP3 approval.
- (6) The owner bears the responsibility for implementation of the SWP3 and notification of all contractors and utility agencies on the site.

Sec. 28-303. Subdivision Developments Requiring an Approved SWP3.

Where construction of a subdivision development will disturb soil or remove vegetation on one (1) or more acres of land during the life of the development project, approved Stormwater Pollution Prevention Plans (SWP3's) for the project must be provided and implemented by the subdivision owner as follows:

- (1) The area disturbed shall be assumed to include the entire platted area.
- (2) SWP3's must be provided by the subdivision owner and included in Public Improvement Plans submitted to the City Engineer for the development.
- (3) The preparation and implementation of all SWP3's must comply with Section 28-304.
- (4) SWP3's must be provided for all phases of development, including sanitary sewer construction, storm drainage system construction, waterline, street and sidewalk

construction, general grading and the construction of individual homes. The subdivision owner will not be required to provide an SWP3 for the activities of utility agencies within the subdivision. Utility construction is addressed in Section 28-305.

- (5) Approval of Public Improvement Plans by the City Engineer will constitute approval of the SWP3. Construction activity, including any soil disturbance or removal of vegetation, shall not commence until the Public Improvement Plans are approved for the development.
- (6) The subdivision owner shall provide a copy of the approved SWP3's to all utility agencies prior to their working within the subdivision.
- (7) The subdivision owner bears the responsibility for implementation of the approved SWP3's for all construction activity within the development, excluding construction under the control of subsequent owners of individual lots and construction managed by utility agencies.
- (8) The subsequent owner of an individual lot bears the responsibility for continued implementation of the approved SWP3's for all construction activity within or related to the individual lot, excluding construction managed by utility agencies.

Sec. 28-304. Stormwater Pollution Prevention Plans.

Preparation and implementation of Stormwater Pollution Prevention Plans for construction activity shall comply with the following:

Preparation

- (1) The SWP3 shall be prepared under the direction of a Qualified Person, as defined in Sec. 28-196 .
- (2) The SWP3 shall provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.
- (3) The SWP3 shall identify existing natural resources such as streams, forest cover and other established vegetative cover.
- (4) The SWP3 shall specify and provide detail for all BMP's necessary to meet the requirements of this Article, including any applicable BMP's that have been adopted and imposed by the City.
- (5) The SWP3 shall specify when each BMP will be installed, and for how long it will be maintained within the construction sequence. Multiple plans may be required for major phases of construction such as rough grading, building construction and final grading.
- (6) The SWP3 shall delineate all anticipated disturbed areas and specify the vegetative cover that must be established in those areas to achieve final stabilization.

Implementation

- (7) BMP's shall be installed and maintained by qualified persons. The owner or their representative shall be able to provide upon the City Engineer's or his representative's request a copy of the SWP3 on site within one hour during construction activity, or within the next business day for periods of inactivity, and shall be prepared to respond to unforeseen maintenance of specific BMP's.
- (8) The owner or their representative shall inspect all BMP's at least once per month and within the next business day after a rainfall of one quarter of an inch or more as measured at the site or generally reported in the Emporia area.
- (9) Based on inspections performed by the owner or by authorized City personnel, modifications to the SWP3 will be necessary if at any time the specified BMP's do not meet the objectives of this Article. In this case, the owner shall meet with authorized City personnel to determine the appropriate modifications. All modifications shall be completed within seven (7) days of the referenced inspection, and shall be recorded on the owner's copy of the SWP3.

Sec. 28-305. Requirements for Utility Construction.

- (1) Utility agencies shall be responsible for compliance with the requirements of Sec. 28-305.
- (2) Utility agencies shall develop and implement Best Management Practices (BMP's) to prevent the discharge of pollutants on any site of utility construction within the City. In addition, the City may adopt and impose BMP's on utility construction activity.
- (3) Utility agencies shall implement BMP's to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately if the sediment presents a traffic hazard or public safety concern.
- (4) Prior to entering a construction site or subdivision development, utility agencies shall have obtained from the owner a copy of any SWP3's for the project. Any disturbance to BMP's resulting from utility construction shall be repaired immediately by the utility company in compliance with the SWP3.

Division 4. ENFORCEMENT.

Sec. 28-401(A) Submissions from the General Public.

Members of the General Public may submit information pertaining to this Article to the City of Emporia, Office of the City Engineer. The City Engineer will consider such submissions as they

pertain to the implementation and enforcement of this Article and will provide written or verbal response to the person submitting the information.

(B) Enforcement Personnel Authorized.

The following personnel employed by the City shall have the power to issue Notices of Violations and implement other enforcement actions under this Article as provided by Charter Ordinance No. 30 of the City of Emporia:

- (1) All authorized personnel under the supervision of the City Engineer.
- (2) All inspectors under the supervision of the City Engineer.
- (3) All health officers that are authorized representatives of the Director of the Lyon County Health Department.

(C) Right of Entry and Sampling.

- (1) Whenever the City Engineer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the City Engineer or his representative shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this article. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.
- (2) The City Engineer or his representative shall have the right to set up on the property of any discharger to the storm drainage system such devices that are necessary to conduct sampling of discharges.

(D) Notice of Violation.

- (1) Whenever an authorized enforcement person determines that a person has violated a prohibition or failed to meet a requirement of this Article, the enforcement person will order compliance by written Notice of Violation to the responsible person.
- (2) The Notice of Violation shall identify:
 - (a) The name of the responsible person
 - (b) The date and location of the violation
 - (c) A description of the violation
 - (d) Actions that must be taken by the responsible person to remedy the violation
 - (e) The deadline within which the required actions must be completed
 - (f) Enforcement actions that may be taken by the City
- (3) Any person receiving a Notice of Violation may appeal the Notice to the City Engineer. The written appeal must be received by the City Engineer within 15 days of the Notice

date. The City Engineer will affirm, modify or rescind the Notice in writing, within 15 days of the date of the appeal.

- (4) Any person aggrieved by the decision of the City Engineer may appeal the decision to the City Manager by submitting a written appeal to the City Manager's Office within 15 days of the date of the City Engineer's written decision. A hearing on the appeal will be scheduled before the City Manager. The decision of the City Manager shall be final.

(E) Action without Prior Notice.

Any person who violates a prohibition or fails to meet a requirement of this Article will be subject, without prior notice, to one or more of the enforcement actions identified in (F) below, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

(F) Enforcement Actions.

Any person who fails to comply with or appeal a Notice of Violation, or fails to comply with an appeal decision of the City Commission, will be subject to one or more of the following enforcement actions:

- (1) Stop Work Order. The City Engineer may issue a Stop Work Order to the owner and contractors on a construction site, by posting the order at the construction site and distributing the order to all City departments whose decisions may affect any activity at the site. Unless express written exception is made, the Stop Work Order shall prohibit any further construction activity at the site and shall bar any further inspection or approval necessary to commence or continue construction or to assume occupancy at the site. A Notice of Violation shall accompany the Stop Work Order, and shall define the compliance requirements.
- (2) Abatement of an Illicit Connection. The City Engineer may order City representatives to terminate an illicit connection to the MS4. Any expense related to such abatement or testing costs by City representatives shall be fully reimbursed by the property owner.
- (3) Abatement of a Violation on Private Property. When a property owner is not available, not able or not willing to correct a violation, the City Engineer may order City representatives to enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.
- (4) Recovery of Costs. Within 30 days after abatement by City representatives, the City Engineer shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may protest the assessment before the City Manager. The written protest must be received by the City

Manager's Office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Manager. The decision of the City Manager shall be final. If the amount due is not paid within the protest period or within 10 days of the decision of the City Manager, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Clerk so that the Clerk may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Treasurer shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

- (5) Termination of Utility Services. After lawful notice to the customer and property owner concerning the proposed disconnection, the City Engineer shall have the authority to order the disconnection of City water, sanitary sewer and/or sanitation services, upon a finding by the City Engineer that the disconnection of utility services will remove a violation of this Article that poses a public health hazard or environmental hazard.
- (6) Performance Bonds. Where necessary for the reasonable implementation of this Article, the City Engineer may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City Engineer to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed. The owner may protest the amount of the performance bond before the City Manager. The written protest must be received by the City Manager's Office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Manager.
- (7) Criminal Prosecution. Any person who violates or continues to violate a prohibition or requirement of this Article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to criminal penalties.

(G) Criminal Penalties.

The violation of any provision of this Article shall be deemed a municipal offense. Any person violating this Article shall, upon an adjudication of guilt or a plea of no contest, be fined a minimum of \$50.00 to a maximum of \$500.00. Each separate day on which a violation is committed or continues shall constitute a separate offense.

(H) Other Legal Action.

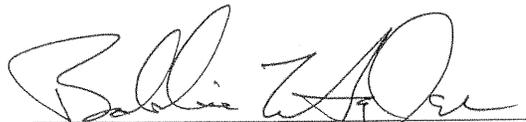
Notwithstanding any other remedies or procedures available to the City, if any person discharges into the storm drainage system in a manner that is contrary to the provisions of this Article, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in the District Court of Lyon County. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

SECTION 2. This ordinance shall take effect upon its publication in the official City newspaper.

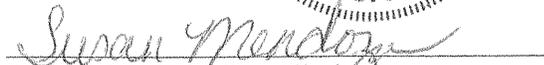
SECTION 3. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS, 1983, as amended, as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

4th PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this day of February, 2009.




Bobbie Agler, Mayor

ATTEST:


Susan Mendoza, City Clerk