

BILL NO. 1004

ORDINANCE NO. 3888

**AN ORDINANCE**

**ADOPTING** Chapter 78, Article X, Sections 78-601 through 78-621 of the Winfield Kansas Code of Ordinances relating to Regulations for Discharges into the Storm Sewer System of the City.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:**

**SECTION 1.** The Winfield Municipal Code is hereby amended by adding Chapter 78, Article X titled "Storm Water Management", which shall read as follows:

**Sec. 78-601. General Provisions.**

**A. PURPOSE:** The purpose and objective of this Chapter are as follows:

- 1) To maintain, improve and protect the quality of surface water and groundwater within the City of Winfield ("City");
- 2) To prevent the Discharge of contaminated Storm Water runoff from industrial, commercial, residential, and construction sites into the Storm Sewer System and natural waterways within the City;
- 3) To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers of the City;
- 4) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
- 5) To facilitate compliance with state and federal standards and permits by owners of industrial and construction sites within the City; and
- 6) To enable the City to comply with all federal and state laws and regulations applicable to its National Pollutant Discharge Elimination System ("NPDES") permit for Storm Water Discharges.

**B. ADMINISTRATION:** Except as otherwise provided herein, the Director of Public Works of the City is hereby designated as the City Officer, and as such is authorized and directed to implement, administer, and enforce the provisions of this Chapter, and to perform all functions and duties, and to exercise such authority and discretion, of the City Officer as prescribed under this Chapter. The Director of Public Works, with the approval of the City Manager, may delegate any of the powers, duties or functions of the City Officer.

**C. DEFINITIONS:** Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Chapter, shall have the meanings hereinafter designated. To the extent these definitions conflict with or are supplemented by any definition contained within State of Kansas ("State") or United States federal regulations applicable to discharges, such definition shall prevail over, or supplement that contained herein.

*Best Management Practices ("BMP")* means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the Pollution of Waters of the United States or the City's Storm Sewer System. The BMPs required in this Chapter

will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.

*Commencement of Construction* means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

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

*Discharge* means any addition or introduction of any pollutant, storm water, or any other liquid or other substance whatsoever into the Storm Sewer System or into Waters of the United States.

*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.

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

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

*Final Stabilization* means the status when all soil-disturbing activities at a site have been completed. This establishes a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles).

*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.

*Individual Building Sites* means and includes sites of building construction or earthwork activities.

*Industry* means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Section 11023; (d) industrial facilities required to obtain NPDES Storm Water Discharge permits due to their Standard Industrial Classification or narrative description; and (e) industrial facilities that the City Officer determines are contributing a substantial pollutant load to the Storm Sewer System, which are sources of Storm Water Discharges associated with industrial activity.

*Kansas General Permit for Storm Water Discharges Associated with Industrial Activity and Industrial General Permit* means an industrial general permit issued by KDHE and any subsequent modifications or amendments thereto.

*Kansas General Permit for Storm Water Discharges from Construction Sites and Construction General Permit* means a construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.

*NPDES Permit* means, for the purpose of this Chapter, a permit issued by the Environmental Protection Agency ("EPA") or the State authorizing the discharge of storm water pollutants to Waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-Point Source* means the source of any Discharge of a Pollutant, other than from a Point Source.

*Notice of Intent (NOI)* means any Notice of Intent required by either the Industrial General Permit or the Construction General Permit.

*Notice of Termination (NOT)* means the Notice of Termination required by either the Industrial General Permit or the Construction General Permit.

*Notice of Violation (NOV)* means a written notice provided to the Owner or Contractor detailing violations of this Chapter and any clean-up action required of the violators or other responsible party as designated herein.

*Owner* means the Person or Persons who hold(s) title, in whole or in part, to real or personal property, a Site, and/or a Facility.

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

*Point Source* means any discernable, confined, and discrete conveyance including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which Pollutants are or may be Discharged. This term does not include return flows from irrigated agriculture or agricultural Storm Water runoff.

*Pollutant* means dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water.

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

*Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Storm Sewer System or the Waters of the United States.

*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.

*Storm Sewer System* means the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curb and gutters, ditches, man-made channels, natural waterways within the City or storm drains) owned and operated by the City and designed or used for collecting or conveying Storm Water.

*Storm Water* means storm runoff, snowmelt runoff, or surface runoff and drainage.

*Storm Water Discharge Associated with Industrial Activity* means the Discharge from any conveyance which is used for collecting and conveying Storm Water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is listed as one

of the categories of facilities in 40 CFR Section 122.26(b) (14), and which is not excluded from EPA's definition of the same term.

*Storm Water Pollution Prevention Plan ("SWPPP")* means a plan required by an Industrial General Permit or the Construction General Permit and which describes and ensures the implementation of practices that are to be used to reduce the Pollutants in Storm Water Discharges associated with construction or industrial activity.

*Subdivision* means the division of a tract of land, into two or more lots or parcels for the purpose of transfer of Ownership or building development or, if a new street is involved, the division of a parcel of land. The term "Subdivision" shall include any further subdivision of a lot or parcel of land previously subdivided for sale, use or other purposes.

*Waters of the United States* shall have the same definition as that contained at 40 CFR Section 122.2, but it does not include any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

**Sec. 78-602. General Prohibition.**

- A. No Person shall introduce or cause to be introduced into the Storm Sewer System any Discharge that is not composed entirely of Storm Water, except as allowed in Subsection B.
- B. The following Discharges are allowed into the Storm Sewer System:
  - 1. A Discharge authorized by, and in full compliance with, an NPDES Permit;
  - 2. A Discharge or flow resulting from emergency fire fighting;
  - 3. A Discharge or flow of Fire Protection Water that does not contain oil or hazardous substances or materials;
  - 4. A Discharge from water line flushing;
  - 5. A Discharge or flow from lawn watering, landscape irrigation, or other irrigation water;
  - 6. A Discharge or flow from a diverted stream flow or natural spring;
  - 7. A Discharge or flow from uncontaminated pumped groundwater or rising groundwater;
  - 8. Uncontaminated groundwater infiltration;
  - 9. Uncontaminated Discharges or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
  - 10. A Discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
  - 11. A Discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of Pollutant;
  - 12. A Discharge or flow from a riparian habitat or wetland or natural spring;
  - 13. A Discharge or flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
  - 14. A Discharge that is a result of an emergency condition to mitigate damage to life or property;
  - 15. Non-Point Source agricultural Discharges, excluding Discharges from confined animal feeding operations;
  - 16. Storm Water runoff from a roof that is not contaminated by any runoff or Discharge from an emissions scrubber or filter or any other source of Pollutant; or
  - 17. Heat pump Discharge waters (residential only).
- C. Notwithstanding the provisions of Subsection B of this Section, a Discharge shall be prohibited if (a) the City Officer determines the Discharge to be a source of Pollutants to the Waters of the United

States or to the Storm Sewer System; (b) written notice of such determination has been provided to the Discharger; and (c) the Discharge occurs more than ten days after receipt of such notice.

**Sec. 78-603 Specific Prohibitions and Requirements.**

- A. In addition to any other prohibitions contained within this Chapter, no Person shall introduce or cause to be introduced into the Storm Sewer System any Discharge that causes or contributes to causing the City to violate a Kansas Department of Health and the Environment ("KDHE") water quality standard, a NPDES Storm Water permit, or any State-issued Discharge permit for Discharges from its Facility.
- B. No Person shall Release or cause, allow, or permit to be Released the following substances into the Storm Sewer System:
1. Any used motor oil, antifreeze or any other petroleum product or waste;
  2. A harmful quantity, as established by any government standard or study, of industrial waste;
  3. Any hazardous waste, including household hazardous waste;
  4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  5. Any garbage, rubbish, or yard waste (including grass trimmings, leaves, weeds and all other vegetation, trees, bushes or portions, trimmings or wastes thereof);
  6. Wastewater that contains soap, detergent, degreaser, solvent, or surfactant-based cleaner from a commercial carwash Facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance Facility; or from any washing, cleaning, or maintenance of any business, institution, commercial or public service vehicle, including a truck, bus or heavy equipment, by a business or public entity that operates more than five such vehicles;
  7. Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantity of soap, detergent, degreaser, solvent, or any surfactant-based cleaner;
  8. Any wastewater from commercial floor, rug, or carpet cleaning;
  9. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other Release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
  10. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
  11. Any ready-mixed concrete, mortar, ceramic, asphalt base material or hydromulch material, or Discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
  12. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area;
  13. Any swimming pool water which has not been de-chlorinated in accordance with the specifications of the City Officer;
  14. Any filter backwash from a swimming pool or fountain water;
  15. Any water from a water curtain in a spray room used for painting vehicles or equipment;
  16. Any substance or material that will damage, block, or clog the Storm Sewer System;
  17. Any contaminated runoff from a vehicle wrecking yard;
  18. Any Release from a petroleum storage tank ("PST"), or any leachate or runoff from soil contaminated by a leaking PST; or any Discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the Discharge has received an NPDES Permit; or
  19. Runoff, wash down or wastewater that contains any of the above;

- D. No Person shall introduce or cause to be introduced into the Storm Sewer System any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on Site, captured on Site, or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.
- E. Regulations of Pesticides and Fertilizers.
  - 1. No Person shall use or cause to be used any pesticide or fertilizer in any manner that the Person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the Storm Sewer System or Waters of the United States.
  - 2. No Person shall dispose of, discard, store, or transport a pesticide or fertilizer, or its container, in a manner that the Person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the Storm Sewer System or Waters of the United States.
- F. Coal Tar Sealcoat Products. No person or company shall apply any coal tar sealcoat product to any surface that drains into the Storm Sewer System, or into any surface water, groundwater, watercourse, or Waters of the United States.
- G. Used Oil. No Person shall Discharge used oil into the Storm Sewer System or into a sewer, drainage system, septic tank, surface water, groundwater, watercourse, or Waters of the United States.
- H. Cleanup. Should the City Officer determine that any Person has Released, allowed to be Released, or is otherwise legally responsible for the Release of, any Pollutant or other Discharge prohibited by this Chapter into the Storm Sewer System or Waters of the United States, the Person shall take immediate measures to remove the Pollutant(s) and/or Discharge(s) from such system or waters. If the Pollutants are not removed within the time period specified by the City Officer, the City may remove the Pollutants and assess the costs thereof to the Person. The City may use any legal means to collect said costs should the Person fail to pay the costs within thirty days.

**Sec. 78-604 Release Reporting and Cleanup.**

- A. Any Person responsible for any Release of any hazardous material that may flow, leach, enter, or otherwise be introduced into the Storm Sewer System or Waters of the United States shall comply with all State, federal, and any other applicable law requiring reporting, clean-up, containment, and any other appropriate remedial action in response to the release.
- B. Following such release, the Fire Chief or his or her designee and/or the Director of Cowley County Emergency Management or his or her designee shall submit a written report to the Storm Water Coordinator detailing spill information and the methods used to remediate the problem.

**Sec. 78-605 Adoption of Erosion and Sediment Guidelines and Specifications.**

The standard guidelines and specifications for erosion and sediment control on construction Site activities, as contained in the latest edition of the CONSTRUCTION SITE BEST MANAGEMENT PRACTICES MANUAL, CITY OF WINFIELD, are adopted by reference as if fully set forth herein.

**Sec. 78-606 Storm Water Discharges from Construction Activities.**

- A. General Requirements
  - 1. The Owner of every construction Site shall ensure that BMPs are used to control and reduce the Discharge of Pollutants into the Storm Sewer System and Waters of the United States to the maximum extent possible under the circumstances.

2. All erosion and sediment control measures and other identified BMPs shall be observed at every construction Site to ensure BMPs are operating correctly and are effective in preventing significant impacts to receiving waters and the Storm Sewer System.
3. At least once every fourteen (14) calendar days and within twenty-four (24) hours after the end of any weather event producing precipitation of one-half (1/2") inch or greater, qualified personnel (provided by the Owner of the construction Site) shall inspect:
  - i. disturbed areas that have not been finally stabilized;
  - ii. areas used for storage of materials that are exposed to precipitation, structural control measures; and
  - iii. locations where vehicles enter or exit the Site.

If the inspection should indicate BMPs are not operating correctly, BMPs shall be revised as soon as practicable after such inspection. These inspections, along with a description of BMP revisions, shall be documented in writing pursuant to Subsection B.13 and shall be available for inspection by the City Officer upon request.

4. Should soil or Pollutants be or threaten to be Released into the Storm Sewer System or Waters of the United States, the Owner(s) shall take immediate measures to (a) ensure no further soil or Pollutants are or will be Released; (b) remedy the violation of this Chapter; and/or (c) remove the Pollutants. If the Owner fails to remove Pollutants within the time period prescribed in any NOV issued by the City, the City may remove the Pollutants and assess the cost thereof to the Owner(s). Failure of the Owner(s) to pay said costs will be grounds for the denial of further City permits or approvals, or the withholding of occupancy certificates.
  5. When necessary for the effective implementation of this Section as determined by the City Officer in his or her sole discretion, the City Officer may require plans and specifications prepared for the construction of Site improvements to illustrate and describe the BMPs required by Subsection A.1 that will be implemented at the construction Site. Should the proper BMPs not be installed or if the BMPs are ineffective, upon reasonable notice to any Owner, 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.
  6. Every Owner of a construction activity Site is responsible for compliance with the requirements in this Subsection.
  7. Any Contractor on a construction Site shall use BMPs to minimize the risk of Releasing Pollutants into the Storm Sewer System.
  8. All Persons shall avoid damaging BMP devices once in place. Any Person damaging a BMP device shall repair the damaged BMP device. .
- B. Sites Requiring Federal and/or State NPDES Storm Water Discharge Permits. All Owners of, developers and Contractors on construction activity Sites that disturb one acre or greater during the life of the project, or that are part of a common plan of development one acre or greater, or sale requiring said permit(s), shall comply with the following requirements (in addition to those in Subsection A):
1. Any Owner who intends to obtain coverage for Storm Water Discharges from a construction Site under a Kansas Industrial General Permit or a Construction General Permit shall submit a signed copy of its NOI to the City's Office of Community Development when a building permit application is made. If the construction activity already is underway upon the effective date of this Chapter, the NOI shall be submitted within thirty days. When Ownership of the construction Site changes, a revised NOI shall be submitted within fifteen days of the change in Ownership.
  2. A SWPPP shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES Permit issued for Storm Water Discharges from the construction Site, and with any additional requirement imposed by or under this Chapter and any other applicable law. The area disturbed shall be assumed

to include the entire property area unless all applicable plans specifically exclude certain disturbance areas from.

3. The SWPPP shall be prepared by a Licensed Professional Engineer or Landscape Architect and shall comply with State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWPPP fully complies with the requirements of any applicable law and/or permit. A qualified person who possesses appropriate competence, skills, and ability as demonstrated by sufficient education, training and/or experience may prepare a SWPPP for a single site that disturbs less than one acre providing that it complies with all applicable laws and the latest edition of the Construction Site Best Management Practices Manual, City of Winfield.
4. The SWPPP shall be completed prior to the submittal of the NOI to the City's Office of Community Development and for new construction, prior to the Commencement of Construction activities. The SWPPP shall be updated and modified as appropriate and as required by the NPDES permit.
5. The City Officer may require any Owner who is required by Subsection B.2 of this Section to prepare a SWPPP, to submit the SWPPP, and any modifications thereto, to the City's Public Works Department for review at any time.
6. Upon the City Officer's review of the SWPPP and any Site inspection that he/she may conduct, if the SWPPP is not fully implemented, the City may upon reasonable notice to the Owner, deny approval of any building permit, Site development plan, final occupancy certificate, or any other City approval necessary to commence or continue construction. A stop work order also may be issued.
7. All Contractors working on a Site subject to a Construction Permit or a General Permit shall sign a copy of the appropriate certification statement prescribed in the *Construction Site Best Management Practices Manual* before beginning work on the Site.
8. All Contractors are responsible for his or her own activities to ensure they comply with the Owners' SWPPP.
9. The SWPPP and the certifications of Contractors required by Subsection B.7 of this Section, and with any modifications attached, shall be retained at the construction Site from the date of construction commencement through the date of Final Stabilization.
10. The City Officer may notify any Owner at any time that the SWPPP does not meet the requirements of the NPDES Permit issued or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or these Chapters which are not met by the SWPPP, and identify which provisions of the SWPPP require modification in order to meet such requirements. Within thirty days of such notification from the City, the Owner shall make the required changes to the SWPPP and shall submit to the City Officer a written certification from the Owner that the requested modifications have been made.
11. The Owner shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the Discharge of Pollutants to the Storm Sewer System or to the Waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing Pollutants, or in otherwise achieving the general objective of controlling Pollutants in Storm Water Discharges.
12. Based on the results of the inspections required by Subsection A.2 of this Section, the Pollution prevention measures identified in the SWPPP shall be revised as appropriate. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection.
13. A report summarizing the scope of any inspection required by Subsection A.2 of this Section, and the names(s) and qualifications of Personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and

actions taken in accordance with Subsection A.2 of this Section above shall be made and retained on Site or at a local office as part of the SWPPP. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the Facility complies with the SWPPP, the Facility's NPDES permit, and this Chapter. The report shall be certified and signed by the Person responsible for making the inspection.

14. The Owner shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES Permit for the Site, and records of all data used to complete the NOI for a period of at least three years from the date that the Site is finally stabilized.
  15. Upon Final Stabilization of the construction Site, the Owner shall submit written certification to the City's Office of Community Development or its designee that the Site has been finally stabilized. The City may withhold the final occupancy or use permit for any premises constructed on the Site until such certification of Final Stabilization has been filed and the Office of Community Development or its designee has determined, following any appropriate inspection, that Final Stabilization has occurred and that any required permanent structural controls have been completed.
- C. Sites not requiring Federal and/or State NPDES Storm Water Discharge Permits which are less than one acre of undeveloped or redeveloped building lot Sites shall comply with the following requirements:
1. All Owners of, developers, Contractors and subContractors working on the construction activity Sites shall sign a copy of the appropriate certification statement(s) prescribed in the *Construction Site Best Management Practices Manual* before beginning work on the Site.
  2. All Owners of, developers, Contractors and subContractors on construction activity Sites shall comply with the BMP(s) in the individual building lot layouts provided in the *Construction Site Best Management Practices Manual*.

**Sec. 78-607 Storm Water Discharges Associated with Industrial Activity.**

- A. All Owners and operators of Industry shall comply with the following requirements:
1. Any Owner who intends, after the effective date of this Chapter, to obtain coverage for a Storm Water Discharge Associated with Industrial Activity under a Kansas Industrial General Permit shall submit a signed copy of its NOI to the Public Works Department, or its designee.
  2. When required by its NPDES permit, all Industry, as defined in Section 78-581(C) shall prepare a SWPPP and implement said plan in accordance with the requirements of its State or federal NPDES permit.
  3. The SWPPP, when required, shall be prepared and signed by a Professional Licensed Engineer and comply with all State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the NPDES permit.
  4. The SWPPP, when required, shall be updated and modified as appropriate and as required by the NPDES Permit and this Chapter.
  5. A copy of any NOI that is required by Subsection A.1 of this Section shall be submitted to the City in conjunction with any application for a permit or any other City approval necessary to commence or continue operation of the industrial Facility.
  6. The City Officer may require any Owner or operator who is required by Subsection A.2 of this Section to prepare a SWPPP, to submit the SWPPP, and any modifications thereto, to the Public Works Department or its designee for review.
  7. Upon the City's review of the SWPPP and any Site inspection conducted, the City Officer may upon reasonable notice to the Owner deny approval necessary to commence or continue operation of the Facility, on the grounds that the SWPPP does not comply with the requirements of the NPDES permit, or any additional requirement imposed by or under this

Chapter. Also, if at any time the City Officer determines that the SWPPP is not being fully implemented, upon reasonable notice to the Owner, he/she may deny approval of any application for a permit or other City approval necessary to commence or continue operation of the Facility.

8. The SWPPP, if required, with any modifications attached, shall be retained at the industrial Facility from the date of commencement of operations until all Storm Water Discharges associated with industrial activity at the Facility are eliminated and the required NOT has been submitted.
9. The City Officer may notify the Owner at any time that the SWPPP does not meet the requirements of the NPDES permit, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Chapter which are not met by the SWPPP, and identify which provisions require modification in order to meet such requirements. Upon thirty days of such notification from the City, the Owner shall submit to the Public Works Department a written certification that the requested changes have been made.
10. The Owner shall amend the SWPPP, if required, whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the Discharge of Pollutants to the Storm Sewer System or to the Waters of the United States, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing Pollutants, or in otherwise achieving the general objective of controlling Pollutants in Storm Water Discharges.
11. As may be required by the Facility's NPDES permit, qualified Personnel (provided by the Owner) shall inspect equipment and areas of the Facility specified in the SWPPP at appropriate intervals or as may be specified in its NPDES permit. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.
12. Industrial facilities shall implement a sampling and testing program as required by its individual NPDES permits. The City may require submission of written reports of any such monitoring and testing.
13. The Owner shall retain the SWPPP and all sampling and testing reports until at least one year after Storm Water Discharges associated with industrial activity at the Facility are eliminated, or the operator is no longer operating the Facility, and a NOT has been submitted.
14. For Discharges subject to the semi-annual or annual monitoring requirements of the industrial general permit, in addition to the records-retention requirements of the paragraph above, Owners are required to retain for a six-year period from the date of sample collection, records of all sampling and testing information collected. Owners must submit such monitoring results, and/or a summary thereof, to the Public Works Department or its designee upon request.
15. After the effective date of this Chapter, no Storm Water Discharge shall contain any hazardous metals in a concentration that would result in the violation of any Kansas Surface Water Quality Standard.

**Sec. 78-608 Ditches and Ponds.**

- A. The Owner(s) of any private drainage ditch or pond that empties into the City's Storm Sewer System or the Waters of the United States shall use BMPs on the ditch or pond to minimize the Pollutant levels downstream. Such BMPs include, but are not limited to, removing excessive build-up of silt, repairing bank erosion, maintaining vegetative cover, and cleaning inlet and outlet works.
- B. The City is hereby authorized to periodically inspect privately-owned ditches and ponds. Should the Owner(s) fail to comply with BMPs, causing the Pollution of downstream receiving waters, the City

shall so notify any Owner by issuing a NOV, and describe the actions required to remedy the violation of this Section.

- C. Should the Owner(s) fail to take these actions within sixty days after issuance of the NOV, the City is authorized to complete the repairs at the expense of the Owner. Should the Owner(s) fail to reimburse the City for the cost of the repairs upon demand; the City may assess the cost thereof to any Owner and initiate any collection proceedings authorized by law.

**Sec. 78-609 Compliance Monitoring.**

- A. The City Officer shall have the right to enter the premises of any Person discharging Storm Water to the City's Storm Sewer System or to Waters of the United States at any reasonable time to determine if the Discharger is complying with all requirements of this Chapter, and with any State or federal Discharge permit, limitation, or requirement. Dischargers shall allow the inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.
- B. Subject to the requirements of Subsection A, Dischargers shall make available, upon request, any SWPPP, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, NOIs, and any other records, reports, and other documents related to compliance with this Chapter and with any State or federal Discharge permit.
- C. The City shall have the right to set up on the Discharger's property such devices necessary to conduct sampling of Storm Water Discharges.

**Sec. 78-610 Subdivision Development.**

- A. The developer of any Subdivision requiring a federal or State NPDES Storm Water Discharge permit shall obtain the required permit and develop and implement an overall SWPPP for the subdivision. Said SWPPP shall include BMPs to be used on individual lot building Sites regardless of the issuance of a NOT.
- B. City Contractors installing public streets, water, sanitary sewer, storm sewer lines, and/or sidewalks shall comply with the developer's SWPPP and sign the appropriate Contractor certification statement. For City-contracted work in public right-of-way or easements requiring a federal or State NPDES Storm Water Discharge permit, the City shall obtain the required permit and prepare the SWPPP, while the City Contractor shall implement the required SWPPP.
- C. Any utility company installing utilities within a new Subdivision shall comply with the developer's SWPPP and sign the appropriate Contractor certification statement. For work in public right-of-way or easements requiring a federal or State NPDES Storm Water Discharge permit, the utility company shall obtain the required permit and preparing and implementing the required SWPPP.
- D. The purchasers of individual lots within the Subdivision shall comply with the developer's SWPPP by following the BMPs for individual lot building Sites, and shall sign a certification statement agreeing to do so.

**Sec. 78-611 Violations.**

- A. The following are violations of this Chapter:
  - 1. Releasing or Discharging any Pollutant into the Storm Sewer System or Waters of the United States;
  - 2. Failing to obtain a federal or State Storm Water Discharge permits when required by any applicable law;
  - 3. Failing to prepare or implement a SWPPP when required by a federal or state permit;
  - 4. Failing to use effective BMP devices;
  - 5. Malicious or intentional destruction of BMP devices;
  - 6. Failing to repair BMP devices;

7. Failing to comply with any directive, citation, or order issued under this Chapter;
  8. Failing to comply with any applicable SWPPP;
  9. Hindering, interfering with, or obstructing the City Officer or his or her designee in the discharge of his or her duties under the provisions of this Chapter; or
  10. Failing to comply or otherwise violating by any mandate, prohibition, or other provision of this Chapter.
- B. Upon discovery of a violation described in Subsection A above, the City Officer shall issue to the Owner, operator, and/or any other legally responsible Person, Discharger, or violator (1) a NOV detailing the nature of the violation; and (2) an order detailing (a) actions required to remedy the violation, (b) actions required to ensure further violations do not occur, including, but not limited to, the installation of BMPs , additional self-monitoring, and/or disconnection from the Storm Sewer System, and (c) specific time periods within which to accomplish said actions.
  - C. Any Person violating any provision of this Chapter may be prosecuted in Municipal Court for such violation. Each day on which noncompliance occurs or continues shall be deemed a separate and distinct violation.
  - D. The City Officer is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any Owner, operator, and/or any other legally responsible Person, Discharger, or violator responsible for noncompliance. Such orders shall include specific action to be taken by to correct the noncompliance within a time period specified by the order.
  - E. Notwithstanding other penalties provided by this Chapter, whenever the City Officer finds that any Owner or Contractor on a construction Site has violated, or continues to violate, any provision of this Chapter or any order issued hereunder, the City Officer may after reasonable notice to the Owner or Contractor issue a stop work order to the Owner and Contractors by posting such order at the construction Site. Said order shall also be distributed to all City departments and divisions 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 by the City associated with the building permit, Site development plan approval, or any other approval necessary to commence or to continue construction or to assume occupancy at the Site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator.
  - F. Nothing in this Section shall limit the authority of the City Officer to take any action, including emergency action, or any other enforcement action, without first issuing a Notice of Violation.

**Sec. 78-612 Violations Deemed a Public Nuisance.**

Notwithstanding the other enforcement processes, procedures and penalties provided in this Chapter, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is hereby declared to be a threat to the public health, welfare and safety, and is hereby declared and deemed to be a public nuisance. Instead of or in addition to any other remedies or procedures hereunder, the City may commence a civil action to abate, enjoin or otherwise compel the cessation of any public nuisance.

**Sec. 78-613 Remedies Not Exclusive.**

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City Officer or of the City Manager or City Commission to seek cumulative remedies. The City shall be entitled to recover all attorney fees, court costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses.

**Sec. 78-614 Violations; Penalties.**

The violation of any provision of this Chapter, or of any order or directive lawfully issued under authority of the provisions of this Chapter is hereby declared a municipal ordinance infraction, with each day that any such violation occurs or continues constituting a separate offense. Notwithstanding any other remedies or procedures available to the City, any person that violates any provision of this Chapter, or any NPDES permit or any order issued under this Chapter, may be assessed an administrative penalty as follows:

- A. Failure to obtain a required NPDES permit: Up to Five Hundred Dollars (\$500.00) per violation;
- B. For all other violations of any provisions of this Chapter:
  - 1. By a fine not exceeding Two Hundred and Fifty Dollars (\$250.00) for each such violation.
  - 2. By a fine not exceeding Five Hundred Dollars (\$500.00) for each such violation occurring within one (1) year from the date of any prior NOV for any violation in this Chapter.
  - 3. By a fine not exceeding One Thousand Dollars (\$1,000.00) for each such violation occurring within one (1) year from the date of any second or subsequent NOV for any violation in this Chapter.
- C. Upon assessment of any administrative penalty, the City will bill the violator for said charge and the City shall have such collection remedies as are available by law.
- D. Failure to comply with ordinance directives and requirements may also result in stop work orders, discontinuance of city inspections and the pulling of permits; at the discretion of the City Officer.
- E. Failure to correct a Notice of Violation is hereby declared a municipal ordinance violation punishable by a fine not exceeding Five Hundred Dollars (\$500.00). Each day that a Notice of Violation is not corrected shall be a separate violation, and punishable by a fine.

**Sec. 78-615 Cost of Abatement of Violation.**

- A. Whenever the City undertakes the correction or abatement of any violation, or the remediation of any damage caused by any violation, either under emergency circumstances, or due to a person's failure to comply with any laws, ordinances, or orders issued by the City Officer or the City Commission, the person(s) or owner(s) responsible for such violation shall be liable to the City for the costs of such corrective, abatement or remedial actions and payment thereof shall be due within thirty (30) days following written notice of such costs.
- B. If any such costs remain unpaid for more than thirty (30) days after becoming due, then in addition to other collection alternatives the City Clerk may also certify such costs to the County Clerk to be assessed against the property to which the violation relates.

**Sec. 78-616 Appeal Process.**

- A. Any person that is subjected to an administrative penalty or stop work order processes may request a hearing and appeal as follows:
  - 1. Any person adversely affected by a penalty, order, directive or determination issued or made pursuant to this Chapter may, within seven days of the issuance of such penalty, order, directive or determination request a hearing before the City Officer to show cause why such should be modified or made not to apply to such person. Such request shall be in writing and addressed to the Director of Public Works at 200 E. Ninth Avenue, Winfield, Kansas 67156. The City Officer or his designee shall hold the requested hearing as soon as practical after receiving the request, at which time the person affected, shall have an opportunity to be heard. At the conclusion of the hearing, the City Officer shall issue a written response to the person requesting the hearing affirming, modifying, or rescinding the penalty, order, directive or determination issued or made.
  - 2. Any party aggrieved by the decision of the City Officer may appeal such decision to the Governing Body within seven days of receipt of the decision by filing notice of appeal with the City Clerk. Upon hearing the Governing Body may affirm, modify, or reverse the decision of the City Officer. Any appeal of the Governing Body's decision shall be as provided by state law.

- B. Filing an appeal shall in no way relieve any party from liability or responsibility for any violations occurring before, during or after the conduct of any such proceedings. Nothing in this Section shall limit the authority of the City Officer to take any other action, including emergency action or any other enforcement action, while such proceedings are also being conducted.

**Sec. 78-617 Enforcement Authorized.**

The following Personnel employed by the City shall have the power to issue NOVs, orders, citations and implement other enforcement actions under this Chapter:

1. All authorized Personnel under the supervision of the Director of Public Works;
2. All authorized Personnel under the supervision of the Director of Community Development;

**Sec. 78-618 Actions without Prior Notice.**

Any person who violates or fails to meet a requirement of this Chapter will be subject, without prior notice, to one or more of the enforcement actions identified in Sec. 78-599, 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.

**Sec. 78-619 Enforcement Actions.**

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

- A. Stop Work Order. The City Officer 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.
- B. Abatement of an Illicit Connection. The City Officer may order City representatives to terminate an illicit connection to the storm drainage system. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.
- C. 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 Officer 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.
- D. Recovery of Costs. Following abatement by City representatives, the City Officer shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may appeal the costs according to Sec. 78-616. Any costs remaining unpaid may be collected according to Sec. 78-615(B).
- E. Termination of Utility Services. After notice to the customer and/or property owner concerning the proposed disconnection, the City Officer shall have the authority to order the disconnection of City utilities and/or sanitation services, upon a finding by the City Officer that the disconnection of utility services will remove a violation of this Chapter that poses a public health hazard or environmental hazard.

Sec. 78-620 Compatibility with Other Regulations.

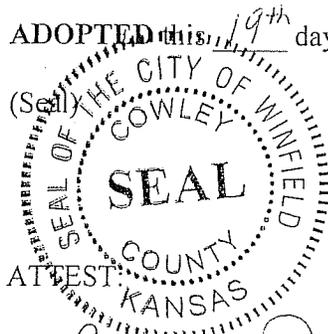
The provisions of this Chapter are not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this Chapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provisions of this Chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 78-621 Severability.

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

SECTION 2. This ordinance shall take effect following its adoption and publication in the official City newspaper.

ADOPTED this 19<sup>th</sup> day of January, 2010



*Phillip R. Jarvis*  
Phillip R. Jarvis, Mayor

*Brenda Peters*  
Brenda Peters, City Clerk

Approved as to form: *William E. Muret*  
William E. Muret, City Attorney

Approved for Commission action: *Warren Porter*  
Warren Porter, City Manager / rt