

ORDINANCE NO. 3466

AN ORDINANCE ADDING TO CHAPTER 13 OF THE CITY OF DODGE CITY MUNICIPAL CODE A NEW ARTICLE 6, IMPLEMENTING THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM AND ESTABLISHING REGULATIONS FOR DISCHARGES INTO THE SEWERS OF THE CITY AND PROVIDING FOR ENFORCEMENT THEREOF AND PENALTIES FOR VIOLATION THEREOF.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

Section 1.0 Repeal: Any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 2.0 Amendment: A new Chapter 13, Article 6, STREETS, Sections 13-601 through 13-617, inclusive, is hereby adopted to read as follows:

13-601 General Provisions.

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

1. To maintain and improve the quality of surface water and groundwater within the city;
2. To prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural water ways 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;
6. To enable the city to comply with all federal and state laws and regulations applicable to its ~~MS4~~ permit for stormwater discharges.

B. **ADMINISTRATION:** Except as otherwise provide herein, the Director of Engineering Services, Chief Building Official, or other appointed representative, shall administer, implement and enforce the provisions of this chapter.

C. **ABBREVIATIONS:** The following abbreviations when used in this chapter shall have the designated meanings:

BMP	-	Best Management Practices
CFR	-	Code of Federal Regulations
EPA	-	U.S. Environmental Protection Agency

HHW -	Hazardous Household Waste
mg/l -	Milligrams per liter
MS4 -	Municipal Separate Storm Sewer System
NOI -	Notice of Intent
NOT -	Notice of Termination
NPDES-	National Pollutant Discharge Elimination System
PST -	Petroleum Storage Tank
SWPPP-	Stormwater Pollution Prevention Plan
USC -	United States Code

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

1. "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 MS4. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMP's required in this chapter will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.
2. "City" means the City of City of Dodge City, Kansas
3. "Commencement of construction" means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
4. "Commercial" means pertaining to any business, trade, industry, or other activity engaged in for profit.
5. "Construction general permit" See "Kansas General Permit for Stormwater Discharges from Construction Sites."
6. "Contractor" means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.
7. "Director" means the person appointed to the position of director of engineering services by the city manager, or his/her duly authorized representative. "Building Official" means the persons appointed to the position of chief building official by the city manager, or his/her duly authorized representative.
8. "Discharge" means any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
9. "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.
10. "Domestic sewage" means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

11. "Earthwork" means the disturbance of soils on a site associated with clearing, grading, or excavation activities
12. "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 EPA or such successor agency.
13. "Extremely hazardous substance" means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification
14. "Facility" means any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
15. "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.
16. "Final stabilization" means the status when all soil-disturbing activities at a site have been completed. This would establish 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).
17. "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.
18. "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.
19. "Harmful quantity" means the amount of any substance that will cause a violation of a State Water Quality Standard or any adverse impact to the city's drainage system.
20. "Hazardous household waste" (HHW) means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.
21. "Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.
22. "Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
23. "Hazardous waste treatment, disposal, and recovery facility" means all contiguous land, and structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.
24. "Individual building sites" means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.
25. "Industrial General Permit." See "Kansas General Permit for Stormwater Discharges Associated with Industrial Activity."
26. "Industrial waste" means any waterborne liquid or solid substance that result from any process of industry, manufacturing, mining, production, trade, or business.

27. "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; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the Director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity.
28. "Kansas General Permit for Stormwater Discharges Associated with Industrial Activity" and "Industrial general permit" mean the industrial general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
29. "Kansas General Permit for Stormwater Discharges from Construction Sites and "Construction General Permit" mean the construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
30. "Landfill" means an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, or an injection well.
31. "Municipal separate storm sewer system" (MS4) means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.
32. "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.
33. "NPDES permit" means for the purpose of this chapter, this is a permit issued by EPA or the state of Kansas that authorizes the discharge of stormwater pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
34. "Nonpoint source" means the source of any discharge of a pollutant that is not a point source.
35. "Notice of intent" (NOI) means the notice of intent that is required by either the industrial general permit or the construction general permit.
36. "Notice of termination" (NOT) means the notice of termination that is required by either the industrial general permit or the construction general permit.
37. "Notice of violation" means a written notice provided to the owner or contractor detailing any violations of this chapter and any clean-up action expected of the violators.
38. "Oil" means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.
39. "Owner" means the person who owns a facility, part of a facility, or land.
40. "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.
41. "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.
 42. "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.
 43. "Petroleum storage tank" (PST) means any one or combination of aboveground or underground storage tanks that contain petroleum product and any connecting underground pipes.
 44. "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 stormwater runoff.
 45. "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.
 46. "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, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
 47. "Qualified personnel" means persons who possess 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 and generally accepted industry standards for such activity
 48. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.
 49. "Reportable quantity" (RQ) means, for any hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any extremely hazardous substance, the quantity established in 40 CFR Part 355.
 50. "Rubbish" means nonputrescible 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 (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).

51. "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).
52. "Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
53. "Service station" means any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from pumps.
54. "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.
55. "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.
56. "Solid waste" means any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material including: solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, agricultural operations, and community and institutional activities.
57. "State" means the state of Kansas.
58. "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.
59. "Stormwater discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater 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.
60. "Stormwater pollution prevention Plan" (SWPPP) means a plan required by an NPDES stormwater permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity.
61. "Subdivision development" means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction activity taking place thereon.
62. "Used oil (or used motor oil)" means any oil that has been refined from crude oil or a synthetic oil that, because of use, storage, or handling; has become unsuitable for its original purpose because of impurities or the loss of original properties.
63. "Water of the state" (or water)" mean 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.
64. "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 the state to be necessary to protect those uses.

65. "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.
66. "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.
67. "Yard waste" means leaves, grass clippings, yard and garden debris, and brush that result from landscaping maintenance and land-clearing operations.

13-602 GENERAL PROHIBITION:

- A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of stormwater, except as allowed in subsection B.
- B. The following nonstormwater discharges are deemed acceptable and not a violation of this section:
 1. A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);
 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 individual residential car washing;

13. A discharge or flow from a riparian habitat or wetland or natural spring;
 14. 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;
 15. A discharge that is a result of an emergency condition to mitigate damage to life or property;
 16. Stormwater 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;
 17. Swimming pool water, excluding filter backwash; that has been dechlorinated so that it contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
 18. Heat pump discharge waters (residential only).
- C. Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by this section if the discharge in question has been determined by the Director of Engineering Services to be a source of pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has continued or occurred more than ten days after such notice has been provided.

13-603 SPECIFIC PROHIBITIONS AND REQUIREMENTS:

- A. The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in Section 13-602
- B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the city to violate a KDHE water quality standard, the city's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.
- C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced the following substances into the MS4, wetlands, waters of the state or other water bodies:
 1. Any used motor oil, antifreeze or any other petroleum product or waste;
 2. A harmful quantity 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;
 6. Wastewater that contains a harmful quantity of 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 or 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 the washing, cleaning, de-icing, or other maintenance of aircraft;
 8. 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;

9. Any wastewater from commercial floor, rug, or carpet cleaning;
 10. 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;
 11. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
 12. 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;
 13. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area;
 14. Any filter backwash from a swimming pool or fountain;
 15. Any swimming pool water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
 16. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or waters of the United States;
 17. Any water from a water curtain in a spray room used for painting vehicles or equipment;
 18. Any contaminated runoff from a vehicle wrecking yard;
 19. Any substance or material that will damage, block, or clog the MS4; or
 20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by 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 from the state.
- D. No person shall introduce or cause to be introduced into the MS4 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 or captured on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.
- E. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.
- F. 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 MS4 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 MS4 or waters of the United States.
- G. Used Oil Regulation.

1. No person shall discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or watercourse.
- H. Cleanup. Should it be determined that any person or business has allowed any pollutant into the MS4 or waters of the United States, immediate measures will be taken by the responsible party to remove the pollutants. If the pollutants are not removed within the time period specified by the Director of Engineering Services, the city may remove the pollutants and assess the cost thereof to the responsible party. The city may use any legal means to collect said cost, should the responsible party fail to pay said cost within forty-five days.

13-604 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 MS4 or waters of the United States shall comply with all state, federal, and any other local law requiring reporting, clean-up, containment, and any other appropriate remedial action in response to the release.
- B. Within thirty days following such release, the City of Dodge City Fire Department shall submit a written report to the Director of Engineering Services detailing spill information and the methods used to remedy the problem.

13-605 STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

- A. General Requirements
 1. The owners of construction sites shall ensure that best management practices are used to control and reduce the discharge of pollutants into the MS4 and waters of the United States to the maximum extent possible under the circumstances.
 2. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four hours of the end of a storm that is one-half inch or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, the best management practices shall be revised as appropriate as soon as practicable. These inspections, along with a description of revisions, will be documented in writing and available for inspection by the director or building official or his representative upon request.
 3. Should it be found that soil or pollutants have already or may be carried into the MS4 or waters of the United States, immediate measures will be taken by the owner to remedy the violation and/or remove the pollutants. If the owner fails to remove pollutants within the time period prescribed in the notice of violation from the city, the city may remove the pollutants and assess the cost thereof to the responsible owner. Failure of the owner to pay said costs will be grounds for the denial of further approvals or the withholding of occupancy certificates.
 4. When determined to be necessary for the effective implementation of this section, the

- director may require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required by subsection A.1 of this section above that will be implemented at the construction site. Should the proper BMP's not be installed or if the BMP's are ineffective, upon reasonable notice to the owner, the city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue construction, or to assume occupancy.
5. Any contractor on a construction site will also be required to use best management practices to minimize pollutants that enter into the MS4.
 6. All persons shall avoid damaging BMP devices once in place. Any person damaging a BMP device shall be responsible for the repair of the damaged BMP device. Intentional destruction of a BMP device or failure of such responsible person to repair BMP device will be deemed a violation of this chapter.
- B. Sites Requiring State NPDES Stormwater Discharge Permits. All owners of and contractors on sites of construction activity, that require a federal or state NPDES stormwater discharge permit, or that are part of a common plan of development 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 stormwater discharges from a construction site under the Kansas General Permit for Stormwater Discharges From Construction Sites ("the construction general permit") shall submit a signed copy of its notice of intent (NOI) to the Chief Building Official when a building permit application is made. If the construction activity is already 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 stormwater pollution prevention plan (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 stormwater discharges from the construction site, and with any additional requirement imposed by or under this chapter and any other city chapter
 3. The SWPPP shall be prepared by a Kansas Licensed Engineer 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 the permit issued.
 4. The SWPPP shall be completed prior to the submittal of the NOI to the Building Official 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 director and/or building official 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 director and /or building official for review at any time. The SWPPP and any modifications shall be available for review at the construction site at all times.
 6. Upon the director's or building official's review of the SWPPP and any site inspection that he/she may conduct, if the SWPPP is not being fully implemented, the

Chief Building Official or his/her representative may upon reasonable notice to the owner, deny approval of any building permit, grading permit, site development plan, final occupancy certificate, or any other city approval necessary to commence or continue construction. A stop work order may also be issued.

7. All contractors working on a site subject to an NPDES permit shall sign a copy of the following certification statement before beginning work on the site:
"I certify under penalty of law, that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this Certification. I understand that I am legally required under the Clean Water Act, to ensure compliance with the terms and conditions of NPDES storm water CGP and this Storm Water Pollution Prevention Plan (SWPPP). I understand that I am full responsible for all subcontractors who perform work activities on the construction site, to comply with all provisions and requirements of the NPDES storm water CGP and this SWPPP." The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
All contractors will be responsible for their own activities to ensure that they comply with the owners' SWPPP. Failure to comply with the SWPPP or intentional destruction of BMP devices is hereby deemed a violation of this chapter.
8. 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
9. The director and/or building official may notify the 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 being 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 director, the owner shall make the required changes to the SWPPP and shall submit to the Chief Building Official a written certification from the owner that the requested changes have been made.
10. 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 MS4 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 stormwater discharges.
11. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four hours of the end of the storm that is one-half (0.5) inch or

- greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
12. Based on the results of the inspections required by subsection B.11 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 (7) calendar days following the inspection.
 13. A report summarizing the scope of any inspection required by subsection B.11 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 B.12 of this section above shall be made and retained on site or at a local office in Dodge City 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 Chief Building Official 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 Chief Building Official has determined, following any appropriate inspection, that final stabilization has occurred and that any required permanent structural controls have been completed.

13-606 STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

- A. All operators of: (1) municipal landfills; (2) hazardous waste treatment, disposal, and recovery facilities; (3) 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; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (4) industrial facilities that the Director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity, shall comply with the following requirements:
 1. Any owner who intends, after the effective date of this chapter, to obtain coverage for a stormwater discharge associated with industrial activity under the Kansas General Permit for Stormwater Discharges Associated With Industrial Activity ("the industrial

- general permit") shall submit a signed copy of its notice of intent (NOI) to the Director of Engineering Services.
2. When required by their NPDES permit, all industries listed in this section shall prepare a stormwater pollution prevention plan (SWPPP) and implement said plan in accordance with the requirements of their state or federal NPDES permit.
 3. The SWPPP, when required, shall be prepared and signed by a qualified individual and will 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 director may require any 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 director or building official for review.
 7. Upon the Director's review of the SWPPP and any site inspection that he/she may conduct, the Director 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 director 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 stormwater discharges associated with industrial activity at the facility are eliminated and the required notice of termination (NOT) has been submitted.
 9. The Director 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 being met by the SWPPP, and identify which provisions require modification in order to meet such requirements. Upon thirty days of such notification from the Director, the owner shall submit to the Director 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 MS4 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 stormwater discharges.
 11. As may be required by the facilities 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 their NPDES permit. A set of tracking

- or followup 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 will implement a sampling and testing program as required by their individual NPDES permits. The director may require written reports of any such monitoring and testing to be submitted to him/her.
 13. The owner shall retain the SWPPP and all sampling and testing reports until at least one year after stormwater discharges associated with industrial activity at the facility are eliminated, or the operator is no longer operating the facility, and a notice of termination (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 Director upon his/her request.
 15. After the effective date of this chapter, no stormwater discharge shall contain any hazardous metals in a concentration that would result in the violation of any Kansas Surface Water Quality Standard.

13-607 DITCHES AND PONDS.

- A. **Duty to Maintain.** The owner of any private drainage ditch or pond that empties into the city's MS4 or the waters of the United States has a duty to use BMP's on the ditches or pond to minimize the pollutant levels downstream. Such BMP's include, but are not limited to, removing excessive build-up of silt, repairing bank erosion, maintaining vegetative cover, the cleaning of inlet and outlet works, and the like.
- B. **Inspection and Notice by City.** The city will periodically inspect these privately owned ditches and ponds. Should conditions be found that cause the pollution of downstream receiving waters, the director shall so notify the owners, and state what actions are expected by the owners to remedy the problem.
- C. **Failure to Repair.** Should the owners fail to make the necessary repair within one hundred twenty days after notice, the city is authorized to do the repairs at the expense of the owner. Should the owner fail to reimburse the city for the cost of the repairs upon demand, the city may assess the cost thereof to the owner and initiate any collection proceedings authorized by law.

13-608 COMPLIANCE MONITORING.

- A. **Right of Entry.** The director and building official or their authorized representatives, shall have the right to enter the premises of any person discharging stormwater to the municipal separate storm sewer system (MS4) 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. No adverse action will be taken against any property owner or resident who refuses to grant such right-of-entry.

- B. **Records.** Subject to the requirements of subsection A, dischargers shall make available, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.
- C. **Sampling.** The director shall have the right to set up on the discharger's property such devices that are necessary to conduct sampling of stormwater discharges.

13-609 SUBDIVISION DEVELOPMENT.

- A. The developer of any subdivision requiring a federal or state NPDES stormwater discharge permit will be responsible for obtaining the required permit and developing and implementing an overall SWPPP for the subdivision. Said SWPPP shall include BMP's to be used on individual lot building sites.
- B. City contractors installing public streets; water, sanitary sewer, storm sewer lines; and/or sidewalks will be required to comply with the developers SWPPP's and sign the appropriate contractor certification statement. For city contracted work in public right-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the city shall be responsible for obtaining the required permit and preparing and implementing the required SWPPP's.
- C. Any utility company installing utilities within a new subdivision will also be required to comply with the developers SWPPP's and sign the appropriate contractor certification statement. For work in public rights-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the utility company shall be responsible for obtaining the required permit and preparing and implementing the required SWPPP's.
- D. The purchasers of individual lots within the subdivision for construction purposes shall comply with the developers SWPPP and shall sign a certification statement (as provided in the City of Dodge City's Best Management Practices Manual) agreeing to do so.

13-610 ENFORCEMENT ACTIONS.

- A. The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States; failure to obtain a federal or state stormwater discharge permit; the failure to prepare or implement a SWPPP when required by a federal or state permit; the failure to use effective BMP devices; the intentional destruction of BMP devices; failure to repair BMP devices; the failure to comply with any directive, citation, or order issued under this chapter; are violations of this chapter for which enforcement action may be taken.
- B. Prior to taking any enforcement action as specified in this section, a violator will be issued a notice of violation that will detail the nature of the violation, actions to be taken to remedy the violation, actions to be taken to clean-up any pollutants, and any specific time periods within which to accomplish said actions.
- C. The enforcement actions to be taken under this chapter are as follows:
 1. **Criminal Penalty.** Any person violating any provision of this chapter is guilty of a

misdemeanor and upon conviction there for shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. Each and every day during which any violation of any provision of this chapter is committed, continued, or permitted is a separate violation.

2. **Stop Work Order.** Notwithstanding other penalties provided by this chapter, whenever the director or building official, or their designees, 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 thereunder, the director of building official 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, grading 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. Failure to comply with the requirements of any stop work order is a violation of this chapter
3. **Administrative Penalty Process.**
 - a. When the director finds that any stormwater discharger has violated or continues to violate the provisions set forth in this chapter, or the discharger's NPDES permit or any order issued thereunder, the director may issue an order for compliance to the discharger. Such orders may contain any requirements as might be reasonably necessary and appropriate to address noncompliance including, but not limited to, the installation of best management practices, additional self-monitoring, and/or disconnection from the MS4.
 - b. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial discharger responsible for noncompliance. Such orders shall include specific action to be taken by the discharger to correct the noncompliance within a time period specified by the order.
 - c. Notwithstanding any other remedies or procedures available to the city, any discharger who is found to have violated any provision of this chapter, or any NPDES permit or any order issued under this chapter, may be assessed an administrative penalty as follows:
 - 1) Failure to obtain required NPDES permit: up to two thousand five hundred dollars per violation;
 - 2) Failure to prepare stormwater pollution prevention plan: up to two thousand five hundred dollars per violation;
 - 3) Failure to install best management practices: up to one thousand dollars per violation;
 - 4) Failure to maintain best management practices: up to one thousand dollars per violation;
 - 5) Failure to perform required sampling and testing or provide testing reports: up

to one thousand dollars per violation.

Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Upon assessment of any administrative penalty, the city will bill the violator for said charge and the director or building official shall have such collection remedies as are available by law.

13-611 APPLICABILITY OF ENFORCEMENT ACTIONS.

- A. Illegal dumping will be subject to the criminal penalties process.
- B. Illegal connections will be subject to either the criminal or the administrative penalty processes.
- C. Industrial violations will be subject to the administrative penalty process.
- D. Individual building sites not requiring a state NPDES permit will be subject to the criminal penalty and the stop work order processes; however, any owner or contractor of such sites found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.
- E. Individual building sites requiring a state NPDES permit will be subject to the administrative penalty process.
- F. Subdivision developers in subdivisions not requiring a state NPDES permit will be subject to the criminal penalty and stop work order processes; however, any such developer found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.
- G. Subdivision developers of subdivisions requiring a state NPDES permit will be subject to the administrative penalty process.
- H. City contractors and utility companies working on projects not requiring a state NPDES permit will be subject to the criminal penalty process.
- I. City contractors and utility companies working on projects requiring state NPDES permit will be subject to the administrative penalty process.

13-612 HEARING AND APPEAL.

- A. Any violator that is subjected to the administrative penalty or stop work order processes may request a hearing and appeal as follows;
 - 1. Any party affected by a penalty, order, directive or determinations 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 director to show cause why such should be modified or made to not apply to such person. Such request shall be in writing and addressed to the Director of Engineering Services at 806 2nd Avenue, Dodge City, Kansas 67801. The director 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 director 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 director may appeal such decision to the city manager within seven days of receipt of the decision by filing notice of appeal

with the city clerk. Upon hearing, the city manager may affirm, modify, or reverse the decision of the director. Any appeal of the manager's decision shall be as provided by state law.

13-613 ENFORCEMENT PERSONNEL AUTHORIZED.

- A. The following personnel employed by the city shall have the power to issue notices of violations, criminal citations and implement other enforcement actions under this chapter:
 - 1. All authorized personnel under the supervision of the Chief Building Official;
 - 2. All authorized personnel under the supervision of the Director of Engineering Services

13-614 OTHER LEGAL ACTIONS.

Notwithstanding any other remedies or procedures available to the city, if any person discharges into the MS4 in a manner that is contrary to the provisions of this chapter, or any NPDES permit or order issued hereunder, the city attorney may commence an action for appropriate legal and equitable relief including damages and costs in the district court of Ford 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.

13-615 FALSIFYING INFORMATION.

Falsifying information is a separate offense and deemed a misdemeanor. Any person who knowingly makes false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or any NPDES permit, or who falsifies, or tampers with any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

13-616 SUPPLEMENTAL ENFORCEMENT ACTIONS.

- A. Performance Bonds. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this chapter. The city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city permit or approval necessary to commence or continue construction or industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.
- B. Liability Insurance. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to

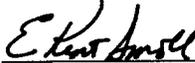
exceed a value reasonably determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

13-617 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 3.0 Effective Date: This Ordinance shall take effect immediately after its passage and publication in the official City newspaper, as provided by law.

Passed by the Governing Body of the City of Dodge City, and approved by the Mayor, this 17th day of November, 2008.



E. Kent Smoll, Mayor

ATTEST:



Nannette Pogue, City Clerk