

REPEALED by ord 48

## ORDINANCE NO. 2 OF 2006

### AN ORDINANCE ADOPTING STORMWATER DISCHARGE REGULATIONS FOR THE CITY OF BENTON, ARKANSAS; DECLARING AN EMERGENCY; AND, FOR OTHER PURPOSES

WHEREAS, The City Council of the City of Benton, Arkansas, has found and determined that it should adopt Stormwater Discharge Regulations in the form and substance of the regulations exhibited with and adopted by this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Benton, Arkansas, that:

SECTION 1. The document entitled "Stormwater Discharge Regulations for Benton, Arkansas," attached hereto and marked "Exhibit A" is included herein by reference, as if such regulations were set forth line-for-line and word-for-word, and same are hereby adopted.

SECTION 2. The City Clerk shall cause a copy of the said "Exhibit A" to be published in a newspaper of general circulation in Saline County, Arkansas, along with this ordinance.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end,

the provisions of this ordinance are hereby declared to be severable.

SECTION 4. All City of Benton Ordinances, Resolutions, Regulations, and parts thereof, in conflict with the "Stormwater Discharge Regulations for Benton, Arkansas," attached hereto and marked "Exhibit A" are hereby repealed to the extent of such conflict.

SECTION 5. There is an immediate need to adopt the "Stormwater Discharge Regulations for Benton, Arkansas." Therefore, an emergency exists, and this ordinance is necessary for the preservation of the public peace, health and safety. It shall be in full force and effect immediately from and after its passage and approval

PASSED AND APPROVED this 28 day of ~~January~~ <sup>February</sup>, 2006.

  
Rick Holland, Mayor


  
Cindy Stracener, City Clerk

Exhibit A to Benton Ordinance 2 of 2006

**STORMWATER DISCHARGE REGULATIONS**

FOR

**BENTON, ARKANSAS**

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I. GENERAL PROVISIONS

A. Purposes

The purposes and objectives of these regulations are as follows:

1. To maintain and improve the quality of surface water and groundwater within the City of Benton, Arkansas, the Central Arkansas Region, and the State of Arkansas.
2. To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Benton, Arkansas.
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 and natural waters of the City of Benton, Arkansas.
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 and operators of industrial and construction sites within the City of Benton, Arkansas.
6. To enable the City of Benton, Arkansas to comply with all federal and state laws and regulations applicable to storm water discharges.

B. Administration

Except as otherwise provided herein, the **Community Development Department (CDD)** of **the City of Benton, Arkansas** shall administer, implement, and enforce the provisions of these regulations. Any powers granted to or duties imposed upon the **CDD** may be delegated by the **Mayor** to other City personnel.

C. Abbreviations

The following abbreviations when used in these regulations shall have the designated meanings:

- BMP - Best Management Practices
- BTEX - Benzene, Toluene, Ethylbenzene, and Xylene
- 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
- Ppb - Parts per billion
- PST - Petroleum Storage Tank
- RLA - Registered Landscape Architect

- RPE - Registered Professional Engineer
- RQ - Reportable Quantity
- SWPPP - Storm Water Pollution Prevention Plan
- TPH - Total Petroleum Hydrocarbons
- USC - United States Code

D. Definitions

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

1. **Agricultural storm water runoff.** Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.
2. **ADEQ.** Arkansas Department of Environmental Quality.
3. **Best management practices (BMP).** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs 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.
4. **City.** The City of Benton, Arkansas.
5. **City Engineer.** The person appointed to the position of City Engineer by the **Mayor** of the City of Benton, Arkansas, or his/her duly authorized representative.
6. **Coal pile runoff.** The rainfall runoff from or through any coal storage pile.
7. **Commencement of construction.** The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
8. **Commercial.** Pertaining to any business, trade, industry, or other activity engaged in for profit.
9. **Discharge.** Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
10. **Discharger.** Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.
11. **Domestic sewage.** 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.
12. **Environmental Protection Agency (EPA).** 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.** Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.
14. **Facility.** Any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
15. **Fertilizer.** A solid or non-solid 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. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

16. **Final stabilization.** The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
17. **Fire Department.** The Fire Department of the City of Benton, Arkansas, or any duly authorized representative thereof.
18. **Fire protection water.** Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.
19. **Garbage.** 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.
20. **Harmful quantity.** The amount of any substance that will cause pollution of water in the State.
21. **Hazardous household waste (HHW).** Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.
22. **Hazardous substance.** Any substance listed in Table 302.4 of 40 CFR Part 302.
23. **Hazardous waste.** Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
24. **Hazardous waste treatment, disposal, and recovery facility.** All contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.
25. **Herbicide.** A substance or mixture of substances used to destroy a plant or to inhibit plant growth.
26. **Industrial waste.** Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.
27. **Motor vehicle fuel.** Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.
28. **Municipal landfill (or landfill).** 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, an injection well, or a pile (as these terms are defined in regulations promulgated by the Arkansas Department of Environmental Quality).
29. **Municipal separate storm sewer system (MS4).** 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 storm water, and which is not used for collecting or conveying sewage.
30. **Municipal solid waste.** 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.
31. **NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (or Industrial General Permit).** The Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.
32. **NPDES General Permit for Storm Water Discharges from Construction Sites (or Construction General Permit).** The Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at

- page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.
33. **NPDES permit.** A permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
34. **Non-point source.** Any source of any discharge of a pollutant that is not a "point source."
35. **Notice of Intent (NOI).** The Notice of Intent that is required by either the Industrial General Permit or the Construction General Permit.
36. **Notice of Termination (NOT).** The Notice of Termination that is required by either the Industrial General Permit or the Construction General Permit.
37. **Oil.** 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.
38. **Operator.** The person or persons who, either individually or taken together, meet the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.
39. **Owner.** The person who owns a facility or part of a facility.
40. **Person.** 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. This definition includes all federal, state, and local governmental entities.
41. **Pesticide.** A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
42. **Petroleum product.** 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. [The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.]
43. **Petroleum storage tank (PST).** Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.
44. **Point source.** 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.
45. **Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.
46. **Pollution.** 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 to the 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.** Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.
48. **Landscape Architect (LA).** A person who has been duly licensed and registered to practice landscape architecture by the State of Arkansas.
49. **Professional Engineer (PE).** A person who has been duly licensed and registered by the Arkansas State Board of Registration for Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Arkansas.
50. **Release.** 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.
51. **Reportable Quantity (RQ).** 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 and listed in Appendix A thereto.
52. **Rubbish.** 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 (1600 to 1800 degrees Fahrenheit).
53. **Sanitary sewer (or sewer).** 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 storm water, surface water, and groundwater are not intentionally admitted).
54. **Septic tank waste.** Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
55. **Service station.** Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.
56. **Sewage (or sanitary sewage).** 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.
57. **Site.** 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.
58. **Solid waste.** 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, and agricultural operations, and from community and institutional activities.
59. **State.** The State of Arkansas.
60. **Storm water.** Storm water runoff, snow melt runoff, and surface runoff and drainage.
61. **Storm water discharge associated with industrial activity.** 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 within one of the categories of facilities listed in 40 CFR § 122.26(b)(14), and which is not excluded from EPA's definition of the same term.
62. **Storm water pollution prevention plan (SWPPP).** A plan required by either the Construction General Permit or the Industrial 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 other industrial activity at the facility.
63. **Uncontaminated.** Not containing a harmful quantity of any substance.



64. **Used oil (or used motor oil).** Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with State and federal law.
65. **Water in the State (or water).** 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, fresh or salt, 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.
66. **Water quality standard.** 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, as specified by the Arkansas Department of Environmental Quality.
67. **Waters of the United States.** 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 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 § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.
68. **Wetland.** An 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.
69. **Yard waste.** Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

## II. GENERAL PROHIBITION

- A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) of Benton, Arkansas any discharge that is not composed entirely of storm water.
- B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section that the discharge was composed entirely of one or more of the following categories of discharges:
  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 fire fighting by the Fire Department;
  3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials;
  4. Agricultural storm water runoff;
  5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the total residual

chlorine (TRC) has been reduced to less than one (1) mg/l and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;

6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;
  7. A discharge or flow from a diverted stream flow or natural spring;
  8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
  9. Uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
  10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
  11. 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;
  12. 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;
  13. A discharge or flow from individual residential car washing;
  14. A discharge or flow from a riparian habitat or wetland;
  15. 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;
  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;
  17. Swimming pool water [that has been dechlorinated so that total residual chlorine (TRC) is less than One (1) mg/l and that 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.
- C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the City Engineer to be a source of a pollutant or 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 occurred more than 15 days beyond such notice. The correctness of the City Engineer's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

### III. 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 II.

- 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 water quality standard, the City's NPDES 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 any of the following substances into the MS4:
1. Any used motor oil, antifreeze, or any other motor vehicle fluid;
  2. Any industrial waste;
  3. Any hazardous waste, including hazardous household waste;
  4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  5. Any garbage, rubbish, or yard waste;
  6. Any wastewater 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 2 such vehicles;
  7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
  8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
  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, emissions filter, or the blowdown from a boiler;
  12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
  13. Any runoff or washdown water from any animal pen, kennel, or fowl or livestock containment area containing more than ten (10) animals;
  14. Any filter backwash from a swimming pool, fountain, or spa;

15. Any swimming pool water containing total residual chlorine (TRC) of one (1) mg/l or more or containing any harmful quantity 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 superchlorination or other means if the total residual chlorine (TRC) is at one (1) mg/l or more or if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
  17. Any fire protection water containing oil or hazardous substances or materials that the Fire Code in these regulations requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire fighting by the Fire Department.);
  18. Any water from a water curtain in a spray room used for painting vehicles or equipment;
  19. Any contaminated runoff from a vehicle wrecking yard;
  20. Any substance or material that will damage, block, or clog the MS4;
  21. 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 satisfies all of the following criteria:
    - (a) Compliance with all state and federal standards and requirements;
    - (b) No discharge containing a harmful quantity of any pollutant; [and]
    - (c) No discharge containing more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).
- 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, or associated with landfilling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained 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. No person shall cause or allow any pavement washwater from a service station to be discharged into the MS4 unless such washwater has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- G. Regulation of Pesticides, Herbicides, and Fertilizers.
1. Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must comply fully with all state and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and all federal regulations promulgated pursuant to FIFRA; and any other state or federal requirement.

2. Any license, permit, registration, certification, or evidence of financial responsibility required by state or federal law for sale, distribution, application, manufacturer, transportation, storage, or disposal of a pesticide, herbicide or fertilizer must be presented to the City Engineer or his/her delegate and any city law enforcement officer for examination upon request.
3. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.
4. No person shall use or cause to be used any pesticide, herbicide, 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, herbicide, or fertilizer to enter the MS4 or waters of the United States.
5. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer 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, herbicide, or fertilizer to enter the MS4 or waters of the United States.
6. If provided with a display notice containing the provisions of this Subsection, pertaining to the regulation of pesticides, herbicides, and fertilizers (or a reasonable description thereof), and the information that any user of the product may obtain further information from the City Engineer, any person selling pesticides, herbicides, or fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.

H. Used Oil Regulation

1. No person shall:
  - (a) Discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;
  - (b) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill;
  - (c) Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.
2. All businesses that change motor oil for the public, municipal waste landfills, and fire stations are encouraged to serve as public used oil collection centers.
3. A retail dealer who annually sells directly to the public more than ten (10) gallons of oil in containers for use off-premises shall post in a prominent place a sign informing the public that improper disposal of used oil is prohibited by law.

I. No person shall allow the storage of toxic or hazardous substances on property that will allow exposure to precipitation and storm water runoff.

J. WaterCourse Protection

1. Every person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris,

- excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.
2. The owner shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

#### IV. RELEASE REPORTING AND CLEANUP

- A. The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall immediately telephone and notify the Arkansas Department of Environmental Quality (501-682-0716) and the U. S. Environmental Protection Agency (800-424-8810) concerning the incident of:
  1. An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302;
  2. An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355;
  3. An amount of oil that either (a) violates applicable water quality standards, or (b) causes a film or sheen upon or discoloration of the surface of the; or
  4. Any harmful quantity of any pollutant.
- B. The immediate notification required by Subsection A shall include the following information:
  1. The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
  2. The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
  3. The time and duration (thus far) of the release;
  4. An estimate of the quantity and concentration (if known) of the substance released;
  5. The source of the release;
  6. Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
  7. Any precautions that should be taken as a result of the release;
  8. Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and
  9. The names and telephone numbers of the person or persons to be contacted for further information.

- C. Within fifteen (15) days following such release, the responsible person in charge of the facility, vehicle, or other source of the release shall, unless waived by the City Engineer, submit a written report containing each of the items of information specified above in paragraph B, as well as the following additional information:
1. The ultimate duration, concentration, and quantity of the release;
  2. All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
  3. Any known or anticipated acute or chronic health risks associated with the release;
  4. Where appropriate, advice regarding medical attention necessary for exposed individuals;
  5. The identity of any governmental/private sector representatives responding to the release; and
  6. The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.

D. The notifications required by Subsections B and C above shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to these regulations or to state or federal law.

E. Any person responsible for any release as described in Subsection A above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.

F. Any person responsible for a release described in Subsection A above shall reimburse the City for any cost incurred by the City in responding to the release.

## V. STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

### A. General Requirements

1. All operators of construction sites shall use best management practices to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with the clearing, grading, excavation, and other construction activities to the maximum extent practicable. Such best management practices may include, but not be limited to, the following measures:
  - (a) Ensuring that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Stabilization measures may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures;

- (b) Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;
  - (c) Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;
  - (d) Prevention of the discharge of building materials, including cement, lime, concrete, and mortar, to the MS4 or waters of the United States;
  - (e) Providing general good housekeeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;
  - (f) Implementation of proper waste disposal and waste management techniques, including covering waste materials and minimizing ground contact with hazardous chemicals and trash;
  - (g) Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices in good and effective operating condition; and
  - (h) Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.
2. Qualified personnel provided by the operator of the construction site shall inspect disturbed areas of any construction site 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 seven calendar days and within 24 hours of the end of a storm that is 0.5 inches 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, best management practices shall be revised as appropriate, and as soon as is practicable.
3. The City Engineer shall require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required by paragraph V.A.1 above that will be implemented at the construction site. 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, on the grounds that the management practices described in the plans or observed upon a



site inspection by the City Engineer are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable.

4. Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in this Subsection V.A.
5. Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

**B. Five-Acre or Greater Disturbances**

All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of five or more acres of total land area, or that are part of a common plan of development or sale within which five or more acres of total land area are disturbed, or who are required to obtain an NPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements, in addition to those in Subsection V.A.:

1. The operator shall complete a "Medium Construction Site Notice" for sites that disturb five (5) to ten (10) acres and a "Large Construction Site Notice" for sites that disturb more than ten (10) acres. These forms are obtainable from the Arkansas Department of Environmental Quality (ADEQ) or the *CDD*. The operator must post such notice in a conspicuous location at the construction site prior to the start of construction. If the construction activity is already underway upon the effective date of these regulations, the notice shall be posted within thirty (30) days.
2. Any operator who intends to obtain coverage for storm water discharges from a construction site under the NPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the City Engineer at least 2 days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of these regulations, the NOI shall be submitted within seven (7) days. For storm water discharges from construction sites where the operator changes, an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.
3. A Storm Water 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 storm water discharges from the construction site, and with any additional requirement imposed by or under these regulations and any city ordinance. A copy of the SWPPP shall be kept on-site in a weatherproof container.
4. On a site of more than five acres in total land area, the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer. The signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual or group NPDES permit issued for storm water

discharges from the construction site, and with any additional requirement imposed by or under these regulations. The SWPPP shall contain the name, title, and business address of the Registered Professional Engineer signing it, and the date that he/she did so.

5. The SWPPP shall be completed prior to the submittal of the NOI to the City Engineer and, for new construction, two (2) weeks prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and these regulations. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.
6. A copy of any NOI that is required by paragraph V.B.1 shall be submitted to the **CDD** in conjunction with any application for a building permit, grading permit, subdivision plat approval, site development plan approval, and any other City approval necessary to commence or continue construction at the site.
7. Any operator who is required by paragraph V.B.2 to prepare a SWPPP shall submit the SWPPP, and any modifications thereto, to the City Engineer for review prior to commencement of construction activities at the site.
8. Upon completion of the City Engineer's review of the SWPPP and any site inspection that he/she may conduct, 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, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under these regulations. Also, if at any time the City Engineer determines that the SWPPP is not being fully implemented, the **CDD** may similarly 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, at the site.
9. Any modification to the SWPPP for a site of more than five acres of total land area shall be prepared, signed, and sealed by a Registered Professional Engineer as required for the original SWPPP by paragraph V.B.3.
10. The **CDD** may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual or group NPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under these regulations. Such notification shall identify those provisions of the permit or these regulations which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) days of such notification from the **CDD**, or as otherwise provided by the **CDD**, the operator shall make the required changes to the SWPPP and shall submit to the City Engineer a copy of the revised SWPPP.
11. The operator 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 storm

water discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.

12. Qualified personnel provided by the operator of the construction site shall inspect disturbed areas of the construction site 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 seven calendar days and within 24 hours of the end of the storm that is 0.5 inches or greater. Inspection forms approved by the City Engineer shall be kept onsite in a weatherproof container indicating the date, time and results of each inspection performed at each construction site. 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.
13. Based on the results of the inspections required by paragraph V.B.11, the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection.
14. A report summarizing the scope of any inspection required by paragraph V.B.11, and the name(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 paragraph V.B.12 above shall be made and retained as part of the SWPPP for at least one year from the date that the site is finally stabilized. 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 is in compliance with the SWPPP, the facility's NPDES permit, and these regulations. The report shall be certified and signed by the person responsible for making it.
15. The operator shall retain copies of any SWPPP and all reports required by these regulations or by the NPDES permit for the site, and records of all data used to complete the NOI, for a period of at least one year from the date that the site is finally stabilized.
16. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by these regulations and by the NPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the **CDD** a Notice of Termination (NOT) that includes the information required for Notices of Termination by the Construction General Permit.
17. Upon final stabilization of the construction site, the owner or the duly authorized representative thereof shall submit written certification to the **CDD** that the site has been finally stabilized. (See definition of final stabilization in these regulations.) The **CDD** may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the City Engineer has determined, following any appropriate inspection, that final

stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

C. Less than Five-Acre Disturbances

All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of less than five acres of total land area, shall comply with the following requirements in addition to those in Subsection V.A.:

1. The operator shall complete a "Small Construction Site Notice" obtainable from the Arkansas Department of Environmental Quality (ADEQ) or the **CDD** and post such notice in a conspicuous location at the construction site prior to the start of construction. If the construction activity is already underway upon the effective date of these regulations, the notice shall be posted within thirty (30) days.
2. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Construction General Permit and with any additional requirement imposed by or under these regulations and any city ordinance. The SWPPP for a site less than five acres in area does not have to be completed by a Registered Professional Engineer. The SWPPP shall contain the name, title, and business address of its preparer. The SWPPP shall be submitted to the City Engineer upon request.
3. The SWPPP shall be completed prior to the start of construction and shall be updated and modified as appropriate and as required by the Construction General Permit and these regulations.
4. A copy of the Small Construction Site Notice and a copy of the SWPPP shall be submitted to the **CDD**. A copy of the SWPPP shall be kept on site in a weather-proof container.
5. Qualified personnel provided by the operator of the construction site shall inspect disturbed areas of the construction site 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 24 hours of the end of the storm that is 0.5 inches or greater. Inspection forms approved by the City Engineer shall be kept onsite in a weatherproof container indicating the date, time and results of each inspection performed at each construction site. 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.

VI. STORM WATER 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, USC § 11023; and (4)

industrial facilities that the City Engineer determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity, shall comply with the following requirements:

1. Any operator who intends to obtain coverage for storm water discharge associated with industrial activity under the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity ("the Industrial General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the **CDD** at least 2 days prior to the commencement of the industrial activity at the facility. If industrial activity is already underway upon the effective date of these regulations, the NOI shall be submitted within seven (7) days. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by the Industrial General Permit changes, the new operator of the facility shall submit an NOI at least 2 days prior to the change.
2. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Industrial General Permit or any individual or group NPDES permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under these regulations.
3. The SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer. The signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Industrial General Permit, or with any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, and within any additional requirement imposed by or under these regulations. The SWPPP shall contain the name, title, and business address of the Registered Professional Engineer signing it, and the date that he/she did so.
4. The SWPPP shall be completed prior to the submittal of the NOI to the **CDD** and, for a new industrial operation, prior to the commencement of the industrial activity at the facility. The SWPPP shall be updated and modified as appropriate and as required by the Industrial General Permit and these regulations. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.
5. A copy of any NOI that is required by paragraph VI.A.1 shall be submitted to the **CDD** in conjunction with any application for a permit or any other City approval necessary to commence or continue operation of the industrial facility.
6. Any operator who is required by paragraph VI.A.2 to prepare a SWPPP shall submit the SWPPP, and any modifications thereto, to the City Engineer for review prior to commencement of or during industrial activity at the facility.
7. Upon the City Engineer's review of the SWPPP and any site inspection that he/she may conduct, the **CDD** may deny approval of any application for a permit or any other City approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the Industrial General Permit, any individual or group NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under these regulations. Also, if at any time the City Engineer determines that the SWPPP is not being fully implemented, the **CDD** may similarly deny approval of any application for a permit or other City approval necessary to commence or continue operation of the industrial facility.

8. Any modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer, as required for the original SWPPP by paragraph VI.A.3.
9. The SWPPP, with the Registered Professional Engineer's signature and seal affixed, and 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 Notice of Termination (NOT) has been submitted.
10. The City Engineer may notify the operator at any time that the SWPPP does not meet the requirements of the Industrial General Permit, any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under these regulations. Such notification shall identify those provisions of the permit or regulations which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within thirty (30) days of such notification from the City Engineer, or as otherwise provided by the City Engineer, the operator shall make the required changes to the SWPPP and shall submit to the City Engineer a written certification that the requested changes have been made.
11. The operator 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, 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 associated with industrial activity.
12. Qualified personnel provided by the operator shall inspect equipment and areas of the facility specified in the SWPPP at appropriate intervals. 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 inspection shall be maintained.
13. Qualified personnel provided by the operator shall conduct comprehensive site compliance evaluations as required by the Industrial General Permit at intervals of not less than once per year. Based on the results of the compliance evaluation, the description of potential pollutant sources and the pollution prevention measures and controls identified in the SWPPP shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the SWPPP in a timely manner, but in no case more than twelve weeks after the compliance evaluation.
14. A report summarizing the scope of the comprehensive site compliance evaluation required by paragraph VI.A.13, personnel making the compliance inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with necessary and appropriate plan revisions shall be made and retained as part of the SWPPP for at least one year after all storm water discharges from the facility are eliminated and the required NOT has been submitted. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES permit, and these regulations. The report shall be signed by the individual responsible for the comprehensive site compliance evaluation, and it shall be submitted to the City Engineer within ten days of its completion.

15. If the industrial facility is required by the Industrial General Permit to conduct semi-annual monitoring, a signed copy of each semi-annual monitoring report shall be submitted to the **CDD**.
16. If the industrial facility is required by the Industrial General Permit to conduct annual monitoring, records of the monitoring results shall be retained at the facility and made available to the City Engineer upon request. If expressly required by the **CDD**, a written report of the annual monitoring shall be prepared and submitted to the City Engineer.
17. By written notice, the City Engineer may require any industrial facility identified in accordance with this Section VI to implement a monitoring program that includes the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for the facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 C.F.R. 122.21(g)(7)(iii) and (iv). The City Engineer may require written reports of any such monitoring to be submitted to him/her.
18. By written notice, the **CDD** may require any industrial facility identified in this Section VI to conduct semi-annual or annual monitoring of storm water discharges, or the **CDD** may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. The City Engineer may require written reports of any such additional monitoring to be submitted to him/her.
19. The operator shall retain the SWPPP until at least one year after storm water discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and a Notice of Termination (NOT) in compliance with paragraph VI.A.23 has been submitted. The operator shall retain all records of all monitoring information, copies of all required reports, and records of all data used to complete the NOI, until at least one year after all storm water discharges associated with industrial activity at the facility are eliminated, or the operator ceases to operate that facility, and the required Notice of Termination (NOT) has been submitted.
20. 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, operators are required to retain for a six year period from the date of sample collection, records of all monitoring information collected. Operators must submit such monitoring results, and/or a summary thereof, to the **CDD** upon request.
21. Any discharge composed of coal pile runoff shall comply with the following limitations: no discharge shall exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor shall such runoff be diluted with storm water or other flows in order to meet this limitation; the pH of such discharges shall be within the range of 6.0-9.0. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids.
22. No discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum allowable concentrations (in mg/l) of each of the hazardous metals listed below:

<u>Total Metal</u>	<u>Monthly Average</u>	<u>Daily Composite</u>	<u>Single Grab</u>
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	0.1	0.2
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

23. Where all storm water discharges associated with industrial activity that are authorized by these regulations, and by the NPDES permit for those discharges from industrial activities, are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the **CDD** a Notice of Termination (NOT) that includes the information required for Notices of Termination by the Industrial General Permit.

- B. Any owner of a facility with a storm water discharge associated with industrial activity to which Subsection A applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with the best management practices (BMP) measures required in the SWPPP for the facility and for compliance with the effluent limitations for coal pile runoff and hazardous metals specified in paragraphs VI.A.21 and VI.A.22 above.
- C. Upon request by the **CDD**, all owners and operators of any facility that experiences a problem complying with the requirements of these regulations, the Industrial General Permit, or any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, shall consult with the City Engineer, any other representative of the City, and any third-party designated by the **CDD** in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the **CDD's** satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the State, and/or the City may itself undertake any enforcement action authorized by Sections IX, XI, or XII of these regulations. Exercise of the City's option for consultation under this Subsection VI.C. shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

## VII. COMPLIANCE MONITORING

### A. Right of Entry: Inspection and Sampling

**City personnel** shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of these regulations, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the **City personnel** 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. Dischargers shall make available to the **CDD**, upon request, any SWPPPs, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with these regulations and with any state or federal discharge permit.



1. Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, **City personnel** will be permitted to enter without delay for the purposes of performing his/her responsibilities.
2. The **CDD** shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.
3. The **CDD** may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
4. The **CDD** may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the **CDD** and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
6. Unreasonable delays in allowing the **City personnel** access to the discharger's premises shall be a violation of these regulations.

B. Search Warrants

If **City personnel** have been refused access to any part of the premises from which storm water is discharged, and they are able to demonstrate probable cause to believe that there may be a violation of these regulations or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with these regulations or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the **CDD** may seek issuance of a search warrant from any court of competent jurisdiction.

VIII. CITIZEN PARTICIPATION AND PUBLICATION

A. Citizen Reports of Violations

1. All citizens are encouraged to report to the **CDD** delegate any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of these regulations of which they become aware.
2. The **Community Development Director** will designate an individual within the **CDD** to receive all such citizen reports by telephone, in writing, and in person. A written record of each citizen report will be prepared and kept on file for a period of three (3) years, and a copy of the record of the report will be furnished to the reporting citizen upon request. Also upon request, the **CDD** will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

B. Publication of Dischargers in Significant Noncompliance

The **CDD** may periodically publish, in a daily newspaper generally distributed within the City, a list of owners and operators of discharges to the MS4 or waters of the United States from sites of construction and industrial activity which, during the previous twelve (12) months, were in significant noncompliance with the requirements of these regulations. The term "significant noncompliance" shall mean:

1. Introducing or causing to be introduced into the waters of the United States any discharge that violates a water quality standard;
2. Introducing or causing to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from the City's MS4;
3. Any connection of a line conveying sanitary sewage, domestic or industrial, to the MS4, or allowing any such connection to continue;
4. Any discharge of pollutants to the MS4 or waters of the United States that has caused an imminent or substantial endangerment to the health or welfare of persons or to the environment, or has resulted in the **CDD's** exercise of emergency authority to halt or prevent such a discharge;
5. Any violation that has resulted in injunctive relief, civil penalties, or criminal fine being imposed as a judicial remedy under Section XI of these regulations; or
6. Any other violation(s) which the **CDD** determines to be chronic or especially dangerous to the public or to the environment.
7. Any failure to comply with a compliance schedule, whether imposed by the City or by a court.

IX. ADMINISTRATIVE ENFORCEMENT REMEDIES

A. Warning Notice

When the **CDD** finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the **CDD** may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the **CDD** to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

B. Notification of Violation

When the **CDD** finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the **CDD** may serve upon that person a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the **CDD**. If the alleged violator denies that any violation occurred and/or contends that no

corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the **CDD** within ten (10) days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the **CDD** to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.

C. Consent Orders

The **City** may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in these regulations or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Subsections IX.E., IX.F. and IX.G. of these regulations and shall be judicially enforceable.

D. Show Cause Hearing

The **CDD** may order any person who has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, to appear before the **CDD** and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in paragraph X.A.7 of these regulations. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

E. Compliance Orders

When the **CDD** finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the **CDD** may issue an order to the violator directing that the violator come into compliance within a specified time limit. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

F. Remediation, Abatement, and Restoration Orders

When the **CDD** finds that a person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, and that such violation has adversely affected the MS4, the waters of the United States or any other aspect of the environment, the **CDD** may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, the waters of the United States, or any other aspect of the environment, and/or to restore any part of the MS4, the waters of the United States, or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action;

confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

G. Emergency Cease and Desist Orders

When the **CDD** finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the **CDD** may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all requirements of these regulations; and
2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the **CDD** may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply or other municipal utility services. The **CDD** may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the **CDD** that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under these regulations. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the **CDD** within ten (10) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

H. "Red Tags"

Whenever the **CDD** finds that any operator of a construction site has violated, or continues to violate, any provision of Section V of these regulations, or any order issued there under, the **CDD** may order that a "Red Tag" be issued to the operator, posted at the construction site, and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the **CDD**, the "Red Tag" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "Red Tag" order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

X. RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

A. Reconsideration and Hearing

1. Any person subject to a Compliance Order under Subsection IX.E, a Remediation, Abatement, or Restoration Order under Subsection IX.F, an Emergency Cease and Desist Order under Subsection IX.G, or a Red Tag Order under Subsection IX.H of these regulations may petition the **CDD** to reconsider the basis for his/her order within ten (10) days of the affected person's notice of issuance of such an order.
2. Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
3. In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.
4. The effect of any Compliance Order under Subsection IX.E, Remediation, Abatement, or Restoration Order under Subsection IX.F, and any Red Tag Order under Subsection IX.H shall be stayed pending the **CDD's** reconsideration of the petition, and any hearing thereon, unless the **CDD** expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Subsection IX.G shall not be stayed pending the **CDD's** reconsideration, or any hearing thereon, unless the **CDD** expressly and in writing stays the emergency order.
5. Within ten (10) days of the submittal of a petition for reconsideration, the **CDD** shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.
6. Written notice of any hearing set by the **CDD** pursuant to paragraph X.A.5 above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.
7. The **CDD** may conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:
  - (a) issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
  - (b) take evidence;
  - (c) transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the **CDD** for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

8. After the **CDD** has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The **CDD** may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

B. Appeal

1. Any person whose petition for reconsideration by the **CDD** has not been granted in its entirety and who remains adversely affected by the **CDD's** order, or who is subject to an order of the **CDD** issued following a Show Cause Hearing under Subsection IX.D, may appeal the action of the **CDD** to the City Council by filing a written appeal with the City Council within ten (10) days of the person's notice of the **CDD's** adverse action on the petition for reconsideration, or within ten (10) days of the person's notice of the issuance of the order following the Show Cause Hearing, as the case may be.
2. Failure to submit a timely written appeal to the City Council shall be deemed to be a waiver of further administrative review.
3. In its written appeal to the City Council, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the **CDD** that are contested, the reasons that the **CDD's** order and/or determinations are contested, and any alternative order that the appealing party would accept.
4. The effect of the **CDD's** order, as issued or modified, shall not be stayed pending the appeal to the City Council, unless the City Council expressly so states.
5. Within thirty (30) days of the submittal of a written appeal to the City Council, the City Council shall hear and consider the appeal in open meeting. The appellant shall be notified at least fifteen (15) days in advance of the date and time of the City Council meeting at which the appeal will be heard and considered.
6. The appellant shall have the right to public appearance before the City Council to present oral and written statements in support of his/her appeal. If the City Council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the **CDD** the City Council may remand the matter to the **CDD** for the taking of additional testimony or other evidence.
7. Upon consideration of any written and oral statements made to the City Council, as well as the record made before the **CDD**, the City Council shall act on the appeal by affirming, vacating, or modifying the order of the **CDD**, and/or by remanding the matter to the **CDD** for further action.
8. Following final action by the City Council on the appeal, any adversely affected party may challenge such action by the City Council in an appropriate court of competent jurisdiction.

## XI. JUDICIAL ENFORCEMENT REMEDIES

### A. Civil Remedies

1. Whenever it appears that a person has violated, or continues to violate, any provision of these regulations that relates to:
  - (a) the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
  - (b) the preservation of public health or to the fire safety of a building or other structure or improvement;
  - (c) the establishment of criteria for land subdivision or construction of buildings, including street design;
  - (d) dangerously damaged or deteriorated structures or improvements;
  - (e) conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
  - (f) point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into the MS4.

– the City may petition the State district court or the county court at law of Saline County, through the City Attorney, for either the injunctive relief specified in paragraph XI.A.2 or the civil penalties specified in paragraph XI.A.3 below, or both the specified injunctive relief and civil penalties.
2. The City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:
  - (a) prohibits any conduct that violates any provision of these regulations that relates to any matter specified in subparagraphs XI.A.1.(a)-(f) above; or
  - (b) compels the specific performance of any action that is necessary for compliance with any provision of these regulations that relates to any matter specified in subparagraphs XI.A.1(a)-(f) above.
3. The City may recover a civil penalty of not more than \$1,000 per day for each violation of any provision of these regulations that relates to any matter specified in subparagraph XI.A.1(a)-(e) above, and a civil penalty of not more than \$5,000 per day for each violation of any provision of these regulations that relates to any matter specified in subparagraph XI.A.1(f) above, if the City proves that:
  - (a) the defendant was actually notified of the provisions of these regulations; and
  - (b) after the defendant received notice of the provisions of these regulations, the defendant committed acts in violation of these regulations or failed to take action necessary for compliance with the regulations.

### B. Criminal Penalties

1. Any person who has violated any provision of these regulations, or any order issued hereunder, shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day or any greater fine authorized by State statute.

2. Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to these regulations, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under these regulations shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day, or any greater fine authorized by State statute.
3. In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

C. Remedies Nonexclusive

The remedies provided for in these regulations are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

XII. SUPPLEMENTAL ENFORCEMENT ACTION

A. Performance Bonds

The **CDD** may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the **CDD** to be necessary to achieve consistent compliance with these regulations, any order issued hereunder, any required Best Management Practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. 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 any industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.

B. Liability Insurance

The **CDD** may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the **CDD**, 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.

C. Public Nuisances

A violation of any provision of these regulations, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the **CDD**. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.



### XIII. MISCELLANEOUS PROVISIONS

#### A. Charges and Fees

The City may adopt reasonable fees for reimbursement of costs of constructing, operating, and maintaining the City's MS4, and for reimbursement of costs of implementing its storm water management program as required by EPA or the State, and the cost of implementing these regulations, which costs may include, but not be limited to, the following:

1. Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;
2. Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants;
3. Fees for reviewing storm water management/drainage plans: and
4. Other fees as the City may deem necessary to carry out the requirements contained in these regulations. These fees relate solely to the matters covered by these regulations and are separate from all other fees, fines, and penalties chargeable by the City.

#### B. Severability

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

#### C. Effective Date

These regulations shall be in full force and effect immediately following their passage, approval, and publication, as provided by law.

STATE OF ARKANSAS }  
County of Saline } ss

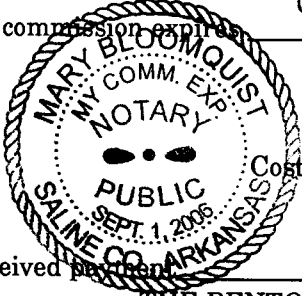
I, Laura L. McCool do solemnly swear that I am Legal Advertising Clerk of The Benton Courier, a daily newspaper printed in said county and that I was such at the date of publication hereinafter stated, and that said newspaper had a bona fide circulation in such county at said dates, and has been regularly published in said county for a period of 130 years next before the date of the first publications of the advertisement hereto annexed, and that said advertisement was published in said newspaper 1 times for 1 issues, the first insertion therein having been made on 3-03-06, and the last insertion on 3-03-06.

Laura L. McCool  
Legal Advertising Clerk

Sworn to and subscribed before me on  
3/31/06

Mary E. Bloomquist  
Notary Public  
9/1/2006

My commission expires



FEE FOR PRINTING \$ 5062.50  
Cost of Proof \$ \_\_\_\_\_  
Total \$ 5062.50

Received payment of \_\_\_\_\_  
THE BENTON COURIER

By \_\_\_\_\_

Legal Notices

ORDINANCE NO. 2 OF 2006

AN ORDINANCE ADOPTING STORMWATER DISCHARGE REGULATIONS FOR THE CITY OF BENTON, ARKANSAS: DECLARING AN EMERGENCY; AND, FOR OTHER PURPOSES

WHEREAS, The City Council of the City of Benton, Arkansas, has found and determined that it should adopt Stormwater Discharge Regulations in the form and substance of the regulations exhibited with and adopted by this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Benton, Arkansas, that:

SECTION 1. The document entitled "Stormwater Discharge Regulations for Benton, Arkansas," attached hereto and marked "Exhibit A" is included herein by reference, as if such regulations were set forth line-for-line and word-for-word, and same are hereby adopted.

Exhibit A to Benton Ordinance 2 of 2006  
STORMWATER DISCHARGE REGULATIONS  
FOR BENTON, ARKANSAS

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I. GENERAL PROVISIONS

A. Purposes

The purposes and objectives of these regulations are as follows:

1. To maintain and improve the quality of surface water and groundwater within the City of Benton, Arkansas, the Central Arkansas Region, and the State of Arkansas.
2. To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Benton, Arkansas.
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 and natural waters of the City of Benton, Arkansas.
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 and operators of industrial and construction sites within the City of Benton, Arkansas.
6. To enable the City of Benton, Arkansas to comply with all federal and state laws and regulations applicable to storm water discharges.

B. Administration

Except as otherwise provided herein, the *Community Development Department (CDD) of the City of Benton, Arkansas* shall administer, implement, and enforce the provisions of these regulations. Any powers granted to or duties imposed upon the CDD may be delegated by the Mayor to other City personnel.

C. Abbreviations

The following abbreviations when used in these regulations shall have the designated meanings:

- BMP - Best Management Practices
- BTEX - Benzene, Toluene, Ethylbenzene, and Xylene
- 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
- Ppb - Parts per billion
- PST - Petroleum Storage Tank
- RLA - Registered Landscape Architect
- RPE - Registered Professional Engineer
- RQ - Reportable Quantity
- SWPPP - Storm Water Pollution Prevention Plan
- TPH - Total Petroleum Hydrocarbons
- USC - United States Code

D. Definitions

hol blend, and any other fluid used in a motor vehicle.

28. **Municipal landfill (or landfill).** 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, an injection well, or a pile (as these terms are defined in regulations promulgated by the Arkansas Department of Environmental Quality).

29. **Municipal separate storm sewer system (MS4).** 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 storm water, and which is not used for collecting or conveying sewage.

30. **Municipal solid waste.** 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.

31. **NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (or Industrial General Permit).** The Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

32. **NPDES General Permit for Storm Water Discharges from Construction Sites (or Construction General Permit).** The Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.

33. **NPDES permit.** A permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

34. **Non-point source.** Any source of any discharge of a pollutant that is not a "point source."

35. **Notice of Intent (NOI).** The Notice of Intent that is required by either the Industrial General Permit or the Construction General Permit.

36. **Notice of Termination (NOT).** The Notice of Termination that is required by either the Industrial General Permit or the Construction General Permit.

37. **Oil.** 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.

38. **Operator.** The person or persons who, either individually or taken together, meet the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

39. **Owner.** The person who owns a facility or part of a facility.

40. **Person.** 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. This definition includes all federal, state, and local governmental entities.

41. **Pesticide.** A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

42. **Petroleum product.** 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. [The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.]

43. **Petroleum storage tank (PST).** Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

44. **Point source.** 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.

45. **Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

46. **Pollution.** 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 to the public health, safety, or welfare, or impairs the useful-

#### D. Definitions

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

1. **Agricultural storm water runoff.** Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

2. **ADEQ.** Arkansas Department of Environmental Quality.

3. **Best management practices (BMP).** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs 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.

4. **City.** The City of Benton, Arkansas.

5. **City Engineer.** The person appointed to the position of City Engineer by the Mayor of the City of Benton, Arkansas, or his/her duly authorized representative.

6. **Coal pile runoff.** The rainfall runoff from or through any coal storage pile.

7. **Commencement of construction.** The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

8. **Commercial.** Pertaining to any business, trade, industry, or other activity engaged in for profit.

9. **Discharge.** Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

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

11. **Domestic sewage.** 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.

12. **Environmental Protection Agency (EPA).** 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.** Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

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

15. **Fertilizer.** A solid or non-solid 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 content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

16. **Final stabilization.** The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

17. **Fire Department.** The Fire Department of the City of Benton, Arkansas, or any duly authorized representative thereof.

18. **Fire protection water.** Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.

19. **Garbage.** 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.

20. **Harmful quantity.** The amount of any substance that will cause pollution of water in the State.

21. **Hazardous household waste (HHW).** Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

22. **Hazardous substance.** Any substance listed in Table 302.4 of 40 CFR Part 302.

23. **Hazardous waste.** Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

24. **Hazardous waste treatment, disposal, and recovery facility.** All contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

25. **Herbicide.** A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

26. **Industrial waste.** Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

27. **Motor vehicle fuel.** Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alco-

hol or the 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.** Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.

48. **Landscape Architect (LA).** A person who has been duly licensed and registered to practice landscape architecture by the State of Arkansas.

49. **Professional Engineer (PE).** A person who has been duly licensed and registered by the Arkansas State Board of Registration for Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Arkansas.

50. **Release.** 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.

51. **Reportable Quantity (RQ).** 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 and listed in Appendix A thereto.

52. **Rubbish.** 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 (1600 to 1800 degrees Fahrenheit).

53. **Sanitary sewer (or sewer).** 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 storm water, surface water, and groundwater are not intentionally admitted).

54. **Septic tank waste.** Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

55. **Service station.** Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

56. **Sewage (or sanitary sewage).** 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.

57. **Site.** 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.

58. **Solid waste.** 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, and agricultural operations, and from community and institutional activities.

59. **State.** The State of Arkansas.

60. **Storm water.** Storm water runoff, snow melt runoff, and surface runoff and drainage.

61. **Storm water discharge associated with industrial activity.** 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 within one of the categories of facilities listed in 40 CFR § 122.26(b)(14), and which is not excluded from EPA's definition of the same term.

62. **STORM water pollution prevention plan (SWPPP).** A plan required by either the Construction General Permit or the Industrial 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 other industrial activity at the facility.

63. **Uncontaminated.** Not containing a harmful quantity of any substance.

64. **Used oil (or used motor oil).** Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with State and federal law.

65. **Water in the State (or water).** 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, fresh or salt, 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.

66. **Water quality standard.** 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, as specified by the Arkansas Department of Environmental Quality.

67. **Waters of the United States.** 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 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 wa-

ters 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 § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

68. **Wetland.** An 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.

69. **Yard waste.** Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

## II. GENERAL PROHIBITION

A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) of Benton, Arkansas any discharge that is not composed entirely of storm water.

B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section that the discharge was composed entirely of one or more of the following categories of discharges:

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 fire fighting by the Fire Department;
3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials;
4. Agricultural storm water runoff;
5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the total residual chlorine (TRC) has been reduced to less than one (1) mg/l and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;
7. A discharge or flow from a diverted stream flow or natural spring;
8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
9. Uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
11. 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;
12. 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;
13. A discharge or flow from individual residential car washing;
14. A discharge or flow from a riparian habitat or wetland;
15. 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;
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;
17. Swimming pool water [that has been dechlorinated so that total residual chlorine (TRC) is less than One (1) mg/l and that 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.

C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the City Engineer to be a source of a pollutant or 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 occurred more than 15 days beyond such notice. The correctness of the City Engineer's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

## III. 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 II.

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 water quality standard, the City's NPDES 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 any of the following substances into the MS4:

1. Any used motor oil, antifreeze, or any other motor vehicle fluid;
2. Any industrial waste;
3. Any hazardous waste, including hazardous household waste;
4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
5. Any garbage, rubbish, or yard waste;
6. Any wastewater 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

does not have to be completed by a Registered Professional Engineer. PPP shall contain the name, title, and business address of its preparer. WPPP shall be submitted to the City Engineer upon request.

WPPP shall be completed prior to the start of construction and shall be updated and modified as appropriate and as required by the Construction Permit and these regulations.

A copy of the SWPPP shall be kept on site in a pre-proof container.

Inspected personnel provided by the operator of the construction site shall be notified of disturbed areas of the construction site that have not been finally stabilized. Areas used for storage of materials that are exposed to precipitation, erosion control measures, and locations where vehicles enter or exit the site shall be inspected at least once every fourteen (14) calendar days and within 24 hours of the start of the storm that is 0.5 inches or greater. Inspection forms approved by the City Engineer shall be kept onsite in a weatherproof container indicating date, time and results of each inspection performed at each construction site. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are being implemented 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.

## STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

Operators of (1) municipal landfills; (2) hazardous waste treatment, storage, and recovery facilities; (3) industrial facilities that are subject to Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023; and (4) industrial facilities that the City Engineer determines are contributing a substantial pollutant loading to the MS4 shall comply with the following requirements:

The operator who intends to obtain coverage for storm water discharge associated with industrial activity under the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity ("the Industrial General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the City Engineer at least 2 days prior to the commencement of the industrial activity. If industrial activity is already underway upon the effective date of these regulations, the NOI shall be submitted within seven (7) days. The operator of a facility with a storm water discharge associated with industrial activity which is covered by the Industrial General Permit shall submit a new NOI at least 2 days before the change.

A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and maintained in accordance with the requirements of the Industrial General Permit or any individual or group NPDES permit issued for storm water discharge from the industrial facility, and with any additional requirements imposed under these regulations.

The SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer. The signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Industrial General Permit, or with any applicable individual or group NPDES permit issued for storm water discharges from the facility, and within any additional requirements imposed by or under these regulations. The SWPPP shall contain the name, title, and business address of the Registered Professional Engineer signing it, and the date that it was signed.

The SWPPP shall be completed prior to the submittal of the NOI to the City Engineer for a new industrial operation, prior to the commencement of the industrial activity at the facility. The SWPPP shall be updated and modified as required by the Industrial General Permit and these regulations. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.

A copy of any NOI that is required by paragraph VI.A.1 shall be submitted to the City Engineer in conjunction with any application for a permit or any other approval necessary to commence or continue operation of the industrial

operator who is required by paragraph VI.A.2 to prepare a SWPPP shall submit a copy of the NOI to the City Engineer prior to commencement of or during industrial activity at the fa-

ility. If the City Engineer's review of the SWPPP and any site inspection conducted by the City Engineer may deny approval of any application for a permit or any other City approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the Industrial General Permit, any individual or group NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under these regulations, the City Engineer may similarly deny approval of any application for a permit or other City approval necessary to commence or continue operation of the industrial facility.

Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer, as required for the original SWPPP.

5. Any garbage, rubbish, or yard waste;
6. Any wastewater 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 2 such vehicles;
7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
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, emissions filter, or the blowdown from a boiler;
12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
13. Any runoff or washdown water from any animal pen, kennel, or fowl or livestock containment area containing more than ten (10) animals;
14. Any filter backwash from a swimming pool, fountain, or spa;
15. Any swimming pool water containing total residual chlorine (TRC) of one (1) mg/l or more or containing any harmful quantity 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 superchlorination or other means if the total residual chlorine (TRC) is at one (1) mg/l or more or if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
17. Any fire protection water containing oil or hazardous substances or materials that the Fire Code in these regulations requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire fighting by the Fire Department.);
18. Any water from a water curtain in a spray room used for painting vehicles or equipment;
19. Any contaminated runoff from a vehicle wrecking yard;
20. Any substance or material that will damage, block, or clog the MS4;
21. 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 satisfies all of the following criteria:
  - (a) Compliance with all state and federal standards and requirements;
  - (b) No discharge containing a harmful quantity of any pollutant; [and]
  - (c) No discharge containing more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).

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, or associated with landfilling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained 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. No person shall cause or allow any pavement washwater from a service station to be discharged into the MS4 unless such washwater has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.

G. Regulation of Pesticides, Herbicides, and Fertilizers.

  1. Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must comply fully with all state and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and all federal regulations promulgated pursuant to FIFRA; and any other state or federal requirement.
  2. Any license, permit, registration, certification, or evidence of financial responsibility required by state or federal law for sale, distribution, application, manufacturer, transportation, storage, or disposal of a pesticide, herbicide or fertilizer must be presented to the City Engineer or his/her delegate and any city law enforcement officer for examination upon request.
  3. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.
  4. No person shall use or cause to be used any pesticide, herbicide, 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, herbicide, or fertilizer to enter the MS4 or waters of the United States.
  5. No person shall dispose of, discard, store, or transport a pesticide herbi-

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## Legal Notices

20. 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, operators are required to retain for a six year period from the date of sample collection, records of all monitoring information collected. Operators must submit such monitoring results, and/or a summary thereof, to the CDD upon request.

21. Any discharge composed of coal pile runoff shall comply with the following limitations: no discharge shall exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor shall such runoff be diluted with storm water or other flows in order to meet this limitation; the pH of such discharges shall be within the range of 6.0-9.0. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids.

22. No discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum allowable concentrations (in mg/l) of each of the hazardous metals listed below:

Total Metal	Monthly Average	Daily Composite	Single Grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	0.1	0.2
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

23. Where all storm water discharges associated with industrial activity that are authorized by these regulations, and by the NPDES permit for those discharges from industrial activities, are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the CDD a Notice of Termination (NOT) that includes the information required for Notices of Termination by the Industrial General Permit.

B. Any owner of a facility with a storm water discharge associated with industrial activity to which Subsection A applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with the best management practices (BMP) measures required in the SWPPP for the facility and for compliance with the effluent limitations for coal pile runoff and hazardous metals specified in paragraphs VI.A.21 and VI.A.22 above.

C. Upon request by the CDD, all owners and operators of any facility that experiences a problem complying with the requirements of these regulations, the Industrial General Permit, or any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, shall consult with the City Engineer, any other representative of the City, and any third-party designated by the CDD in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the CDD's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the State, and/or the City may itself undertake any enforcement action authorized by Sections IX, XI, or XII of these regulations. Exercise of the City's option for consultation under this Subsection VI.C. shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

## VII. COMPLIANCE MONITORING

### A. Right of Entry: Inspection and Sampling

City personnel shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of these regulations, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the City personnel 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. Dischargers shall make available to the CDD, upon request, any SWPPPs, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with these regulations and with any state or federal discharge permit.

1. Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, City personnel will be permitted to enter without delay for the purposes of performing his/her responsibilities.

2. The CDD shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

3. The CDD may require any discharger to the MS4 or waters of the United States to conduct specified monitoring activities and other activities

before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the CDD to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.

### C. Consent Orders

The City may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in these regulations or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Subsections IX.E., IX.F. and IX.G. of these regulations and shall be judicially enforceable.

### D. Show Cause Hearing

The CDD may order any person who has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, to appear before the CDD and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in paragraph X.A.7 of these regulations. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

### E. Compliance Orders

When the CDD finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the CDD may issue an order to the violator directing that the violator come into compliance within a specified time limit. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

### F. Remediation, Abatement, and Restoration Orders

When the CDD finds that a person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, and that such violation has adversely affected the MS4, the waters of the United States or any other aspect of the environment, the CDD may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, the waters of the United States, or any other aspect of the environment, and/or to restore any part of the MS4, the waters of the United States, or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

### G. Emergency Cease and Desist Orders

When the CDD finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the CDD may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all requirements of these regulations; and
2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with an emergency order, the CDD may take any action authorized by these regulations, including emergency action, without first issuing a Notice of Violation.

and/or metering of the discharger's operations.

3. The CDD may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.

4. The CDD may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the CDD and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

6. Unreasonable delays in allowing the City personnel access to the discharger's premises shall be a violation of these regulations.

#### **B. Search Warrants**

If City personnel have been refused access to any part of the premises from which storm water is discharged, and they are able to demonstrate probable cause to believe that there may be a violation of these regulations or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with these regulations or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the CDD may seek issuance of a search warrant from any court of competent jurisdiction.

### **VIII. CITIZEN PARTICIPATION AND PUBLICATION**

#### **A. Citizen Reports of Violations**

1. All citizens are encouraged to report to the CDD delegate any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of these regulations of which they become aware.

2. The Community Development Director will designate an individual within the CDD to receive all such citizen reports by telephone, in writing, and in person. A written record of each citizen report will be prepared and kept on file for a period of three (3) years, and a copy of the record of the report will be furnished to the reporting citizen upon request. Also upon request, the CDD will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

#### **B. Publication of Dischargers in Significant Noncompliance**

The CDD may periodically publish, in a daily newspaper generally distributed within the City, a list of owners and operators of discharges to the MS4 or waters of the United States from sites of construction and industrial activity which, during the previous twelve (12) months, were in significant noncompliance with the requirements of these regulations. The term "significant noncompliance" shall mean:

1. Introducing or causing to be introduced into the waters of the United States any discharge that violates a water quality standard;

2. Introducing or causing to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from the City's MS4;

3. Any connection of a line conveying sanitary sewage, domestic or industrial, to the MS4, or allowing any such connection to continue;

4. Any discharge of pollutants to the MS4 or waters of the United States that has caused an imminent or substantial endangerment to the health or welfare of persons or to the environment, or has resulted in the CDD's exercise of emergency authority to halt or prevent such a discharge;

5. Any violation that has resulted in injunctive relief, civil penalties, or criminal fine being imposed as a judicial remedy under Section XI of these regulations; or

6. Any other violation(s) which the CDD determines to be chronic or especially dangerous to the public or to the environment.

7. Any failure to comply with a compliance schedule, whether imposed by the City or by a court.

### **IX. ADMINISTRATIVE ENFORCEMENT REMEDIES**

#### **A. Warning Notice**

When the CDD finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the CDD may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the CDD to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

#### **B. Notification of Violation**

When the CDD finds that any person has violated, or continues to violate, any provision of these regulations, or any order issued hereunder, the CDD may serve upon that person a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the CDD. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the CDD within ten (10) days of receipt of the notice. Submission of an explanation and/or plan in

shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the CDD may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply or other municipal utility services. The CDD may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the CDD that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under these regulations. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the CDD within ten (10) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

#### **H. "Red Tags"**

Whenever the CDD finds that any operator of a construction site has violated, or continues to violate, any provision of Section V of these regulations, or any order issued there under, the CDD may order that a "Red Tag" be issued to the operator, posted at the construction site, and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the CDD, the "Red Tag" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "Red Tag" order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

### **X. RIGHT TO RECONSIDERATION, HEARING, AND APPEAL**

#### **A. Reconsideration and Hearing**

1. Any person subject to a Compliance Order under Subsection IX.E, a Remediation, Abatement, or Restoration Order under Subsection IX.F, an Emergency Cease and Desist Order under Subsection IX.G, or a Red Tag Order under Subsection IX.H of these regulations may petition the CDD to reconsider the basis for his/her order within ten (10) days of the affected person's notice of issuance of such an order.

2. Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

3. In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

4. The effect of any Compliance Order under Subsection IX.E, Remediation, Abatement, or Restoration Order under Subsection IX.F, and any Red Tag Order under Subsection IX.H shall be stayed pending the CDD's reconsideration of the petition, and any hearing thereon, unless the CDD expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Subsection IX.G shall not be stayed pending the CDD's reconsideration, or any hearing thereon, unless the CDD expressly and in writing stays the emergency order.

5. Within ten (10) days of the submittal of a petition for reconsideration, the CDD shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

6. Written notice of any hearing set by the CDD pursuant to paragraph X.A.5 above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

7. The CDD may conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:

(a) issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;

(b) take evidence;

(c) transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the CDD for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

8. After the CDD has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The CDD may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

#### **B. Appeal**

1. Any person whose petition for reconsideration by the CDD has not been granted in its entirety and who remains adversely affected by the CDD's order, or who is subject to an order of the CDD issued following a Show Cause



City Council by filing a written appeal with the City Council within ten (10) days of the person's notice of the CDD's adverse action on the petition for reconsideration, or within ten (10) days of the person's notice of the issuance of the order following the Show Cause Hearing, as the case may be.

2. Failure to submit a timely written appeal to the City Council shall be deemed to be a waiver of further administrative review.

3. In its written appeal to the City Council, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the CDD that are contested, the reasons that the CDD's order and/or determinations are contested, and any alternative order that the appealing party would accept.

4. The effect of the CDD's order, as issued or modified, shall not be stayed pending the appeal to the City Council, unless the City Council expressly so states.

5. Within thirty (30) days of the submittal of a written appeal to the City Council, the City Council shall hear and consider the appeal in open meeting. The appellant shall be notified at least fifteen (15) days in advance of the date and time of the City Council meeting at which the appeal will be heard and considered.

6. The appellant shall have the right to public appearance before the City Council to present oral and written statements in support of his/her appeal. If the City Council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the CDD the City Council may remand the matter to the CDD for the taking of additional testimony or other evidence.

7. Upon consideration of any written and oral statements made to the City Council, as well as the record made before the CDD, the City Council shall act on the appeal by affirming, vacating, or modifying the order of the CDD, and/or by remanding the matter to the CDD for further action.

8. Following final action by the City Council on the appeal, any adversely affected party may challenge such action by the City Council in an appropriate court of competent jurisdiction.

#### XI. JUDICIAL ENFORCEMENT REMEDIES

##### A. Civil Remedies

1. Whenever it appears that a person has violated, or continues to violate, any provision of these regulations that relates to:
  - (a) the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
  - (b) the preservation of public health or to the fire safety of a building or other structure or improvement;
  - (c) the establishment of criteria for land subdivision or construction of buildings, including street design;
  - (d) dangerously damaged or deteriorated structures or improvements;
  - (e) conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
  - (f) point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into the MS4.

-- the City may petition the State district court or the county court at law of Saline County, through the City Attorney, for either the injunctive relief specified in paragraph XI.A.2 or the civil penalties specified in paragraph XI.A.3 below, or both the specified injunctive relief and civil penalties.

2. The City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:

- (a) prohibits any conduct that violates any provision of these regulations that relates to any matter specified in subparagraphs XI.A.1.(a)-(f) above; or
- (b) compels the specific performance of any action that is necessary for compliance with any provision of these regulations that relates to any matter specified in subparagraphs XI.A.1.(a)-(f) above.

3. The City may recover a civil penalty of not more than \$1,000 per day for each violation of any provision of these regulations that relates to any matter specified in subparagraph XI.A.1.(a)-(e) above, and a civil penalty of not more than \$5,000 per day for each violation of any provision of these regulations that relates to any matter specified in subparagraph XI.A.1(f) above, if the City proves that:

- (a) the defendant was actually notified of the provisions of these regulations; and
- (b) after the defendant received notice of the provisions of these regulations, the defendant committed acts in violation of these regulations or failed to take action necessary for compliance with the regulations.

##### B. Criminal Penalties

1. Any person who has violated any provision of these regulations, or any order issued hereunder, shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day or any greater fine authorized by State statute.
2. Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to these regulations, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under these regulations shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day, or any greater fine authorized by State statute.
3. In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and

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Dave Chappelle never return to Comedy Central cable network with plans to produce a series of films culled from his previous series. "It's kind of a surprise," Chappelle told Daily News in an interview for a Wednesday. "That's how I feel about it. I don't know if that's the case."

But if people don't watch then I'd be more happy."

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- \*EIGHT BELOW (PG) 4:15 7:00 9:45
- \*FINAL DESTINATION 3 (R) 2:15 4:50 7:25 9:55
- \*FIREWALL (PG-13) 2:30 5:00 7:30 9:55
- \*MADEA'S FAMILY REUNION (PG-13) 2:30 4:20 5:05 7:15 7:40 9:50
- \*NANNY MCPHEE (PG) 7:05 9:30
- \*PINK PANTHER (PG) 2:05 2:55
- \*RUNNING SCARED (R) 7:05 9:05

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- \*ULTRAVIOLET (PG-13) (12:05 1:05 2:30 5:45 7:00 8:15 9:30 10:30)
- \*AQUAMARINE (PG) (12:10 2:50 5:25 7:30 9:10)
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- \*RUNNING SCARED (R) 7:50 10:00
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- DATE MOVIE (PG-13) (1:00 3:10 5:30 7:30)
- FREEDOMLAND (R) (1:15 7:30)
- PINK PANTHER (PG) (1:10 4:00) 7:25
- FIREWALL (PG-13) (1:10 4:00) 7:25
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- MATCHPOINT (R) (4:15 10:35)
- CURIOUS GEORGE (G) (12:35 2:55 5:15)
- WHEN A STRANGER CALLS (PG-13) (4:15 7:15 9:45)
- BIG MOMMA'S HOUSE 2 (PG-13) (12:15 2:45 5:15 7:45 10:15)
- BROKEBACK MOUNTAIN (R) 9:15

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...order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under these regulations shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day, or any greater fine authorized by State statute.

3. In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

#### **C. Remedies Nonexclusive**

The remedies provided for in these regulations are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

### **XII. SUPPLEMENTAL ENFORCEMENT ACTION**

#### **A. Performance Bonds**

The CDD may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the CDD to be necessary to achieve consistent compliance with these regulations, any order issued hereunder, any required Best Management Practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. 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 any industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.

#### **B. Liability Insurance**

The CDD may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the CDD, 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.

#### **C. Public Nuisances**

A violation of any provision of these regulations, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the CDD. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

### **XIII. MISCELLANEOUS PROVISIONS**

#### **A. Charges and Fees**

The City may adopt reasonable fees for reimbursement of costs of constructing, operating, and maintaining the City's MS4, and for reimbursement of costs of implementing its storm water management program as required by EPA or the State, and the cost of implementing these regulations, which costs may include, but not be limited to, the following:

1. Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;
2. Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants;
3. Fees for reviewing storm water management/drainage plans; and
4. Other fees as the City may deem necessary to carry out the requirements contained in these regulations. These fees relate solely to the matters covered by these regulations and are separate from all other fees, fines, and penalties chargeable by the City.

#### **B. Severability**

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

#### **C. Effective Date**

These regulations shall be in full force and effect immediately following their passage, approval, and publication, as provided by law.

SECTION 2. The City Clerk shall cause a copy of the said "Exhibit A" to be published in a newspaper of general circulation in Saline County, Arkansas, along with this ordinance.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 4. All City of Benton Ordinances, Resolutions, Regulations, and parts thereof, in conflict with the "Stormwater Discharge Regulations for Benton, Arkansas," attached hereto and marked "Exhibit A" are hereby repealed to the extent of such conflict.

SECTION 5. There is an immediate need to adopt the "Stormwater Discharge Regulations for Benton, Arkansas." Therefore, an emergency exists, and this ordinance is necessary for the preservation of the public peace, health and safety. It shall be in full force and effect immediately from and after its passage and approval.

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3. Fees for reviewing...  
4. Other fees as the City may deem necessary to carry out the... contained in these regulations. These fees relate solely to the matters covered by these regulations and are separate from all other fees, fines, and penalties chargeable by the City.

**B. Severability**

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

**C. Effective Date**

These regulations shall be in full force and effect immediately following their passage, approval, and publication, as provided by law.

SECTION 2. The City Clerk shall cause a copy of the said "Exhibit A" to be published in a newspaper of general circulation in Saline County, Arkansas, along with this ordinance.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 4. All City of Benton Ordinances, Resolutions, Regulations, and parts thereof, in conflict with the "Stormwater Discharge Regulations for Benton, Arkansas," attached hereto and marked "Exhibit A" are hereby repealed to the extent of such conflict.

SECTION 5. There is an immediate need to adopt the "Stormwater Discharge Regulations for Benton, Arkansas." Therefore, an emergency exists, and this ordinance is necessary for the preservation of the public peace, health and safety. It shall be in full force and effect immediately from and after its passage and approval.

PASSED AND APPROVED this 28th day of February, 2006.

Rick Holland, Mayor

Cindy Stracener, City Clerk

...more than \$5,000 per day for each violation of any provision of these regulations that relates to any matter specified in subparagraph XI.A.1(f) above, if the City proves that:

- (a) the defendant was actually notified of the provisions of these regulations;
- (b) after the defendant received notice of the provisions of these regulations, the defendant committed acts in violation of these regulations or failed to take action necessary for compliance with the regulations.

**Criminal Penalties**

Any person who has violated any provision of these regulations, or any order issued hereunder, shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day or any greater fine authorized by State statute.

Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other document...

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