

ARTICLE III.

STORMWATER MANAGEMENT

Sec. 34-125. Purpose.

The purpose of this article is to promote the elimination or reduction of pollutants from entering the city's municipal separate storm sewer system and for control over discharges to and from the system. It shall also be the purpose of this article to:

- (1) Maintain and improve the quality of surface water and groundwater within the city limits;
- (2) Prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4), as defined in section 34-130, and natural waters and water courses within the city;
- (3) 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 city's storm drains and into natural waters and water courses;
- (4) Encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
- (5) Minimize destruction of the natural landscape by reducing erosion and sedimentation;
- (6) Treat stormwater runoff as a valuable natural resource of the city, which is a community that is prone to drought, by encouraging water collection and infiltration on site;
- (7) Control the adverse impacts associated with accelerated stormwater runoff on natural drainage ways and all structures due to increased development and creation of new impervious surfaces;
- (8) Minimize erosion and degradation of arroyo channels and improve the condition of these channels where possible;
- (9) Respect, protect, maintain, and restore natural drainage ways, wetlands, bosques, floodplains, steep slopes, riparian vegetation, and wildlife habitat areas that are within the city's jurisdiction;

- (10) Integrate stormwater management measures into the landscape and site planning process;
 - (11) Provide aesthetically pleasing solutions to stormwater management and erosion control measures by integrating permanent measures into the overall landscape and site design;
 - (12) Facilitate compliance with state and federal standards and permits by owners and operators of construction sites within the city;
 - (13) Enable the city to comply with all federal and state laws, regulations and permits applicable to stormwater discharge;
 - (14) Protect the health and welfare of the citizens and residents of the city.
- (Ord. No. 2146, § I, 11-1-04)

Sec. 34-126. Scope.

This article shall apply to any stormwater discharge associated with commercial and industrial activity including construction, as defined by 40 CFR, Section 122.26(b)(14).
(Ord. No. 2146, § I, 11-1-04)

Sec. 34-127. Administration.

The director of public works or designee shall administer and coordinate the implementation and enforcement of the provisions of this article.
(Ord. No. 2146, § I, 11-1-04)

Sec. 34-128. Duties and responsibilities of director of public works.

Duties and responsibilities of the director of public works or designee shall include, but are not limited to the following:

- (1) Be the guardian of the MS4, including all dams, detention and retention basins, storm drains, outlet working channels and pumping stations;
- (2) Maintain and hold open for public inspection all records pertaining to the provisions of this article;
- (3) Review permit applications to determine whether proposed developments will eliminate or reduce the pollutants entering the MS4;
- (4) Review, approve or deny all applications for development permits required by adoption of this article;

- (5) Maintain supervision over the operation and maintenance condition of the MS4 to ensure its safe and effective functioning and notify the streets systems administrator of any required maintenance and/or repair work;
- (6) Conduct an annual inspection of the MS4 and provide a written inspection report, including an assessment of the operational condition, safety, effectiveness and maintenance condition of the system, and a line item list of required special maintenance or repairs to the streets systems administrator;
- (7) Establish and implement a program to locate and eliminate illicit discharges and improper disposals to the MS4;
- (8) Establish and implement a program to prevent, contain and respond to spills that may discharge into MS4. This program shall be in conjunction with the fire department's hazardous materials division;
- (9) Establish and implement a program to identify and control pollutants in stormwater discharges from any construction or commercial facility that the director of public works determines that is contributing a substantial pollutant loading to the MS4.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-129. Definitions.

(a) For the purpose of this article, the following words shall have the meaning set forth in this section.

(b) Terms.

Accelerated erosion: Erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away.

Agricultural stormwater runoff: Any stormwater 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.

Best management practices: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent and/or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Building permit: Any duly authorized permit for construction issued by the city or any authorization that includes soil disturbance.

Channel: A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing: Any activity which removes the vegetative surface cover. Includes grubbing or removal of subsurface stabilization such as roots.

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

Damage of MS4: The introduction of any substance not entirely comprised of clean stormwater into the drainage system of the city.

Detention: The temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

Detention facility: A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Discharge: Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the MS4 or into waters of the United States.

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.

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 free from industrial waste, to include commercial enterprise.

Drainage way: Any channel that conveys surface runoff throughout a site.

Environmental protection agency: 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.

Erosion: The wearing away of the ground surface as a result of the movement of gravity, wind, water or ice.

Erosion control: Measures that prevent erosion.

Erosion and sediment control plan: A plan indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site both before, during and after construction. Same as "erosion control plan (ECP)."

Extremely hazardous substance: Any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

Facility: Any location where there is or may be a discharge of stormwater associated with industrial activity.

Fee in lieu: A payment of money in place of meeting all or part of the stormwater performance standards required by this article.

Fertilizer: Any 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, 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.

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 seventy percent of the cover for unpaved areas and areas not covered by permanent structures has been established, and/or equivalent permanent stabilization measures (such as the use of rip-rap, gabions, or geotextiles) have been employed.

Fire department: The city's fire department, or any duly authorized representative thereof.

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.

Grading: Excavation or fill of material, including the resulting conditions thereof.

Harmful quantity: For purposes of this article, discharges of oil, motor fuel, or other substance or petroleum product of any quantities that the director of public works has determined may be harmful to the public health, public welfare, or harmful to the environment. To include discharges of such products that are of sufficient quantity to:

- (1) Violate applicable water quality standards;
- (2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines;

- (3) Cause any damage to the MS4; or
- (4) Interfere with the operation of the MS4, such as sediment.

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 section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR part 261.

Hazardous substance: Any substance listed in table 302.4 of 40 CFR part 302.

Hazardous waste: Any substance identified or listed as a hazardous waste by the EPA in 40 CFR part 261.

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

Herbicide: A substance or mixture of substances used to destroy a plant or to inhibit plant growth, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Impervious cover: Those surfaces that do not effectively allow rainfall infiltration. (e.g., building rooftops, pavement, sidewalks, driveways, etc).

Industrial waste: Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or commercial business, including transportation related activities.

Industrial activity: The categories of industries and activities identified in 40 CFR 122.26(b)(14), as amended, including, without limitation, construction activity including clearing, grading and excavation activities (except for operations that result in the disturbance of less than one acre of total land area which are not part of a larger plan of development or sale).

Infiltration: The process of percolating stormwater into the subsoil.

Infiltration facility: Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

Landowner: The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance agreement: A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

Motor vehicle fluid: 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.

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 state environment department,).

Municipal separate storm sewer system (MS4): The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches, man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

NPDES general permit for stormwater 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.

NPDES general permit for stormwater 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, or the state's construction general permit if program authority is transferred.

NPDES permit: A permit issued by EPA (or by the state under authority delegated pursuant to 33 USCS Section 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.

Nonpoint Source: Any source of any discharge of a pollutant that is not a "point source."

Notice of intent (NOI): The document that must be filed with EPA, when required for either the industrial general permit or the construction general permit.

Notice of termination (NOT): The document that must be filed with EPA, when required, for either the industrial general permit or the construction general permit.

Oil: Any kind of oil in any form, including, but not limited to petroleum, fuel oil,, sludge, oil refuse, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure and oil mixed with waste.

Off-site facility: A stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

On-site facility: A stormwater management measure located within the subject property boundary described in the permit application for land development activity.

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.

Owner: The person who owns a facility or part of a facility or who is an operator.

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 or individual who has control over day to day activities. This definition includes all federal, state, and local governmental entities.

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, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Petroleum product: A 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 No. 1 and No. 2 diesel.

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

Phasing: Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Point source: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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.

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.

Qualified personnel: Persons approved by the director of public works who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and, 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.

Recharge: The replenishment of underground water reserves.

Registered professional engineer: A person who has been duly licensed and registered by the state board of registration for professional engineers to engage in the practice of engineering in the state.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 or the waters of the United States or onto the ground in such a manner that a pollutant may be discharged into the MS4.

Reportable quantity (RQ): For any "hazardous substance," the quantity established and listed in table 302.4 of 40 CFR Part 302 and for any "extremely hazardous substance," the quantity established in 40 CFR Part 355 and listed in appendix A thereto.

Rubbish: Nonputrescible solid waste, excluding ashes, that consist of:

- (1) Combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and
- (2) Noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

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 stormwater, surface water, and groundwater are not intentionally admitted).

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

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

Sewage (or sanitary sewage): The domestic waste and industrial waste that is discharged into the city sanitary sewer systems and passes through the sanitary sewer system to the city sewage treatment plant for treatment.

Site: The land or water area where any facility or activity is physically located or conducted, including land used in connection with the facility or activity such as borrow pits and storage areas and may include land adjacent to the site when utilized by the operator.

Solid waste: Any garbage, rubbish, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, from community and institutional activities, and material from transportation related activities.

Also, 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.

Stop work order: An order issued which requires that all construction activity on a site be stopped.

Stormwater: Precipitation runoff, snow melt runoff, and surface runoff and drainage.

Stormwater discharge associated with industrial activity: The discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR Section 122.26 (b) (14), and which is not excluded from EPA's definition of the same term.

Stormwater management: The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat. Stormwater discharges associated with construction or other industrial activity at the facility.

Stormwater 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 pollutant resulting from the activity the plan is designed for.

Uncontaminated: Not containing a harmful quantity of any pollutant.

Underlayment: A material used under landscaping for the purpose of weed control.

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.

Water in the state (or water): Any groundwater, percolating or otherwise, lakes, ponds, impounding reservoirs, springs, rivers, canals, streams, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. This includes dry washes or arroyos.

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 EPA to be necessary to protect those uses.

Water quality volume (WQv): The storage needed to capture and treat 90% of the average bi-annual stormwater runoff volume. Numerically (WQv) will vary as a function of long term rainfall statistical data.

Watercourse: A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

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 Section 122.2, including the Rio Grande River, dry washes, arroyos, but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

Wetland: An area that is inundated or saturated by surface water 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. Wetland generally includes swamps, marshes, bogs, and similar areas.

Yard waste: Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.
(Ord. No. 2146, § I, 11-1-04)

Sec. 34-130. General prohibitions.

(a) No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any discharge that is not composed entirely of stormwater.

(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 resulting from firefighting;
- (3) Agricultural stormwater runoff;
- (4) A discharge from water line flushing, but not including discharge from water line disinfected by super chlorination or other means unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
- (5) A discharge from residential lawn watering, residential landscape irrigation, or crop irrigation water;

- (6) A discharge from a diverted stream flow or natural spring;
- (7) A discharge from uncontaminated pumped groundwater or rising groundwater;
- (8) Uncontaminated groundwater infiltration (as defined in 40 CFR section 35.2005(20)) to the MS4;
- (9) Uncontaminated discharge from a foundation drain, crawl space pump, footing drain or sump pump;
- (10) A discharge from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
- (11) A discharge from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
- (12) A discharge from individual residential vehicle washing;
- (13) An uncontaminated discharge from riparian habitat or wetland;
- (14) A discharge from water used in street washing provided that the water is not contaminated with any harmful cleaning substance;

(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 to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, and written notice of such determination has been provided to the discharger.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-131. Specific prohibitions and requirements.

(a) The specific prohibitions and requirements in this section are within but do not limit the general prohibition of all the discharges prohibited by the general prohibitions in section 34-130.

(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 or federal issued discharge permit for discharges from its MS4.

(c) No person shall release or cause, allow, or permit the introduction of any of the following substances into the MS4 or the waters within the jurisdiction of the city such that the substance may enter the air or groundwater:

- (1) Any used motor oil, antifreeze, or any other motor vehicle fluid;
- (2) Any industrial waste or wastewater;
- (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 wastewater from a commercial carwash facility, and from any commercial vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility.
- (6) Any wastewater from the commercial washing, cleaning, de-icing, or other maintenance of aircraft;
- (7) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of building exterior where the wastewater contains any cleaning substance;
- (8) Any wastewater from commercial floor, rug, or carpet cleaning;
- (9) Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of any cleaning substance; or any wastewater from the wash down 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 quantities of such released material have been previously removed;
- (10) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
- (11) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or runoff from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
- (12) Any contaminated filter backwash from a swimming pool, fountain, or spa;
- (13) Any fountain, swimming pool, or spa water, to include any filter backwash water;

- (14) Any discharge from water line disinfected by super chlorination or other means, if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
 - (15) Any water from a water curtain in a spray room used for painting vehicles or equipment;
 - (16) Any contaminated runoff from a vehicle wrecking yard;
 - (17) Any substance or material that will damage, block, or clog the MS4;
 - (18) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge complies with all state and federal standards and requirements.
- (d) No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with land filling 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) 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) 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.
 - (3) 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.

- (g) 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 watercourse;
 - 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 or knowingly discharge used oil onto the ground;
 - c. Introduce used oil into the environment by any method, including application of used oil to a road or land for dust suppression, weed abatement, or other similar use.
- (2) A retail dealer who annually sells directly to the public more than five hundred 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. The sign shall prominently display the City of Las Cruces Recycling Center or any other local used oil disposal locations.
- (h) No person shall install an impervious underlayment for landscaping related uses. All underlayment must allow 12 GPM/sq. ft. of water to pass. No underlayment shall be placed at the bottom of a detention or retention pond.
- (i) Sites may be allowed to discharge into the MS4, upon mutual agreement with the operator of the MS4. The operator of the MS4 shall be allowed to assess a fee for expenses incurred to meet latest EPA standards for stormwater quality based on the two-year event.
(Ord. No. 2146, § I, 11-1-04; Ord. No. 2194, § I, 5-2-05)

Sec. 34-132. Release reporting and cleanup.

- (a) The operator 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 notify the fire department, the city public works department, and the city's floodplain administrator as soon as practicable concerning the incident:
 - (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 discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or
- (4) Any harmful quantity of any pollutant.

(b) The immediate notification required by subsection (a) of this section shall include the following information:

- (1) The identity or chemical name of the substance released, chemical classification, 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 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 14 days following such release, the operator of the facility, vehicle, or other source of the release shall submit a written report to the city public works department containing each of the items of information specified above in subsection (b) of this section, 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) Any release report required by a state or federal authority containing the information described in subsection (b) and (c) of this section, shall be adequate to meet the reporting requirements of subsection (c) of this section upon submittal to the city.
- (e) The notifications required by subsections (b), (c), and (d) of this section 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 this article or to state or federal law.
- (f) Any person responsible for any release as described in subsection (a) of this section 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.
- (g) Any person responsible for a release described in subsection (a) of this section shall reimburse the city for any cost incurred by the city in responding to the release, within 30 days of being invoiced by the city.
(Ord. No. 2146, § I, 11-1-04)

Sec. 34-133. Stormwater discharge from construction activities.

- (a) *Manual.* All operators of construction sites with a disturbed area of one (1) acre or more shall use the methodology on BMPs and SWPPP development from the state department of transportation "Storm Water Management Guidelines for Construction & Industrial Activities" 2002 manual, appendices, and all addenda. The city may, by resolution, adopt a stormwater quality best management practices for

construction activities manual. Alternate BMPs may be submitted for consideration at any time.

(b) *Inspection.* 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 twice a month, (or as required by law) and within 24 hours of the end of a rainfall event that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed by the operator 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 on a daily basis.

(c) *Erosion and sediment control plan.* All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of one or more acres of total land area, or that are part of a common plan of development or sale within which one or more acres of total land area are disturbed, or who are required to obtain an NPDES permit for stormwater discharges associated with construction activity, shall include an erosion and sediment control plan in the plan set, 18" × 24" minimum.

(d) *Certification.* Any operator who is required to obtain coverage for stormwater discharges from a construction site under the NPDES general permit for stormwater discharges from construction sites ("the construction general permit") shall submit a signed copy of the following certification prior to commencement of work:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) Construction General Permit(63CFR 36506) that authorizes stormwater discharges associated with construction activity from the site identified as part of this certification. Prior to any earthwork or clearing a Notice of Intent (NOI) will be approved by EPA Region Six for this project and I understand I must keep a copy of my Stormwater Pollution Prevention Plan (SWPPP) on site, or posted location thereof, available for public viewing. I understand that my project shall not damage the city of Las Cruces' municipal stormwater system (MS4).

The certification must include:

- (1) Address of site.
- (2) Legal description of property.

- (3) Property owner's name, address and phone.
- (4) Contractor's name, address and phone number, if applicable.
- (5) SWPPP preparer's name, address and phone.
- (6) Start and end date of construction.
- (7) Acreage of disturbed area.

(e) *Operator changes.* For stormwater discharges from construction sites where the operator changes, an NOI shall be accepted by EPA prior to the operator commencing work at the site. The NOI must be signed by an officer of the company.

(f) *Additional requirements.* Additional requirements which may be requested from operator could include:

- (1) Location of all easements and rights-of-way;
- (2) The delineation, if applicable, of the 100-year floodplain, including the flood fringe and floodway, if available, and any on-site or adjacent wetlands;
- (3) Percolation test results for all areas with retention ponds or other facilities designed for infiltration and a description of techniques to be used to prevent the clogging of soil pores by fine sediment;
- (4) A description of the approximate area of the watershed above the site, including the vegetative coverage and impervious surfaces;
- (5) SWPPP;
- (6) The NOI.

(g) *Denial and review.* The director of public works 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 city personnel, 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. Together with written notification to the applicant that the approval sought is denied, the director of public works shall provide the applicant a written explanation of the reasons for the denial. The applicant may request review of the decision made by the director of public works by the development review committee. Any such request for review shall be made within ten days of the date the applicant receives notification of the decision by the

director of public works. The decision whether or not to review the decision shall be within the sole discretion of the committee, and may be limited to written materials considered by the committee to be relevant.

(h) *Increase in minimum standards.* The director of public works may require implementation of more than the minimum stormwater standards if arroyos on-site or immediately downstream of a site show evidence of increased flooding, accelerated erosion, channel erosion or sedimentation, as a direct result of conditions on the site. Increased requirements shall be limited to the following on-site measures:

- (1) Erosion control measures extended to a broader area of the site than the development area;
- (2) Revegetation of highly eroded areas;
- (3) Arroyo restoration or other erosion control measures within highly eroded channels; or
- (4) A combination of the above measures.

(i) *Waivers.* If a waiver is granted by EPA, the operator will not be required to sign the certification for permit. However he must still comply with the general and specific prohibitions and may still be required to have a SWPPP. Specifically he must ensure no harmful substances are introduced into the MS4 or groundwater by mechanical means. It is the operator's sole responsibility to meet the requirements of the waiver. If the operator fails to meet the requirements of the waiver, he shall be required to comply with this section prior to expiration of the waiver. Failure to do so will constitute a knowing violation of this section.

(j) *Notification or permitting by other agencies.* Activities permitted by this section may also require notification or permitting by other agencies, including but not limited to written approval from the Elephant Butte Irrigation District or other official watercourse related organization, the federal Environmental Protection Agency, the United States Army Corps of Engineers, the Federal Emergency Management Agency (FEMA) and the state environment department. It is the responsibility of each applicant to determine whether additional notification or permitting is required.

(k) *Maintenance responsibilities for stormwater systems.*

- (1) The stormwater management system shall be maintained in good condition and promptly repaired. Maintenance shall include the repair and restoration of all grade surfaces, walls, swales, drains, dams, ponds, basins, site restoration measures, associated vegetation, and any other stormwater measure constructed on site. Such maintenance shall be in accordance with the National Pollutant Discharge Elimination System

Manual Storm Water Management Guidelines for Construction and Industrial Activities, latest version.

- (2) All stormwater management measures and facilities shall be maintained by the fee simple owner of the property or a homeowners association, unless a dedication of the stormwater management system has been required or accepted by the city, in which case, the city shall be responsible for maintenance.
 - (3) Prior to project construction plan approval by the city, applicants must ensure implementation and maintenance of the BMPs. Applicants shall propose a maintenance agreement assuring that all permanent BMPs will be maintained throughout the "use" of the project site, satisfactory to the public works department.
 - (4) For all properties, the verification mechanism will include the applicant's signed statement, as part of the construction permit application, accepting responsibility for all permanent BMP maintenance, repair and replacement.
- (1) *Maintenance agreement.* The maintenance agreement shall include the following:
- (1) *Operation and maintenance (O&M) plan.* The applicant shall include an operation and maintenance (O&M) plan, prepared satisfactory to the city, with the approved maintenance agreement, which describes the designated responsible party to manage the stormwater BMP(s), employee's training program and duties, operating schedule, maintenance frequency, routine service schedule, performance bond up to 15 years, specific maintenance activities (including maintenance of storm drain inlet markers), copies of resource agency permits and any other necessary activities. At a minimum, maintenance agreements shall require the applicant to provide inspection and servicing of all permanent BMPs on an annual basis. The project proponent or city-approved maintenance entity shall complete and maintain O&M forms to document all maintenance requirements. Parties responsible for the O&M plan shall retain records for at least five years. These documents shall be made available to the city for inspection upon request at any time.
 - (2) *Access easement/agreement.* Unless the applicant accepts permanent maintenance responsibilities, the applicant shall execute an access easement, if needed, to the official maintenance entity that shall be binding on the land throughout the life of the project, until such time that the permanent treatment BMP requiring access is no longer required to be in use, satisfactory to the city.

- (3) *Maintenance violations.* If, after notice by the city to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) or responsible party within a reasonable period of time, the city may perform all necessary work to place the facility in proper working condition. The owner(s) or responsible party of the facility shall be assessed the associated costs of the work and shall reimburse the costs for said work.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-134. Citizen participation.

(a) All citizens are encouraged to report to the city 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 this article of which they become aware.

(b) The director of public works, his designee, or city codes enforcement Department shall 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 years, and a copy of the city's record of the report will be furnished to the reporting citizen upon request. Also upon request, the city will inform the reporting citizen of any action undertaken by the city in response to the citizen's report.

(c) The city shall establish a local telephone number for the reporting of such violations. The number shall be displayed at various locations throughout the city, as designated by the director of public works and city codes enforcement department.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-135. Authority to issue administrative warnings.

The director of public works, the director of community development and personnel under their supervision as well as city building and project inspectors shall be authorized to issue verbal as well as written administrative warnings to any person, operator or owner who allegedly violates any provision of this article. A written warning may include a stop work order which requires that all construction activity on a site be stopped.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-136. Criminal penalty.

(a) Any person violating any provision of this article shall be deemed guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500.00, imprisonment for a term not exceeding 90 days, or both per violation. Each violation of a particular section of this article shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this article.

(b) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise or other administrative actions or equitable relief.
(Ord. No. 2146, § I, 11-1-04)

Sec. 34-137. Authority to issue criminal citations.

Officers with the city's codes department or police department shall be authorized to issue criminal citations to any person, operator or owner who allegedly violates any provision of this article.
(Ord. No. 2146, § I, 11-1-04)