

ORDINANCE NO. G19 - 03

Stormwater discharges from construction activities associated with development, redevelopment, and underdeveloped properties.

A. Purposes: The purpose and objective of this ordinance are as follows:

1. Maintain and improve the quality of surface water and groundwater.
2. Attenuate the discharge of contaminated storm water runoff from the construction sites into the municipal separate storm sewer system (MS4) and natural waters.
3. Promote public awareness of the hazards involved in the improper discharge of sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers.
4. Facilitate compliance with state and federal standards and permits by owners' construction sites.
5. Enable the city to comply with all the federal and state laws and regulations applicable to its NPDES permit for storm water discharges.
6. Facilitate compliance with city standards and permits by owners of developed, redeveloped and undeveloped properties.

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

| | |
|-------|---|
| BMP | Best Management Practices |
| MS4 | Municipal Separate Storm Sewer System |
| NOI | Notice of Intent |
| NOT | Notice of Termination |
| NPDES | National Pollutant Discharge Elimination System |
| SWP3 | Storm Water Pollution Prevention Plan |

ARTICLE 1. GENERAL PROVISIONS

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

- (a) **“Best Management Practices (BMP’s)”** means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States or the city’s MS4 and includes both temporary measures used during construction and permanent measures that are constructed in accordance with the provisions of this ordinance. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

The BMP's required in this ordinance will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMP's required in this ordinance will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.

- (b) **“City”** means the City of Eastborough, Kansas.
- (c) **“Commencement of construction”** means the disturbance of soil associated with clearing, grading, or excavating activities or other construction activities.
- (d) **“Construction general permit”** refers to the Kansas General Permit for Storm water discharges from construction sites.
- (e) **“Contractor”** means any person or firm performing construction work at a construction site, including any general contractor and subcontractors and includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.
- (f) **“Development or new development”** means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.
- (g) **“Director”** means the person or persons associated with the management of the MS4 Permit for the city of Eastborough.
- (h) **“Discharge”** means 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.
- (i) **“Discharger”** means any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation any owner of a construction site or industrial facility.
- (j) **“Drainage plan”** refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or issuance of a building permit.
- (k) **“Earthwork”** means the disturbance of soil on a site associated with clearing, grading, or excavation activities.
- (l) **“Environmental Protection Agency (EPA)”** means the United States Environmental Protection Agency, the regional office thereof, any federal

department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

- (m) **“Facility”** means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.
- (n) **“Final stabilization”** means the status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles)
- (o) **“Individual building sites”** means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developed subdivision.
- (p) **“Kansas General Permit for Storm Water Discharges Associated with Industrial Activity (or industrial general permit)”** means the construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
- (q) **“Land disturbance”** means the disturbance of soil on a site associated with clearing, grading, excavation, new development or redevelopment activities.
- (r) **“Municipal Stormwater Drainage System”** means the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade 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.
- (s) **“NPDES permit”** means for the purpose of this ordinance a permit issued by EPA or the State of Kansas that authorizes the discharge of storm water pollutants to waters of the United States, whether the permit is applicable to an individual group, or general area-wide basis.
- (t) **“Notice of Intent (NOI)”** means the notice that is required by either the industrial general permit or the construction general permit.
- (u) **“Notice of Termination (NOT)”** means the notice that is required by either the industrial general permit or the construction general permit.
- (v) **“Notice of violation”** means a written notice provided to the owner or contractor detailing any violations of this ordinance and any clean-up action expected of the violators.
- (w) **“Director”** means the appropriate councilmember and his or her authorized representatives.

- (x) **“Owner”** means the person who owns a facility, part of a facility, or land.
- (y) **“Person”** means any individual, partnership, corporation, LLC, association, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local government entities.
- (z) **“Pollutant”** means dredged soil, soil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, or anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water and/or any substance, debris, matter that may be carried downstream by storm water runoff, and/or any substance or matter that may be dissolved in storm water runoff.
- (aa) **“Pollution”** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (bb) **“Qualified personnel”** means person who possess the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.
- (cc) **“Site”** means the land or water area where development or redevelopment is physically located or being conducted, including lands adjacent to the development that is not subject to land disturbing activities but that is used as a staging area or for such activity.
- (dd) **“State”** means the state of Kansas
- (ee) **“Storm water”** means storm water runoff, snow melt runoff, and surface runoff and drainage.
- (ff) **“Storm water pollution prevention plan (SWP3)”** means a plan required by an NPDES storm water permit and which describes an 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.
- (gg) **“Subdivision development”** means and includes activities associated with the platting of any parcel of land into two or more lots and includes all

construction taking place thereon.

- (hh) **“Water of the state (or water)”** means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigate 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.
- (ii) **“Waters of the United States”** means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, all interstate waters, including interstate wetlands, all other waters the use, degradation, or destruction if 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 water within the federal definition of “waters of the United States” at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

102. General requirements (all sites)

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

assess the cost thereof to the responsible owner. Failure of the owner to pay said costs will be grounds for the denial of further approvals or the withholding of occupancy certificates.

4. When determined to be necessary for the effective implementation of this section, the director may require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe best management practices required by subsection A. 1 of this section above will be implemented at the construction site. Should the proper BMP's not be installed or if the BMP's are ineffective, upon reasonable notice to the owner, the city may deny approval of any building permit or any other city approval necessary to commence or continue construction. A stop work order may also be issued.
5. The owner of a site of construction activity is responsible for compliance with the requirements in this subsection.
6. Any contractor on a construction site will also be required to use best management practices so as to minimize pollutants that enter into the MS4.
7. All persons shall avoid damaging BMP devices once in place. Any person damaging a BMP device shall be responsible for the repair of the damaged BMP device. Malicious destruction of a BMP device or failure of such responsible person to retain BMP device will be deemed a violation of this ordinance.

103. Sites requiring Federal and/or State NPDES Stormwater Discharge Permits. All owners of and contractors on sites of construction activity, that require federal or state NPDES stormwater discharge permit, or that are part of a common plan of development or sale requiring said permit(s), shall comply with the following requirements (in addition to those in subsection D)

1. Any owner who intends to obtain coverage for stormwater discharge from a construction site under the Kansas General Permit for Stormwater Discharges From Construction Sites ("the construction general permit") shall submit a signed copy of its notice of intent (NOI) to the Director when a building permit application is made.

2. A stormwater pollution prevention plan (SWP3) shall be prepared and implemented in accordance with the requirements of the construction general permit of any individual or group NPDES permit issued for stormwater discharges from the construction sites, and with any additional requirement imposed by or under this ordinance and any other city ordinance.

3. The SWP3 shall be prepared by a qualified person and shall comply with State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the permit issued.

4. The SWP3 shall be completed prior to the submittal of the NOI to the

Director for new construction, prior to the commencement of construction activities. The SWP3 shall be updated and modified as appropriate and as required by the NPDES permit.

5. The director may require any owner who is required by subsection E of this section to prepare a SWP3, to submit the SWP3, and any modifications thereto, to the Director for review at any time.

6. Upon the director's review of the SWP3 and any site inspections that he/she may conduct, if the SWP3 isn't being fully implemented, the director may upon reasonable notice to the owner, deny approval of any building permit or any other city approval necessary to commence or continue construction. A stop work order may also be issued.

7. All contractors working on a site subject to an NPDES permit shall sign a copy of the following certification statement before beginning work on the site:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with construction activity from the construction site identified as part of this certification and with the Stormwater Pollution Prevention Plan ordinance of the city, and I agree to implement and follow the provisions of the Stormwater Pollution Prevention Plan (SWP3) for the construction site;

The certification must include the name and title of the person providing the signature, the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

All contractors will be responsible for their own activities to ensure that they comply with the owners' SWP3. Failure to comply with the SWP3 or malicious destruction of BMP devices is hereby deemed to be a violation of this ordinance.

8. The director may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit issued or any additional requirement imposed by or under this ordinance. Such notification shall identify those provisions of the permit or ordinance which are not being met by the SWP3 and identify which provisions of the SWP3 require modification in order to meet such requirements. Within thirty days of such notification to the director, the owner shall make the required changes to the SWP3 and shall submit to the director a written certification from the owner that the requested changes have been made.

9. The owner may amend the SWP3 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 the waters of the United States, and which has not otherwise been addressed in the SWP3, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges.

10. 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 SWP3 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.

11. The owner shall retain copies of any SWP3 and all reports required by this ordinance or by the NPDES permit for the site, and records of all data used to complete the NOI for a period of at least three years from the date that the site is finally stabilized.

12. Upon final stabilization of the construction site, the owner shall submit written certification to the director and OCI that the site has been fully stabilized. The city may withhold the final occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been field and the director has determined, following any appropriate inspection, that final stabilization has occurred and that any required permanent structural controls have been completed.

PASSED by the City Council this ____ day of August 2019.

DATED: Signed by the Mayor this ____ day of August 2019.

Mayor Danny Wallace

ATTEST:

City Clerk Debra Gann