

BILL NO. _____

ORDINANCE _____

Division 4

Sec. 94-370 Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of West Plains through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (A) To regulate the contribution of pollutants to the City of West Plains' separate storm sewer system by any person.
- (B) To prohibit illicit connections and discharges to the City of West Plains' separate storm sewer system.
- (C) To prevent non-stormwater discharges generated as a result of spills, inappropriate dumping, or disposal from entering the City of West Plains' storm sewer system.
- (D) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance.

Sec. 94-371 Definitions

- (A) **Hazardous Materials** are any material—including any substance, waste, or combination thereof—which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (B) **Illicit Connection** is defined as either of the following: any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains

and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected from a commercial or industrial use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

- (C) **Illicit Discharge** is a measurable flow (normally observable during dry weather) containing pollutants and/or pathogens in or leaving a stormwater conveyance structure.
- (D) **Pollutant** is anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that some may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- (E) **Premises** are any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (F) **Non-Stormwater Discharge** is any discharge to the storm drain system that is not composed entirely of stormwater.
- (G) **Storm Drainage System** are the publicly-owned facilities by which stormwater is collected and/or conveyed including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and man-made or altered drainage channels, reservoirs, and other drainage structures.
- (H) **Stormwater Conveyance Structure** is defined as pipes, junction boxes, inlet boxes, and open channels used to transport stormwater.
- (I) **Wastewater** is any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- (J) **Stormwater Coordinator** refers to a position within the Engineering Department of the City of West Plains that has the authority and

responsibility to manage, enforce, and regulate illicit discharges within the City of West Plains.

Sec. 94-372 Discharge Prohibitions

No person shall throw, drain, discharge, cause to be discharged, or allow others under its control to throw, drain, or otherwise discharge into the City of West Plains' separate storm sewer system or watercourses any materials including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except for the discharges described as follows:

- (A) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, and any other water source not containing pollutants.
- (B) Discharges or flows from firefighting activities and other discharges specified in writing by the City of West Plains as being necessary to protect public health and safety.
- (C) Dye testing is an allowable discharge, but requires notification to the authorized enforcement agency prior to the time of the test.
- (D) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (E) Illicit connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the City of West Plains.

Sec. 94-373 Prohibition of Illicit Connections

- (A) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- (B) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (C) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Sec. 94-374 Notification of Discharges and Spills

- (A) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity, or operation, or responsible for emergency response for a facility, activity, or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the City of West Plains separate storm sewer system, state waters, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.
- (B) Said person shall notify the City of West Plains within 24 hours of the nature, quantity, and time of occurrence of the discharge. If the discharge of prohibited materials originates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.
- (C) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be notified immediately.

Sec. 94-375 Enforcement

Whenever the City of West Plains finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City may order compliance by

written notice of violation to the responsible person. Such notice may require without limitation:

- (A) The performance of monitoring, analyses, and reporting.
- (B) The elimination of illicit connections or discharges.
- (C) That violating discharges, practices, or operations shall cease and desist.
- (D) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property.
- (E) Payment of a fine to cover administrative and remediation costs.
- (F) The implementation of source control or treatment best management practices (BMPs).

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Should the violator fail to remediate or restore within the established deadline, the work may be done by a designated government agency or a contractor and the expense thereof shall be charged to the violator.

Sec. 94-376 Inspection

- (A) The City of West Plains shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the City Stormwater Coordinator and/or his/her representatives.
- (B) Facility operators shall allow the City of West Plains ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (C) The City of West Plains shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.

- (D) The City of West Plains has the right to require the discharger to install monitoring equipment as necessary. 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 stormwater flow and quality shall be calibrated to ensure their accuracy.
- (E) 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 operator at the written or oral request of the City of West Plains and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (F) Unreasonable delays in allowing the City of West Plains access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (G) If the City of West Plains has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any competent jurisdiction.

Sec. 94-377 Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the Stormwater Coordinator. The notice of appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before the City Administrator shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Administrator shall be final.

Sec. 94-378 Enforcement Measures after Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal, within 15 days of the

decision of the Administrator upholding the decision of the Stormwater Coordinator, then representatives of the Stormwater Coordinator shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 94-379 Cost of Abatement of the Violation

Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the Administrator or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person in violation of any of the provisions of this article shall become liable to the City by reason of such violation.

Sec. 94-380 Remedies Not Exclusive

- (A) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.
- (B) In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec. 94-381 Criminal Prosecution

- (A) Any person that has violated or continues to violate this ordinance shall be subject to Section 1-10 of the West Plains Code.
- (B) The authorized enforcement agency may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Effective Date. This ordinance shall become effective March 1, 2010.

PASSED AND APPROVED THIS ____ DAY OF _____, 2010.

CITY OF WEST PLAINS, MISSOURI

BY: _____
JOE PAUL (J. P.) EVANS, MAYOR

ATTEST:

MALLORY PREWETT, CITY CLERK