

ORDINANCE NO. 5163

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, RELATING TO STORMWATER POLLUTION REGULATIONS, REPEALING OTHER ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA;

SECTION I. DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCIDENTAL DISCHARGE. A discharge prohibited by this Ordinance which occurs by chance and without planning or thought prior to occurrence.

BEST MANAGEMENT PRACTICES (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving water, or storm water conveyance systems. **BMPs** also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CONSTRUCTION ACTIVITY. Activities subject to the National Pollutant Discharge Elimination System (NPDES) construction permits. Currently these include construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavation and demolition.

HAZARDOUS MATERIALS. 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.

ILLEGAL DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 8.

ILLICIT CONNECTIONS. 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-storm water discharge including sewage, process wastewater and wash water to enter the storm drain system and 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 land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

INDUSTRIAL ACTIVITY. Activities subject to NPDES industrial permits as defined 40 CFR, Section 122.26(b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The storm water sewer system and appurtenances, including established natural drain-ways and ditches used to transport and handle the flow of storm water.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. A permit issued by EPA [or by a State under authority delegated pursuant to 33USC 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.

NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of storm water.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. **POLLUTANTS** may include, but are not limited to: soils; paints, varnishes and solvents; oils and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, military supplies and inventories, so the same 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. Pollutants lead to the human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem.

SECTION 2. PURPOSE AND INTENT

The purpose of this Ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-storm water discharges to the City of Fremont municipal separate storm sewer 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 on the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user.
- (2) To prohibit illicit connection and discharges to the municipal separate storm sewer system.
- (3) To prevent non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system.
- (4) To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Ordinance.

SECTION 3. APPLICABILITY

This Ordinance shall apply to all water generated on any developed and undeveloped lands entering the municipal separate storm sewer system unless explicitly exempted.

SECTION 4. COMPATIBILITY WITH OTHER REGULATIONS

This Ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this Ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where this Ordinance is in conflict with any other provisions of law, the provision which is more restrictive or imposes higher protective standards for human health or the environment shall control.

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

The Director of Public Works shall administer, implement and enforce the provisions of this Ordinance. The Director of Public Works may delegate enforcement powers to any employee of the City.

SECTION 6. SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person, establishment or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 7. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance is not to be interpreted as meaning that compliance by any person will ensure that there will be no contamination, pollution nor unauthorized discharge of pollutants.

SECTION 8. PROHIBITION OF ILLEGAL DISCHARGES

No person shall discharge or cause to be discharged into the municipal separate storm sewer system or watercourses any materials other than storm water, including, but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standard. The commencement, conduct or continuance of any illegal discharge to the municipal separate storm drain system is prohibited except as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Ordinance: water line flushing or 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 de-watering system), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated, typically less than one part per million of chlorine), fire fighting activities and any other water source not containing pollutants.
- (2) Discharges specified in writing by the Director of Public Works as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a written notification to the Director of Public Works prior to the time of test.
- (4) The prohibition shall not apply to any non-storm water discharge permitted under a 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 municipal separate storm sewer system.

SECTION 9. PROHIBITION OF ILLICIT CONNECTIONS

The construction, connection, use, maintenance or continued existence of any illegal connection to the municipal separate storm sewer system is prohibited.

- (1) 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.
- (2) A person is considered to be in violation of this Ordinance if the person connects a line conveying pollutants to the municipal separate storm sewer system or allows such a connection to continue.

SECTION 10. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Fremont prior to the allowing of discharges to the MS4.

SECTION 11. REQUIREMENTS TO PREVENT, CONTROL AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City will adopt requirements identifying best management practices for any activity, operation or facility which may cause or contribute to pollution or contamination of storm water, the municipal separate storm sewer system or waters of the State of Nebraska or the United States of America. The owner or operator of a commercial or industrial establishment shall provide, at the expense of the owner or operator, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal separate storm sewer system or water courses through the use of these structural and non-structural best management practices to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with the industrial provisions of this section is required. These best management practices shall be part of a storm water pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

SECTION 12. WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, 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. In addition, the owner or lessee 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.

SECTION 13. SUSPENSION OF MS4 ACCESS

(A) *Suspension due to illicit discharges in emergency situations.* The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State of Nebraska or the United States of America or to minimize danger to persons or property.

(B) *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this Ordinance may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator

of the proposed termination of its MS4 access. The violator may petition the City Administrator for reconsideration and hearing. A person commits an offense if that person reinstates MS4 access to premises terminated pursuant to this section, without prior written approval of the Director of Public Works.

SECTION 14. ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES

The Director of Public Works or designee may enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this Ordinance.

- (A) Employees of the City may enter and inspect facilities subject to regulations under this Ordinance as often as may be necessary to determine compliance with this Ordinance.
- (B) Facility operators shall allow authorized employees of the City 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 a NPDES permit to discharge storm water and performance of any additional duties as defined by state and federal law.
- (C) The City may set up on any permitted facility such devices as are necessary in the opinion of the Director of Public Works to conduct monitoring and/or sampling of the facility's storm water discharge.
- (D) The City may 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 storm water flow and quality shall be calibrated to ensure accuracy.
- (E) The 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 and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (F) Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water 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 representatives of the City have been refused access to any part of the premises from which storm water is discharged, the City may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 15. NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS

- (A) Notwithstanding other requirements of the 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-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into the City of Fremont's separate storm sewer system, waters of the State of Nebraska, or the waters of the United States of America, 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 Director of Public Works or designee of the Director of Public Works within 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications that are not in writing shall be confirmed by written notice addressed and mailed to the Director of Public Works or designee within three business days of the telephone call or personal notification. If the discharge of prohibited materials emanates 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 action taken to prevent its recurrence. Such records shall be retained for at least three 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 immediately notified.
- (D) Failure to provide notification of a release as provided above is a violation of this Ordinance.

SECTION 16. NOTICE OF VIOLATION

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Director of Public Works may order compliance by written notice of violation to the responsible person. Such notice shall be sent via regular U.S. mail or via hand delivery to the owner of the property.

- (A) The notice shall include:
 - (1) The name and address of the alleged violator;
 - (2) The address when available or a description of the building, structure or land upon which the violation is occurring or has occurred;
 - (3) A statement specifying the nature of the violation;
 - (4) A description of the remedial action;

- (5) A statement of the penalty or penalties that shall or may be assessed against the person or persons to whom the notice of violation is direct; and
 - (6) A statement that the determination of violation may be appealed to the City Administrator by filing a written notice of appeal within 30 days of service of notice of violation.
- (B) In the event of a violation, the City may require:
- (1) The performance of monitoring, analyses and reporting;
 - (2) The elimination of illicit discharges and illegal connections;
 - (3) That violating discharges, practices or operations shall cease and desist;
 - (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
 - (5) Payment of costs to cover administrative and abatement costs;
 - (6) The implementation of pollution prevention practices; and
 - (7) Such other action as may be reasonably necessary to accomplish the purposes of this Ordinance.

SECTION 17. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the City of Fremont. The notice of appeal shall be in writing and shall be delivered to the City Clerk within 30 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 pendency of an appeal shall not relieve the responsible person from complying with the requirements of the Notice of Violation, unless the Director of Public Works otherwise consents in writing.

SECTION 18. 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 City Administrator, then representatives of the City may enter upon the subject private property and are authorized to take any 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 City of Fremont or designated City contractor to enter upon the premises for the purposes set forth above.

SECTION 19. COST OF ABATEMENT OF THE VIOLATION

Within 30 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 with the City Clerk objecting to the assessment or to the amount of the assessment within 30 days of such notice. If the amount due is not paid within 30 days after receipt of the notice or if an appeal is taken within 30 days after a decision on said appeal, the assessment may be collected pursuant to law.

SECTION 20. INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of the Ordinance, the City may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 21. ALTERNATIVE ACTIONS UPON VIOLATION

In lieu of enforcement proceedings, penalties and remedies authorized by this Ordinance, the City may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, waterway cleanup or other community service work.

SECTION 22. VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of the Ordinance is a threat to public health, safety and welfare and is declared and deemed a nuisance and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

SECTION 23. CRIMINAL PROSECUTION

(A) Any person who has violated or continues to violate this Ordinance shall be liable for criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$1,000 per violation per day for each day deemed to be in violation.

(B) The City may recover all attorney fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

SECTION 24. REMEDIES NOT EXCLUSIVE

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 City to seek cumulative remedies.

SECTION 25. REPEAL

Any other ordinances, parts of ordinances, or resolutions of the City of Fremont in conflict herewith are hereby repealed.

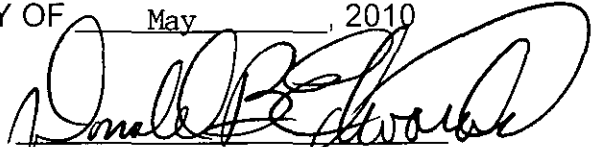
SECTION 26. PAMPHLET FORM

This Ordinance shall be published in pamphlet form.


SECTION 27. EFFECTIVE DATE.

This ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 25th DAY OF May, 2010


Donald B. Edwards, Mayor

ATTEST:


Kimberly Volk, MMC
City Clerk

