

ORDINANCE NO. 10-5505

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING CHAPTER 28, ARTICLES 28-100 THROUGH 28-700, SECTIONS TO BE NUMBERED 28-101 THROUGH 28-715; **CITY OF BILLINGS STORMWATER MANAGEMENT AND DISCHARGE CONTROL.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings Montana City Code be amended by adding a new chapter 28, Articles 28-100 through 28-700, with sections to be numbered 28-101 through 28-715, to read as follows:

Chapter 28

STORMWATER MANAGEMENT AND CONTROL

ARTICLE 28-100: GENERAL PROVISIONS

Sec. 28-101 Purpose.

This ordinance and its provisions are applicable to any activity by any individual or entity engaging in the disposal of any pollutant that has the potential to adversely impact the water quality of either watercourses, water bodies, or groundwater, as further detailed in 28-101(c).

(a) Purpose and intent of this ordinance is to:

- A. Protect and enhance the water quality of the Yellowstone River, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act of 1972 and the Phase II Stormwater Regulations.
- B. Minimize non-stormwater discharges to storm drains and minimize pollutants in stormwater discharges. Require the removal of illicit connections to the City's MS4 system.
- C. Provide design, construction, operation, and maintenance criteria for permanent and temporary on-site stormwater management facilities to control stormwater runoff. Prohibit improper disposal of substances into the City's MS4 system
- D. Establish and maintain a data base and inspection program sufficient to determine compliance with the Phase II Stormwater Regulations and the City's Municipal Separate Storm Sewer System (MS4) Application.

- E. Establish legal authority to conduct inspections, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.
- F. Establish legal authority to develop, implement, and enforce a program to reduce pollutants in stormwater runoff from construction activities.
- G. Establish legal authority to develop, implement, and enforce a program to address stormwater runoff from new developments and redevelopment projects.
- H. Provide an equitable distribution of cost for the program including but not limited to the fee schedule in accordance with Section 22-804, titled "Rates for Storm Sewers".

Discharges into the municipal separate storm sewer system (MS4) may be subject to further regulation by the U.S. Environmental Protection Agency, Montana Department of Environmental Quality and local agencies owning and operating a MS4. Local agencies owning and operating portions of the MS4 in Billings include but are not limited to Yellowstone County and Montana Department of Transportation.

This ordinance provides for the regulation of contributors or dischargers to the City's stormwater collection system through the development of a stormwater management program, including issuance and enforcement of private and public construction Storm Water Pollution Prevention Plans to address construction site stormwater, enforcement of adopted BMP construction standards, enforcement of post-construction stormwater BMP maintenance, and the detection and elimination of illicit discharges. This ordinance authorizes monitoring and enforcement activities, requires user reporting, protects the state and receiving waters, and establishes penalties and remedies for violations of the stormwater ordinance.

Sec. 28-102. Policy.

It is the policy of the City to protect the health and welfare of its citizens and environment by monitoring and regulating discharges that may cause pollution to the environment.

Sec. 28-103. Applicability

This ordinance shall apply to all construction and maintenance activities for industrial, commercial, institutional, single family and multifamily residential developments, as well as subdivision projects with private access which may introduce pollutants into any private storm drain, or any body of water within the City's MS4 jurisdiction. Exceptions include activities that are contained entirely on federal or state, or county lands and do not impact adjacent jurisdictions or MS4s. Additionally, permanent and temporary stormwater management controls and facilities, constructed as part of any activities listed in this section, which are located within the City's MS4 jurisdiction, are also subject to this ordinance.

Sec. 28-104. Authority

This ordinance shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and the Municipal MPDES Permit and any amendments, revisions or re-issuance thereof. Activities regulated by this ordinance may be subject to further regulation by the specific public entity owning and operating a MS4. No permit or approval issued pursuant to this ordinance shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance.

The City's Stormwater Management Manual provides additional policy, criteria and information including specifications and standards for the proper implementation of the requirements of this ordinance and is incorporated by reference herein. The manual includes a list of acceptable stormwater treatment practices, including design criteria. Design and construction of stormwater facilities are to meet minimum water quality performance standards.

Sec. 28-105. Responsibility of Discharger.

The standards set forth in and promulgated pursuant to this ordinance are minimum standards. This ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution or unauthorized discharge of pollutants into waters of the United States caused by that person. This ordinance shall not create liability on the part of the City, or any City agent or employee for any damages that result from any discharger's reliance on this ordinance or any administrative decision lawfully made pursuant to this ordinance.

ARTICLE 28-200. DEFINITIONS

Sec. 28-201. Definitions

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section.

- 1) Authorized Enforcement Agent The City Administrator or any individual designated by the City Administrator as an Authorized Enforcement Agent.
- 2) Best Management Practices (or BMPs) Schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters." 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.
- 3) Billings City Non-Stormwater Disposal Best Management Practices Best management practices adopted by reference by this Ordinance for non-stormwater disposal.

- 4) BMCC Billings, Montana City Code.
- 5) City The City of Billings, Montana.
- 6) CFR The Code of Federal Regulations
- 7) Clean Water Act (CWA) Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; 33 USC 1251 et seq.
- 8) Comprehensive Drainage Plan A stormwater management plan that covers all current and anticipated development on a site greater than 5 acres and sites planned for phased development, including the impact on existing off-site infrastructure.
- 9) Concentrated Flow Parameters exceed the median concentration in Table 2 of the General Permit for MS4s and the flow exceeds dry weather flow conditions.
- 10) Construction Activity Any work that results in land disturbance of any nature.
- 11) Control Measure Any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to state waters.
- 12) Development Any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City of Billings as well as any manmade change or alteration to the landscape, including but not limited to, mining, drilling, dredging, grading, paving, excavating and filling.
- 13) Director of Public Works The Director of the Billings City Public Works Department.
- 14) Discharge Any introduction or addition of any pollutant, stormwater, or any other substance into the municipal storm sewer system (MS4), waters of the state, or into waters of the United States by a person.
- 15) 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.
- 16) Fire Fighting Water Any water, and any substance or materials contained therein, used in an emergency, to control or extinguish a fire.
- 17) Illicit Connection
 - a) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 including, but not limited to, any

conveyances which allow any 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 the drain or connection had been previously allowed, permitted or approved by a government agency; refer to exemptions under 28-102, 01B or

- b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved, permitted or permitted by the City.
- 18) Illicit Discharge Any discharge to a MS4 that is not composed entirely of stormwater except the following: discharges not identified as significant contributors of pollutants listed in the General Permit and allowable under the City's MS4 program.
- 19) Impervious Surface A surface which prevents or retards the penetration of water into the ground, including, but not limited to, roofs, sidewalks, patios, driveways, parking lots, concrete and asphalt paving, gravel, compacted native surfaces and earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of stormwater.
- 20) Major Modification An alteration to an existing or planned stormwater drainage facility that does one or more of the following: changes the volume, surface area, depth, capacity, inflow rates, outflow rates or level of treatment by 5% or more; changes the treatment process; adds more than one thousand (1000) square feet of impervious surface; or increases the tributary impervious drainage area to an individual drainage facility component by more than 10%.
- 21) Maximum Extent Practicable (or MEP) The technology-based discharge standard for Municipal Separate Storm Sewer Systems to reduce pollutants in the stormwater discharges that was established by the Clean Water Act, Section 402(p). A discussion of MEP as it applies to MS4s is found in ARM 17.30.1111(5).
- 22) MDEQ Montana Department of Environmental Quality. A state regulating agency.
- 23) MPDES Permit Montana Pollution Discharge Elimination System. An area-wide MPDES permit that is issued to a government agency or agencies for the discharge of pollutants from any point source into the waters of the State or United States.
- 24) MS4. The Billings, Montana municipal separate storm sewer system.
- 25) Municipal Separate Storm Sewer System (or MS4) A conveyance or system of conveyance (including roads with drainage systems, municipal streets, catch basin, curb, gutters, ditches, manmade channels, or storm drains) owned or

operated by a public body (created under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as sewer district, irrigation district, flood control district or drainage district, or similar entity that discharges to the waters of the United States and which are not part of a Publicly Owned Treatment Works ("POTW") as defined in ARM Title 17, Chapter 30, Sub-chapter 13.

- 26) Permit National Pollutant Discharge Elimination System Permit (or NPDES) A permit issued by MDEQ, in compliance with the Federal Clean Water Act for the discharge of pollutants from any point source into the waters of the State or United States.
- 27) Notice of Intent (or NOI) Submittal required by the State under the General Permit for stormwater discharges associated with construction activity.
- 28) Notice of Termination (or NOT) Submittal required by the State under the General Permit for stormwater discharges associated with construction activity. The construction site has been finally stabilized and the operator desires to be relieved of responsibility on the General Permit coverage period.
- 29) Non-Stormwater Discharge Any discharge that is not entirely composed of stormwater.
- 30) Off-Site Stormwater Any runoff crossing property lines that discharges to public right-of-way, property not included in the SWPPP, or property owned by others.
- 31) Owner or Operator (a) A person who owns, leases, operates, controls, or supervises a point source. (b) For the purpose of permitting "stormwater discharge associated with construction activity" means any "owner or operator" associated with a construction project, who is a person designated as an eligible signatory, who has operational control over the construction plans and specifications and has day to day operational control at the project to ensure compliance with the SWPPP.
- 32) Person Any individual, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.
- 33) Plan Pertains to Stormwater Management Plan and Comprehensive Drainage Plan.
- 34) 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.

- 35) Pollutant Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)], heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water, and as otherwise defined in 40 CFR 122.2.
- 36) Premises Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 37) Redevelopment A project that proposes to add, replace and/or alter impervious surfaces affecting an existing drainage system, other than routine maintenance, resurfacing, or repair. A project which meets the criteria of a major modification as defined in this section shall be considered a redevelopment.
- 38) State Waters Any body of water, either surface or underground. "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.
- 39) Stormwater Storm water runoff, snowmelt runoff, and surface runoff and drainage.
- 40) Stormwater Management The process of collection, conveyance, storage, treatment, and disposal of stormwater to ensure control of the magnitude and frequency of runoff and to minimize the hazards associated with flooding. Also includes implementing controls to reduce the discharge of pollutants including management practices, control techniques and systems, design and engineering methods.
- 41) Stormwater Management Manual The design standards manual prepared by the Billings City Public Works Department which provides design, performance, and review criteria for stormwater management practices.
- 42) Stormwater Management Plan Details of the on-site drainage system, structures, BMPs, concepts and techniques that will be used to control stormwater, including drawings, engineering calculations, computer analyses, maintenance and operations procedures, and all other supporting documentation for developments equal to or less than five (5) acres.
- 43) Stormwater Pollution Prevention Plan (or SWPPP) Under the State's General Permit for Storm Water Discharges Associated with Construction Activities which characterizes the construction activity, potential sources of pollutants, and Best Management Practices (BMPs) to help ensure pollutants do not reach surface waters.
- 44) Stormwater System Physical facilities, that are both private and public, temporary or permanent, designed to treat, collect and transport stormwater

which include but are not limited to; curbs, inlets, pipe, box culverts, swales, ditches, ponds, French drains, boulder pits, wattles, and silt fences.

- 45) Total Maximum Daily Load (or TMDL) The sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards. as defined in MCA 75-5-103.
- 46) U.S. EPA United States Environmental Protection Agency.
- 47) Variance A modification of the requirements of the Ordinance.
- 48) Watercourse. Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City of State
- 49) Wetland An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

ARTICLE 28-300 DISCHARGE PROHIBITIONS.

Sec. 28-301. Prohibitions of Illicit Discharges.

- A. It shall be unlawful to discharge or cause to be discharged into the MS4 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 or that could cause the City to be in violation of its MPDES. It shall be unlawful to store, handle or apply any pollutant in a manner that will cause exposure to rainfall or runoff and discharge to the MS4 and to State waters or waters of the United States.
- B. The commencement, conduct or continuance of any discharge not composed entirely of stormwater to the MS4 is prohibited except as follows:
 - 1) Discharges pursuant to an MPDES General Permit for MS4's permit and discharges due to firefighting activities.
 - 2) Discharges from the following activities are not be considered a source of pollutants to the MS4 and to State waters when properly managed, and shall not be considered illicit discharges unless determined by the City to be significant contributors of pollutants to the MS4 or to cause a violation of the provisions of the Clean Water Act or this ordinance based on quantity of flow, concentration of pollutants, proximity to a water course, or condition of a receiving water: irrigation water, irrigation ditch return flows, landscape irrigation, diverted stream flows, rising ground waters,

uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering (excluding over watering), individual residential car washing, individual residential dechlorinated swimming pool and hot tub discharges, individual residential street washing, water line flushing, flows from riparian habitats and wetlands, uncontaminated water from irrigation system meter pits and flows from emergency firefighting activities. Before applying the listed exceptions, the City shall make a determination on a case by case basis as to what is considered significant contributors of pollutants. In addition, the following non-storm water discharges need not be prohibited from entering the MS4, provided approved control measures to minimize the impacts from the sources are implemented: Municipally owned dechlorinated swimming pool discharges, Municipal water tank draining and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City. This prohibition shall not apply to any non-storm water discharge permitted under an MPDES permit, waiver or waste discharge order issued to the discharger and administered by the State of Montana under the authority of the United States 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.

- 3) The City may exempt in writing other non-storm water discharges which are not a significant source of pollutants to the City's MS4 or State waters.

Sec. 28-302. Prohibitions of Illicit Connections and Discharges.

- A. The construction, use, maintenance or continued existence of illicit connections to the MS4 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 in violation of this ordinance if the person connects a line conveying sewage or pollutant to the MS4, or allows an existing connection to continue.
- D. Illicit connections must be disconnected at the owner's expense in a timely manner.
- E. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice from the City of Billings. The notice will specify a reasonable time period to locate the drain or conveyance, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of

connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations shall be documented and provided to the Public Works Department.

No person shall throw, deposit, leave, maintain, wash or rinse, keep any substance that may cause or contribute to pollution, or permit any such substance to be thrown, deposited, left, maintained, washed or rinsed, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, manhole, ditch, channel, pond or any other component of the MS4, or State waters. Pollutants for this purpose include but are not limited to oil, solvents, anti freeze, flammables, septage, poisonous or infectious substances, garbage, soaps, acids, bases and sediment. Wastes deposited in streets in a manner allowed by the City for the purpose of collection are exempted from this prohibition. Refer to section 28-102.01 B2 for exemptions.

Sec. 28-303. Parking Lots and Similar Structures.

- A. Persons owning or operating a paved parking lot, gas station pavement, paved private street or road, or similar structure or conducting routine building wash downs, shall clean and maintain those structures or areas consistent with the Billings City Non-Stormwater Disposal Best Management Practices prior to discharging to a storm drain.
- B. Newly constructed and significantly remodeled covered parking garages or other covered structures shall be drained into a stormwater system in accordance with this ordinance and other Billings ordinances. The owner and operator of a private stormwater collection system may be required to construct control structures to ensure the pre-treatment of such discharges prior to entry into the stormwater system. Existing structures are exempt unless deemed by the City to be a significant contributor of pollution to the stormwater system.

Sec. 28-304. Outdoor Storage Areas - Commercial and Industrial Facilities.

In outdoor areas, no person shall store grease, oil or other pollutants in a manner that will or may result in such substances entering a stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to a storm drain. To prevent the discharge of hazardous substances to the MS4, the City may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

Article 28-400. CONSTRUCTION ACTIVITY.

Sec. 28-401. Required Construction Submittals.

- A. Any construction within the City's MS4 area shall comply with the provisions of this ordinance, City's Stormwater Management Manual, and the State's General Permit for Storm Water Discharges Associated with Construction Activity (Montana Code Annotated (MCA) 75-5-101, Administrative Rules of Montana (ARM 17.30.1301 and ARM 17.30.601). The City will require at a minimum an executed copy of the State standard Notice of Intent (NOI) form for a storm water discharge associated with construction activity under the General Permit and a Storm Water Pollution Prevention Plan (SWPPP), and a Notice of Termination (NOT) for construction sites either one acre or larger, for each phase of a construction site that exceeds one acre, or within 50 feet of any water course including irrigation and stormwater ditches for construction sites of less than one acre.
- B. Any person performing support activities related to a construction site (e.g. concrete or asphalt batch plants, equipments staging yards, material storage areas, etc.) within the City's MS4 area may require the following NOI, SWPPP, NOT, similar to the requirements of construction activity provided that:
 - 1) The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction activity.
 - 2) Appropriate controls and measures are identified in the SWPPP for discharge from support activity.
 - 3) The support activity disturbs an area that is one acre or greater in size or is within 50 feet of any water course.
- C. In accordance with the State's reporting requirements the property owner shall also notify the City when there is any facility contact change, any spill or release, any finding that there has been non-compliance with the SWPPP.
- D. The City shall conduct all inspections of any construction activities requiring a SWPPP for all work within the MS4 area.
- E. The City will enforce the requirements under the State's General Permit for Storm Water Discharges Associated with Construction Activity in whole or in part determined by the City's Enforcement Agent.
- F. The operator shall retain completed and signed copies of the NOI, MDEQ's confirmation letter for receipt of the NOI package, and a SWPPP at the construction activity project site at all times during the coverage period. If the operator does not maintain a permanent office/ or building at the project site, copies of these documents shall be retained at the operator's office and shall

be brought to the project site by the operator responsible for implementation of the SWPPP.

- G. Upon failure of the operator to take corrective actions on or prior to a required date on a reported or observed spill or the potential to release pollutants, including sediment, into the stormwater system, the City may either perform the corrective work or employ contractors to do the same. The contractor shall reimburse the City for all expenditures pertaining to the corrective action in accordance with Section 28-104.05 BMCC.
- H. The City's Enforcement Agent has the authority to issue a stop work order pursuant to the remediation of a current violation or the potential of a violation of this ordinance in accordance with 18-300 BMCC.
- I. An Authorized Enforcement Agent shall establish the appropriate frequencies for inspection of construction stormwater pollution prevention measures or BMPs at all active construction sites.
- J. The permittee or his/her agent will be required to perform regularly scheduled site inspections, at least every fourteen (14) calendar days, and within ten (10) calendar days after major storm events to ensure all BMPs have been constructed and are functioning properly. The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. Permittee shall document all inspections in writing and made available for review by the City.

Sec. 28-402. Construction Activity on Less than One Acre.

The City may apply this ordinance in whole or in part for construction sites or lots that are less than one acre if it is determined that appropriate good housekeeping practices or best management practices are not being implemented to minimize impacts, such as but not limited to, erosion and sediment transport into public right-of-way or any adjoining property that causes stormwater runoff that exceeds pre-construction activities.

Sec 28-403. Construction Activity on Lots Within a Master Plan Development.

Individual lot development regardless of the lot size must follow good housekeeping practices and best management practices as outlined in the SWPPP for the development.

ARTICLE 28-500. REGULATIONS AND REQUIREMENTS

Sec. 28-501. Requirement to Control and Reduce Stormwater Pollutants.

- A. New Development and Redevelopment: The City's Stormwater Management Manual outlines appropriate BMPs to control the volume, rate, and the potential of pollutants in stormwater runoff from new development and redevelopment

projects as may be appropriate to minimize the generation, transport and discharge of pollutants.

B. Responsibility to Implement BMPs: Any person or entity engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering stormwater, the MS4 or State waters, shall implement BMPs to the maximum extent practicable to provide protection from discharge into the MS4. BMPs shall be provided and maintained at the owner's or operator's expense. The Public Works Director or designee shall have the authority to require the installation, operation and/or maintenance of BMPs. The Public Work Director shall also have the authority to require the removal of temporary BMPs.

Sec. 28-502. Requirement to Eliminate Illicit Discharges.

The City may require by written notice that a person or entity responsible for an illicit discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges.

Sec. 28-503. Requirement to Eliminate or Secure Approval for Illicit Connections.

A person responsible for an illicit connection to the MS4 shall comply with the requirements of this ordinance and shall eliminate or secure approval for the connection whether the connection or discharges to it had been established or approved prior to or after the effective date of this ordinance. An application seeking approval for the connection shall be submitted in writing to the City Public Works Department's Environmental Division.

Sec. 28-504. Watercourse Protection.

Any person owning property through which a watercourse passes, or that person's lessee, shall keep and maintain all parts of the watercourse within that property reasonably free of trash, debris, excessive vegetation and other obstacles that would pollute, or significantly restrict the flow of water through the watercourse. The owner or lessee shall maintain any existing privately owned structures within or adjacent to that watercourse, so that those structures will not become a hazard to the use, function or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation unless it is reasonably necessary for maintenance. The owner or lessee shall not remove vegetation if it will increase the vulnerability of the watercourse to erosion. The property owner shall maintain and stabilize the watercourse within the property owner's property boundaries in a manner that will protect against any erosion and degradation of the watercourse originating on or flowing through their property.

Sec. 28-505. Requirement to Remediate.

Whenever the City finds that a discharge of pollutants, within the MS4 area, is taking place or has occurred which will result in or has resulted in pollution of stormwater, the

MS4 or State waters, the City will notify the responsible person or entity in writing and give them a reasonable opportunity to remediate the affected property in accordance with the provisions of this ordinance using a remediation plan pre-approved by the Public Works Director or designee. The City or a designated contractor may remediate the affected property at the owner's or responsible person's or entity's expense if the owner or responsible person does not take corrective actions within a reasonable time. Remediation plans shall be submitted to the City by the owner or responsible person and approved prior to the start of the remediation. The plan shall include, but may not be limited to, a remediation schedule, a course of action, a list of personnel performing remediation work and a list of equipment to be used.

Whenever a violation of this ordinance constitutes an emergency presenting imminent danger of serious injury to persons or property the City may remediate the conditions giving rise to the violation through an available public agency or by contract or arrangement with private persons, and the cost of such abatement shall be paid by the owner of the property.

Sec. 28-506. Requirement to Monitor and Analyze.

The City may require any person engaged in any activity or owning or operating any facility which may cause or contribute to stormwater pollution, illicit discharges or non-stormwater discharges to the MS4 or State waters, to undertake, at the person's or owner's expense, monitoring and analyses by a State certified laboratory pursuant to the provisions of this ordinance, and furnish reports to the City of Billings as deemed necessary to determine compliance with this ordinance.

Sec. 28-507. Notification of Spills.

Notwithstanding other requirements of law, as soon as any owner of or any person responsible for a facility or operation has information of any known or suspected release of pollutants discharging into stormwater, the MS4, or State waters from that facility, that person shall take all necessary steps to ensure the discovery, containment and cleanup of the release. In the event of a release of a Pollutant, the person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release not requiring an emergency response, that person shall notify the City by calling the City's Public Works Department Environmental Division Environmental Division within twenty-four (24) hours, and providing a written notice thereto within five (5) business days. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or responsible person must make and keep an onsite written record of the circumstances of the discharge and the actions taken to prevent its recurrence. These records shall be retained for not less than five (5) years.

Sec. 28-508. Discharge Pursuant to MPDES Permit.

The prohibition of discharges shall not apply to any discharge regulated under an MPDES permit issued and administered by DEQ, provided that the Discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

Compliance with an applicable MPDES permit governing discharges into the MS4 shall be considered compliance with this ordinance.

Sec. 28-509. Noncompliance with MPDES Permits.

Any discharge that would constitute a violation of a MPDES Permit and any amendments, revisions or re-issuance thereto, when either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, the permittee shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge as provided by applicable rules of law. All persons in charge of a facility are to comply with applicable federal and state laws including facility personnel, training, training record maintenance, training records, maintenance of notification procedures, and implementation of notification requirements for spill response to assure containment, cleanup, and immediate notification to the owner and operator of the MS4. Individuals responsible for spills are to comply with applicable state and federal notification requirements to assure containment, clean up, and immediate notification to the owner and operator of the MS4.

ARTICLE 28-600. STORMWATER MANAGEMENT PLANS AND COMPREHENSIVE DRAINAGE PLANS.

Sec. 28-601. Requirements

To control the quality, volume and rate of stormwater runoff to storm drains and prevent the deterioration of water quality, all new developments and redevelopment projects will be required to submit a stormwater management plan or a comprehensive drainage plan to the City for approval. The Stormwater Management Manual establishes standards and guidelines for implementing BMPs and stormwater management is incorporated by reference and made part of this ordinance.

Sec. 28-602. Maintenance of Stormwater Facilities.

- A. Stormwater facilities shall be maintained by the owner or other responsible party in a condition so that the facilities will function as designed.
- B. Waste shall be disposed of from maintenance of facilities in accordance with applicable federal, state and local laws and regulations.
- C. The owner or other responsible party shall create and maintain records of installation and maintenance and repair for a period of five (5) years and shall be made available to the City Public Works Department upon request.
- D. Any failure to maintain facilities or to correct deficiencies at facilities within a reasonable time after receiving written notice from the City may result in criminal or civil penalties. The City may perform corrective or maintenance work

the owner or responsible person fails or refuses to perform within a reasonable time at the owner's expense.

Art. 28-700. INSPECTIONS AND ENFORCEMENT

Sec. 28-701. Inspection.

- A. The owner or other responsible party shall conduct annual inspections of the facilities and shall maintain records of such inspections for a period of five (5) years.
- B. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever an Authorized Enforcement Agent has reasonable cause to believe that there exists any condition which may constitute a violation of the provisions of this ordinance in any building or upon any premises, the Authorized Enforcement Agent may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Authorized Enforcement Agent by this ordinance; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
- C. If permission is refused or denied, or if it is not possible to locate the owner or responsible person and no emergency exists, the Authorized Enforcement Agent shall obtain a warrant before entering the premises. If an emergency exists presenting imminent danger of serious injury to persons or property, the Authorized Enforcement Agent may immediately enter into any building or upon any premises within the jurisdiction of the city for purposes of inspection or abatement.
- D. The City may conduct routine inspections as deemed necessary to carry out the objectives of this ordinance, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.
- E. Unreasonable delays in allowing the City access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance.

Sec. 28-702. Enforcement.

Any of the following shall constitute a violation of this Article:

- A. Conducting any land disturbing or construction activity of an area larger than one acre without submitting a notice of intent to the City.

- B. Conducting any land disturbing or construction activity of an area larger than one acre without complying with a NPDES or MPDES general permit for stormwater discharge associated with construction activity requirements at the location where the land disturbance activity has occurred.
- C. Failure to install erosion control devices or to maintain erosion control devices throughout the duration of the soil disturbing activities.
- D. Failure to remove off-site sedimentation that is a direct result of soil disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices or BMPs.
- E. Failure to repair damaged erosion control devices in a timely manner.
- F. Failure to contain and properly dispose of solid waste, sanitary waste, hazardous waste, chemicals, petroleum products, or concrete truck washout at or from a construction site.
- G. Other situations that result in a non-compliance with this ordinance.

Sec. 28-703. Sampling.

With the consent of the owner or occupant or with authorization from a Court of competent jurisdiction, any City Enforcement Agent may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the City Enforcement Agent may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples. Samples shall be collected, stored and transported in conformance with accepted sampling and testing standards, including chain-of-custody.

Sec. 28-704. Testing and Monitoring.

- A. Whenever the Director of Public Works or designee determines that any person engaged in any activity or owning or operating any facility that may cause or contribute to an illicit discharge to the stormwater system, the Director of Public Works or designee may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Director of Public Works or designee may recommend. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall describe the monitoring activities and/or analyses and reports required. The owner or operator shall perform the actions ordered by the Director of Public Works and shall pay for all costs of these activities, analyses and reports. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

B. In the event the owner or operator of a facility fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the City may cause such monitoring and/or analyses to occur and assess all costs incurred, including reasonable administrative costs and attorney's fees, to the facility owner or operator. The City may pursue judicial action to enforce the Order and recover all costs incurred.

Sec. 28-705. Notice of Violation.

Whenever the City 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.

A. The Notice of Violation shall contain:

- 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 setting forth the facts which constitute the violation;
- 4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- 5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed;
- 6) A statement that the determination of violation may be appealed to the Public Works Director by filing a written notice of appeal within ten (10) calendar days of service of notice of violation; and
- 7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Such notice may require, without limitation:

- 1) Monitoring, analyses, and reporting;
- 2) Elimination of illicit connections or discharges;
- 3) That discharges, practices, or operations in violation of this Article shall cease and desist;

- 4) Abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- 5) Payment of a civil fine to cover administrative and remediation costs; and
- 6) Implementation of source control or treatment BMPs.

Sec. 28-706. Continuing Violations.

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this ordinance is committed, continued or permitted by the person and shall be punishable accordingly, as herein provided.

Sec. 28-707. Violations Constituting Misdemeanors.

The knowing violation of any provision of this ordinance, or knowing failure to comply with any of the mandatory requirements of this ordinance shall constitute a misdemeanor.

Sec. 28-708. Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this ordinance shall constitute a violation of this Article.

Sec. 28-709. Acts Resulting in Violation of Federal Clean Water Act.

Any person who violates any provision of this ordinance, any provision of any permit issued pursuant to this ordinance, or who discharges pollutants, waste or wastewater so as to cause an illicit discharge into the MS4, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

Sec. 28-710. Violations Deemed a Public Nuisance.

- A. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter may be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Director of Public Works or designee, and may be summarily abated and/or restored by the City and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance.
- B. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

- C. In any administrative or civil proceeding under this ordinance in which the City prevails, the City may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorneys' fees.

Sec. 28-711. Civil Actions.

In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the City. In any such action, the City may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

- A. A temporary and/or permanent injunction.
- B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.
- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing stormwater discharge control systems and/or implementing or enforcing the provisions of this Ordinance.
- E. Fines to City for MPDES permit violations.

Sec. 28-712. Administrative Enforcement Powers.

In addition to the other enforcement powers and remedies established by this ordinance, any City Enforcement Agent has the authority to utilize the following administrative remedies.

- A. Cease and Desist Orders. When a City Enforcement Agent finds that a discharge has taken place or is likely to take place in violation of this Ordinance, the agent may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (a) comply with the requirement; (b) comply with a time schedule for compliance, and/or (c) take appropriate remedial or preventive action to prevent the violation from recurring.
- B. Notice to Clean. Whenever a City Enforcement Agent finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain or a non-stormwater discharge to the storm drain, he or she may give

notice to remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein. In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the City Director of Public Works or designee may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) calendar days, a lien shall be placed upon and against the property.

Sec. 28-713. Nonexclusivity of Remedies.

Remedies under this Ordinance are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

Sec. 28-714. Appeal

Any person notified of non-compliance with this ordinance or required to perform monitoring, analyses, reporting and/or corrective action, who is aggrieved by the decision of the City Enforcement Agent, may appeal such decision in writing to the Public Works Director within 10 business days following the effective date of the decision or written notice. Upon receipt of such request, the City Administrator shall request a report and recommendation from the City Enforcement Agent and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the City Administrator may hear additional evidence, and may revoke, affirm or modify the City Enforcement Agent's decision. Such decision shall be final.

Sec. 28-715. Disclaimer of Liability.

The degree of protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this Ordinance does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This Ordinance shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions

or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 22nd day of February 2010.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of March 2010.



CITY OF BILLINGS

By Thomas W. Hanel

Thomas W. Hanel, Mayor

ATTEST:

By Cari Martin
Cari Martin, City Clerk