

# **APPENDIX A**

City of Wichita Stormwater Management Ordinance – Chapter 16.32

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## CHAPTER 16.32. STORMWATER POLLUTION PREVENTION

### Sec. 16.32.010. General provisions.

- A. Purposes. The purpose and objective of this chapter are as follows:
1. To maintain and improve the quality of surface water and groundwater within the city;
  2. To attenuate the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the city;
  3. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers of the city;
  4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
  5. To facilitate compliance with state and federal standards and permits by owners of industrial and construction sites within the city;
  6. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for storm water discharges;
  7. To regulate the management of storm water for purposes of public safety, welfare and quality of life;
  8. To manage and maintain local floodplains;
  9. To facilitate compliance with city standards and permits by owners of developed, redeveloped and undeveloped properties within the city;
- B. Administration. Except as otherwise provided herein, the director, or his appointed representative, shall administer, implement, and enforce the provisions of this chapter.
- C. Authority. The Director may develop additional policies, criteria, specifications and standards in a Storm Water Manual and/or in other policy, master plans, watershed plans or guidance documents as necessary to effectively implement the requirements of this chapter. The policies, criteria and requirements of the Storm Water Manual and/or other policy, plans or guidance documents may be implemented and amended by the Director, are referenced in this chapter when required, and shall be enforceable, consistent with the provisions contained in this chapter. A public meeting shall be held bi-annually to allow public comment on this chapter and the Storm Water Manual.

In the event that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city may issue a Notice of Violation to the permittee, plan holder or property owner and/or any other person or entity having responsibility for the property or properties where the violation occurred under the provisions of subsection .100 B. of this chapter.

In the spirit of the purposes defined above for this chapter and in the administration of these requirements, the Director may consider the cost-effectiveness of storm water management controls provided that such controls meet the water quality, channel erosion protection and flood protection requirements of this chapter or are waived or exempted in accordance with the criteria defined in this chapter.

- D. Regulatory or legal conflicts. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations, except as specifically noted in this chapter. However, where the provisions of this ordinance and another regulation conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail.

E. Abbreviations. The following abbreviations when used in this chapter shall have the designated meanings:

BMP	-	Best Management Practices
CFR	-	Code of Federal Regulations
CLOMR	-	Conditional Letter of Map Revision
EPA	-	U.S. Environmental Protection Agency
FEMA	-	Federal Emergency Management Agency
HHW	-	Hazardous Household Waste
KAR	-	Kansas Administrative Regulations
KSA	-	Kansas Statutes Annotated
LOMR	-	Letter of Map Revision
mg/l	-	Milligrams per liter
MS4	-	Municipal Separate Storm Sewer System
NOI	-	Notice of Intent
NOT	-	Notice of Termination
NPDES	-	National Pollutant Discharge Elimination System
OCI	-	Office of Central Inspection
PST	-	Petroleum Storage Tank
SWP3	-	Storm Water Pollution Prevention Plan
TMDL	-	Total Maximum Daily Load
USC	-	United States Code

F. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

1. "As-built plan" means a drawing showing the actual state of permanent storm water facilities as installed.
2. "Best management practices (BMP)" means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States or the city's MS4. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMPs required in this chapter will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.
3. "City" means the City of Wichita.
4. "Commencement of construction" means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
5. "Commercial" means pertaining to any business, trade, industry or other activity engaged in for profit.
6. "Construction general permit" refers to the *Kansas General Permit for Stormwater Discharges from Construction Sites*.
7. "Contractor" means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.
8. "Development" or "new development" means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.

9. "Director" means the person appointed to the position of Public Works and Utilities Director by the City Manager of the City, or his/her duly authorized representative. Authorized representatives can include, but are not limited to, the City Engineer, the Storm Water Engineer, and others, as so authorized.
10. "Discharge" means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
11. "Discharger" means any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation any owner of a construction site or industrial facility.
12. "Domestic sewage" means human excrement, gray water (From home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.
13. "Drainage plan" refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or for issuance of a building permit.
14. "Earthwork" means the disturbance of soils on a site associated with clearing, grading, or excavation activities.
15. "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.
16. "Extremely hazardous substance" means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.
17. "Facility" means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.
18. "Fertilizer" means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.
19. "Final stabilization" means the status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles).
20. "Fire protection water" means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.
21. "Garbage" means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.
22. "Harmful quantity" means the amount of any substance that will cause a violation of a State Water Quality Standard or any adverse impact to the city's drainage system.
23. "Hazardous household waste (HHW)" means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waster under 40 CFR Part 261.

24. "Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.
25. "Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
26. "Hazardous waste treatment, disposal, and recovery facility" means all contiguous land, and structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.
27. "Impervious area" or "impervious cover" means the number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.
28. "Individual building sites" means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.
29. Industrial General Permit. See "Kansas General Permit for Stormwater Discharges Associated with Industrial Activity."
30. "Industrial waste" means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.
31. "Industry" means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity.
32. "Kansas General Permit for Stormwater Discharges Associated with Industrial Activity (or industrial general permit)" means the industrial general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
33. "Kansas General Permit for Stormwater Discharges from Construction Sites (or construction general permit)" means the construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
34. "Land disturbance" means the disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.
35. "Landfill" means an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, or an injection well.
36. "Municipal separate storm sewer system (MS4)" means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.
37. "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

38. "NPDES permit" means for the purpose of this chapter, this is a permit issued by EPA or the state of Kansas that authorizes the discharge of stormwater pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis
39. "Nonpoint source" means the source of any discharge of a pollutant that is not a point source.
40. "Notice of intent (NOI)" means the notice of intent that is required by either the industrial general permit or the construction general permit.
41. "Notice of termination (NOT)" means the notice of termination that is required by either the industrial general permit or the construction general permit.
42. "Notice of violation" means a written notice provided to the owner or contractor detailing any violations of this chapter and any clean-up action expected of the violators.
43. "OCI" means office of central inspection and includes its superintendent and his or her authorized representatives.
44. "Oil" means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.
45. "Outfall" or "storm water outfall" means the terminus of the storm water system for a development or redevelopment where the storm water runoff is released into a larger public or private storm water management system, or into a stream, waters of the United States or other water body.
46. "Owner" means the person who owns a facility, part of a facility, or land.
47. "Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local government entities.
48. "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.
49. "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.
50. "Petroleum storage tank (PST)" means any one or combination of aboveground or underground storage tanks that contain petroleum product and any connecting underground pipes.
51. "Point source" means any discernable, confined, and discrete conveyance including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
52. "Pollutant" means dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water.

53. "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
54. "Qualified personnel" means persons who possess the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.
55. "Redevelopment" or "redevelopment site" means a change to previously existing improved property, including but not limited to the demolition or building structures, filling, grading, paving, or excavating.
56. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.
57. "Reportable quantity (RQ)" means, for any hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any extremely hazardous substance, the quantity established in 40 CFR Part 355.
58. "Rubbish" means nonputrescible solid waste, excluding ashes, that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including grass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).
59. "Sanitary sewer" means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the city sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).
60. "Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
61. "Service station" means any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from pumps.
62. "Sewage", means the domestic sewage and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to the city sewage treatment plant for treatment.
63. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
64. "Solid waste" means any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material including: solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, agricultural operations, and community and institutional activities.
65. "State" means the state of Kansas.
66. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.



67. "Stormwater discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is listed as one of the categories of facilities in 40 CFR Section 122.26(b)(14), and which is not excluded from EPA's definition of the same term.
68. "Storm water management facility" or "storm water control" means any structure or installation used to manage storm water quality, flow rate, or volume.
69. "Storm Water Manual" refers to the latest version, as amended, of the document on file with the Director of Public Works entitled City of Wichita/Sedgwick County Storm Water Manual.
70. "Stormwater pollution prevention Plan (SWP3)." Means a plan required by an NPDES stormwater permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity.
71. "Subdivision development" means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction taking place thereon.
72. "Undisturbed property" means real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.
73. "Used oil (or used motor oil)" means any oil that has been refined from crude oil a synthetic oil that, as a result of use, storage, or handling; has become unsuitable for its original purpose because of impurities or the loss of original properties.
74. "Water of the state (or water)" means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.
75. "Water quality standard" means the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses.
76. "Waters of the United States" means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any water within the federal definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.
77. "Watershed" means the cumulative area that drains to a common point.
78. "Watershed plan" means an engineering and planning study for the drainage system and/or land areas of a watershed that may include a plan for storm water management in the watershed. Watershed plans can include, but are not limited to, the analysis of flooding problems, water quality problems, potential storm water

capital improvements, land use patterns, and regulatory issues for existing and potential future land use conditions and address solutions to these problems.

79. "Wetland" means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
80. "Yard waste" means leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

(Ord. No. 44-123 § 1)

**Sec. 16.32.020. General prohibition.**

- A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of stormwater, except as allowed in subsection B.
- B. The following nonstormwater discharges are deemed acceptable and not a violation of this section:
  1. A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);
  2. A discharge or flow resulting from emergency fire fighting;
  3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials;
  4. A discharge from water line flushing;
  5. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;
  6. A discharge or flow from a diverted stream flow or natural spring;
  7. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
  8. Uncontaminated groundwater infiltrations;
  9. Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
  10. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
  11. A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
  12. A discharge or flow from individual residential car washing;
  13. A discharge of flow from a riparian habitat or wetland or natural spring;
  14. A discharge of flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
  15. Stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant;

16. Swimming pool water, excluding filter backwash; that has been dechlorinated so that it contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.
  17. Heat pump discharge waters (residential only).
- C. Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by the section if the discharge in question has been determined by the director to be a source of a pollutant to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than ten days beyond such notice.

(Ord. No. 44-123 § 2)

**Sec. 16.32.030. Specific prohibitions and requirements.**

- A. The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in Section 16.32.020.
- B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the city to violate a KDHE water quality standard, the city's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.
- C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced the following substances into the MS4:
1. Any used motor oil, antifreeze or any other petroleum product or waste;
  2. A harmful quantity of industrial waste;
  3. Any hazardous waste, including household hazardous waste;
  4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  5. Any garbage, rubbish, or yard waste;
  6. Wastewater that contains a harmful quantity of soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than five such vehicles.
  7. Wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
  8. Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantity of soap, detergent, degreaser, solvent, or any surfactant based cleaner.
  9. Any wastewater from commercial floor, rug, or carpet cleaning;
  10. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
  11. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;

12. Any ready-mixed concrete, mortar, ceramic, asphalt base material or hydromulch material, or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
  13. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area;
  14. Any filter backwash from a swimming pool or fountain;
  15. Any swimming pool water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
  16. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or waters of the United States;
  17. Any water from a water curtain in a spray room used for painting vehicles or equipment;
  18. Any contaminated runoff from a vehicle wrecking yard;
  19. Any substance or material that will damage, block, or clog the MS4;
  20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state.
- D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.
- E. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.
- F. Regulation of Pesticides and Fertilizers.
1. No person shall use or cause to be used any pesticide or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the MS4 or waters of the United States.
  2. No person shall dispose of, discard, store, or transport a pesticide or fertilizer, or its container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the MS4 or waters of the United States.
- G. Used Oil Regulation.
1. No person shall discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course.
- H. Cleanup. Should it be determined by the director that any person or business has allowed any pollutant into the MS4 or waters of the United States, immediate measures will be taken by the responsible party to remove the pollutants. If the pollutants are not removed within the time period specified by the director, the city may remove the pollutants and assess the cost thereof to the responsible party. The city may use any legal means to collect said cost, should the responsible party fail to pay said cost within forty-five days.

(Ord. No. 44-123 §4)

**Sec. 16.32.040. Release reporting and cleanup.**

- A. Any person responsible for any release of any hazardous material that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States shall comply with all state, federal, and any other local law requiring reporting, clean-up, containment, and any other appropriate remedial action in response to the release.
- B. Within thirty days following such release, the Wichita fire department shall submit a written report to the public works department detailing spill information and the methods used to remedy the problem.

(Ord. No. 44-123 §4)

**Sec. 16.32.050. Stormwater discharges from construction activities.**

- A. General Requirements (All Sites).
  - 1. The owners of construction sites shall ensure that best management practices are used to control and reduce the discharge of pollutants into the MS4 and waters of the United States to the maximum extent possible under the circumstances.
  - 2. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measurers, and location where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four hours of the end of a storm that is one-half inch or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, the best management practices shall be revised as appropriate as soon as practicable. These inspections, along with a description of revisions, will be documented in writing and available for inspection by the director and OCI upon request.
  - 3. Should it be found that soil or pollutants have already or may be carried into the MS4 or waters of the United States, immediate measures will be taken by the owner to remedy the violation and/or remove the pollutants. If the owner fails to remove pollutants within the time period prescribed in the notice of violation from the city, the city may remove the pollutants and assess the cost thereof to the responsible owner. Failure of the owner to pay said costs will be grounds for the denial of further approvals or the withholding of occupancy certificates.
  - 4. When determined to be necessary for the effective implementation of this section, the director may require any plans and specification that are prepared for the construction of the site improvements to illustrate and describe the best management practices required by subsection A.1 of this section above that will be implemented at the construction site. Should the proper BMP's not be installed or if they BMP's are ineffective, upon reasonable notice to the owner, the city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue construction, or to assume occupancy.
  - 5. The owner of a site of construction activity is responsible for compliance with the requirements in this subsection. In the case of new subdivisions, builders on individual lots can operate under the developers NPDES permit if the developer's SWP3 deals with individual lots and the contractors certification has been signed.

6. Any contractor on a construction site will also be required to use best management practices so as to minimize pollutants that enter into the MS4.
  7. All persons shall avoid damaging BMP devices once in place. Any person damaging a BMP device shall be responsible for the repair of the damaged BMP device. Malicious destruction of a BMP device or failure of such responsible person to repair BMP device will be deemed a violation of this chapter.
- B. Sites Requiring Federal and/or State NPDES Stormwater Discharge Permits. All owners of and contractors on sites of construction activity, that require a federal or state NPDES stormwater discharge permit, or that are part of a common plan of development or sale requiring said permit(s), shall comply with the following requirements (in addition to those in subsection A):
1. Any owner who intends to obtain coverage for stormwater discharges from a construction site under the Kansas General Permit for Stormwater Discharges From Construction Sites ("the construction general permit") shall submit a signed copy of its notice of intent (NOI) to OCI when a building permit application is made. If the construction activity is already underway upon the effective date of this chapter,\* the NOI shall be submitted within thirty days. When ownership of the construction site changes, a revised NOI shall be submitted within fifteen days of the change in ownership.

**\*Editor's note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

2. A stormwater pollution prevention plan (SWP3) shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this chapter and any other city ordinance.
3. The SWP3 shall be prepared by a qualified person and shall comply with State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the permit issued.
4. The SWP3 shall be completed prior to the submittal of the NOI to OCI and for new construction, prior to the commencement of construction activities. The SWP3 shall be updated and modified as appropriate and as required by the NPDES permit.
5. The director and/or OCI may require any owner who is required by subsection B.2 of this section to prepare a SWP3, to submit the SWP3, and any modifications thereto, to the Director and/or OCI for review at any time.
6. Upon the director's review of the SWP3 and any site inspection that he/she may conduct, if the SWP3 is not being fully implemented, the director may upon reasonable notice to the owner, deny approval of any building permit, grading permit, site development plan, final occupancy certificate, or any other city approval necessary to commence or continue construction. A stop work order may also be issued.
7. All contractors working on a site subject to an NPDES permit shall sign a copy of the following certification statement before beginning work on the site:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with construction activity from the construction site identified as part of this certification and with the Stormwater Pollution Prevention Plan Chapter of the

city, and I agree to implement and follow the provisions of the Stormwater Pollution Prevention Plan (SWP3) for the construction site;

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

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

8. The SWP3 and the certifications of contractors required by subsection B.7 of this section, and with any modifications attached, shall be retained at the construction site or at a local office in Wichita from the date of construction commencement through the date of final stabilization.
9. The director may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit issued or any additional requirement imposed by or under this chapter. Such notification shall identify those provisions of the permit or chapter which are not being met by the SWP3, and identify which provisions of the SWP3 require modification in order to meet such requirements. Within thirty days of such notification from the director, the owner shall make the required changes to the SWP3 and shall submit to the director a written certification from the owner that the requested changes have been made.
10. The owner shall amend the SWP3 whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWP3, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges.
11. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four hours of the end of the storm that is one-half inch or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
12. Based on the results of the inspections required by subsection B.11 of this section, the pollution prevention measures identified in the SWP3 shall be revised as appropriate. Such modifications shall provide for timely implementation of any changes to the SWP3 within ten calendar days following the inspection.
13. A report summarizing the scope of any inspection required by subsection B.11 of this section, and the names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWP3, and actions taken in accordance with subsection B.12 of this section above shall be made and refined on site or at a local office in Wichita as part of the SWP3. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWP3, the facility's NPDES permit, and this

chapter. The report shall be certified and signed by the person responsible for making it.

14. The owner shall retain copies of any SWP3 and all reports required by this chapter or by the NPDES permit for the site, and records of all data used to complete the NOI for a period of at least three years from the date that the site is finally stabilized.
15. Upon final stabilization of the construction site, the owner shall submit written certification to the director and OCI that the site has been finally stabilized. The city may withhold the final occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the director has determined, following any appropriate inspection, that the final stabilization has occurred and that any required permanent structural controls have been completed.

(Ord. No. 44-123 § 5)

**Sec. 16.32.060. Stormwater discharges associated with industrial activity.**

- A. All operators of: (1) municipal landfills; (2) hazardous waste treatment, disposal, and recovery facilities; (3) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (4) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity, shall comply with the following requirements:
  1. Any owner who intends, after the effective date of this chapter,\* to obtain coverage for a stormwater discharge associated with industrial activity under the Kansas General Permit for Stormwater Discharges Associated With Industrial Activity (“the industrial general permit”) shall submit a signed copy of its notice of intent (NOI) to the director.

**\*Editors note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

2. When required by their NPDES permit, all industries listed in this section shall prepare a stormwater pollution prevention plan (SWP3) and implement said plan in accordance with the requirements of their state or federal NPDES permit.
3. The SWP3, when required shall be prepared and signed by a qualified individual and will comply with all state NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the NPDES permit.
4. The SWP3, when required, shall be updated and modified as appropriate and as required by the NPDES permit and this chapter.
5. A copy of any NOI that is required by subsection A.1 of this section shall be submitted to the city in conjunction with any application for a permit or any other city approval necessary to commence or continue operation of the industrial facility.
6. The Director may require any operator who is required by subsection A.2 of this section to prepare a SWP3, to submit the SWP3, and any modifications thereto, to the director for review.
7. Upon the director’s review of the SWP3 and any site inspection that he/she may conduct, the director may upon reasonable notice to the owner deny approval necessary to commence or continue operation of the facility, on the grounds that the



SWP3 does not comply with the requirements of the NPDES permit, or any additional requirement imposed by or under this chapter. Also if at any time the director determines that the SWP3 is not being fully implemented, upon reasonable notice to the owner, he/she may deny approval of any application for a permit or other city approval necessary to commence or continue operation of the facility.

8. The SWP3, if required, with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all stormwater discharges associated with industrial activity at the facility are eliminated and the required notice of termination (NOT) has been submitted.
9. The director may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit, or any additional requirement imposed by or under this chapter. Such notification shall identify those provisions of the permit or chapter which are not being met by the SWP3, and identify which provisions require modification in order to meet such requirements. Upon thirty days of such notification from the director, the owner shall submit to the director a written certification that the requested changes have been made.
10. The owner shall amend the SWP3, if required, whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges.
11. As may be required by the facilities NPDES permit, qualified personnel (provided by the owner) shall inspect equipment and areas of the facility specified in the SWP3 at appropriate intervals or as may be specified in their NPDES permit. A set of tracking or follow up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained.
12. Industrial facilities will implement a sampling and testing program as required by their individual NPDES permits. The director may require written reports of any such monitoring and testing to be submitted to him/her.
13. The owner shall retain the SWP3 and all sampling and testing reports until at least one year after stormwater discharges associated with industrial activity at the facility are eliminated, or the operator is no longer operating the facility, and a notice of termination (NOT) has been submitted.
14. For discharges subject to the semi-annual or annual monitoring requirements of the industrial general permit, in addition to the records-retention requirements of the paragraph above, owners are required to retain for six year period from the date of sample collection, records of all sampling and testing information collected. Owners must submit such monitoring results, and/or a summary thereof, to the director upon his/her request.
15. After the effective date of this chapter,\* no stormwater discharge shall contain any hazardous metals in a concentration that would result in the violation of any Kansas Surface Water Quality Standard.

(Ord. No. 44-123 § 6)

**\*Editor's note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

**Sec. 16.32.070. Ditches and ponds.**

- A. Duty to Maintain. The owner of any private drainage ditch or pond that empties into the city's MS4 or the waters of the United States has a duty to use BMP's on the ditches or pond to minimize the pollutant levels downstream. Such BMP's include, but are not limited to, removing excessive build-up of silt, repairing bank erosion, maintaining vegetative cover, the cleaning of inlet and outlet works, and the like.
- B. Inspection and Notice by City. The city will periodically inspect these privately owned ditches and ponds. Should conditions be found that because the pollution of downstream receiving waters, the director shall so notify the owners, and state what actions are expected by the owners to remedy the problem.
- C. Failure to Repair. Should the owners fail to make the necessary repair within one hundred twenty days after notice, the city is authorized to do the repairs at the expense of the owner. Should the owner fail to reimburse the city for the cost of the repairs upon demand, the city may assess the cost thereof to the owner and initiate any collection proceedings authorized by law.

(Ord. No. 44-123 § 7)

**Sec. 16.32.080. Compliance monitoring.**

- A. Right of Entry. The director, OCI, and the city-county health department, or their authorized representatives, shall have the right to enter the premises of any person discharging stormwater to the municipal separate storm sewer system (MS4) or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.
- B. Records. Subject to the requirements of subsection A, dischargers shall make available, upon request, any SWP3's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notice of intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.
- C. Sampling. The director shall have the right to set up on the discharger's property such devices that are necessary to conduct sampling of stormwater discharges.

(Ord. No. 44-123 § 8)

**Sec. 16.32.090. Subdivision development.**

- A. The developer of any subdivision requiring a federal or state NPDES stormwater discharge permit will be responsible for obtaining the required permit and developing and implementing an overall SWP3 for the subdivision. Said SWP3 shall include BMP's to be used on individual lot building sites.
- B. City contractors installing public streets; water sanitary sewer, storm sewer lines; and/or sidewalks will be required to comply with the developers SWP3's and sign the appropriate contractor certification statement. For work in public right-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the city shall be responsible for obtaining the required permit and preparing and implementing the required SWP3's.
- C. Any utility company installing utilities within a new subdivision will also be required to comply with the developers SWP3's and sign the appropriate contractor certification statement. For work in public rights-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the utility company shall be responsible for obtaining the required permit and preparing and implementing the required SWP3's.

- D. The purchasers or individual lots within the subdivision for construction purposes shall comply with the developers SWP3 and shall sign a certification statement agreeing to do so.

(Ord. No. 44-123 § 9)

### **Sec. 16.32.091. Storm Water Quality Management Standards**

A. Applicability.

1. Water quality treatment and downstream channel protection shall be required of owners of new developments and redevelopments that cause a land disturbance greater than or equal to one (1) acre, including projects that cause a land disturbance less than one (1) acre that are part of a larger common plan of development or sale.
2. The requirements of 16.32.091 shall not apply to:
  - i. new developments or redevelopments that have a construction plan approved by January 1, 2011 and will have completed construction of all storm water management facilities within 90 days of January 1, 2011. This does not exempt such new developments from water quality management regulations that may be required in the future by EPA or KDHE; or,
  - ii. redevelopment projects that consist solely of ordinary maintenance activities, remodeling of buildings on the existing foundation, resurfacing (milling and overlay) of existing paved areas, and exterior changes or improvements.

B. Water Quality Treatment Standard for New Developments. Storm water runoff from applicable new developments must be treated for water quality prior to discharge from the development site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.

C. Water Quality Treatment Standard for Redevelopments. Owners of applicable redevelopments must adhere to one of the following requirements.

1. The total impervious cover of the property after redevelopment shall be reduced by at least twenty-percent (20%) from the total impervious cover of the property prior to the proposed redevelopment.
2. Storm water runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.
3. The owner shall provide storm water controls at an alternative location in the same watershed as the proposed redevelopment. The level of storm water control provided shall be equivalent to what would have been provided at the proposed redevelopment for either requirement 1 or 2 above, at a minimum.
4. In agreement and partnership with the City of Wichita, the owner shall provide engineering design and/or construction activities to address one or more known downstream water quality or channel erosion issues located within the same watershed as the proposed redevelopment, through stream restoration and/or other off-site remedies approved by the Director.
5. The owner shall pay a fee in-lieu-of water quality control and channel protection control, in an amount to be determined by the city in accordance with the in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the redevelopment.
6. Any combination of (1) through (5) above may be acceptable to the City of Wichita or other solution(s) approved by the Director that meets the intent of this chapter.

- D. Downstream Stabilization Standard. Downstream long-term channel protection shall be provided for applicable new developments and redevelopments prior to discharge from the new/redevelopment site in accordance with the downstream stabilization standards and criteria provided in the Storm Water Manual.

#### **Sec. 16.32.092. Storm Water Quantity Management Standards**

- A. Applicability. Storm water runoff peak discharge analysis and control shall be required for new developments and redevelopments that will create or add one (1) acre or greater of impervious cover, including projects that have less than one (1) acre in impervious cover that are part of a larger common plan of development or sale that will result in one (1) acre or greater of impervious cover.
- B. Water Quantity Management Standard. Storm water runoff peak discharge analysis and control shall be required for applicable new developments or redevelopments in accordance with the storm water quantity standards and criteria provided in the Storm Water Manual.

#### **Sec. 16.32.093. Other Storm Water Management Requirements**

- A. Applicability. Section 16.32.093 is applicable to new developments and redevelopments that are required to comply with section 16.32.091 and/or section 16.32.092.
- B. Alternative Standards for Individual Watersheds. Alternative storm water management standards, either lesser or greater than those specified in this chapter, may be required by the Director in those areas or watersheds where water quality, flooding or erosion problems are known to exist, or in individual watersheds where a watershed plan or storm water master plan, approved by the City Council of the City of Wichita, specifies such alternative standards.
- C. Other Requirements for Storm Water Discharges.
  - 1. Storm water discharges shall be managed in consideration of the erosion control measures detailed in the Storm Water Manual.
  - 2. Any discharge of storm water runoff to groundwater must meet all applicable local, State and Federal requirements, permits, plans and programs. The owner is responsible for complying with all local State and Federal permits that are applicable to the site.
- D. Requirement to Stabilize Banks. Banks of all streams, channels, ditches and other earthen storm water conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.
- E. Requirement to Use the Storm Water Manual. All storm water facilities and systems, including those designed and constructed for water quality treatment, downstream channel stabilization, and peak discharge control shall be designed, constructed and maintained in accordance with the criteria, standards, and specifications presented in this chapter and in the Storm Water Manual. The standards for water quality treatment, downstream channel stabilization and peak discharge analysis and control shall be achieved through the use of one or more storm water quality management facilities that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the Storm Water Manual. Methods, designs or technologies for storm water quality management facilities that are not provided in the Storm Water Manual may be submitted for approval by the city if it is proven that such methods, designs or technologies will meet or exceed the storm water treatment standards set forth in the Storm Water Manual and this ordinance. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the Storm Water Manual.

- F. Storm Water Facilities on Public Property. Storm water management facilities shall not be installed within public rights-of-way or on public property unless a permit has been issued by the city engineer.

**Sec. 16.32.094. Waivers and Exemptions from Storm Water Management Standards for New Developments**

- A. Exemptions. Owners of properties where the following activities are undertaken are exempt from the requirements of sections 16.32.091, 16.32.092, 16.32.093 and 16.32.094 of this chapter.
  - 1. Minor land disturbing activities at individual locations, such as gardening, building or grounds maintenance and landscaping, provided that the activity does not result in equal to or greater than one (1) acre of land disturbance;
  - 2. Individual utility service connections, unless such activity is carried-out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by regulation;
  - 3. Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by the regulation;
  - 4. Installation of posts or poles;
  - 5. Farming activities;
  - 6. Unplanned emergency work and emergency repairs necessary to protect life or property.
- B. Waivers. All or some of the storm water management standards required in section 16.32.091 and/or 16.32.092 of this chapter may be waived by the Director under the following circumstances.
  - 1. Existing Downstream Facilities. A waiver may be provided for one or more storm water management standards if the waived standard(s) are met by discharging the storm water runoff to an existing storm water management facility, whether public or private, that is:
    - i. provided in accordance with an existing watershed plan that is approved by the city; and,
    - ii. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,
    - iii. designed, constructed and maintained to provide a level of storm water control that is equal or greater than that which would be afforded by on-site storm water management facilities.
    - iv. If a waiver is provided for this reason, the owner of the new development or redevelopment will be required to pay a fee in-lieu-of water quality control, downstream channel stabilization and peak discharge control, in an amount to be determined by the city in accordance with an adopted in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the new development or redevelopment.
  - 2. Adverse Impact. A waiver may be provided if engineering studies determine that installing a storm water management facility in order to meet the storm water management standard being considered for waiver will cause adverse impact to water quality, or cause increased channel erosion, or downstream flooding.

3. Technical Criterion. A waiver may be provided if the technical criterion required to waive the storm water management standard, as presented in the Storm Water Manual, is met. In any case, a waiver is subject to satisfaction of the following requirements, which shall be shown in drainage plans submitted for the new development or redevelopment:
  - i. the waiver applicant shall provide an engineering study, as defined in 16.32.094.C that proves the adequacy of downstream or shared off-site storm water management facilities to offer equivalent or greater protection than the standard(s) for which a waiver is requested; and,
  - ii. the waiver applicant obtains any necessary CLOMR prior to construction, and a LOMR upon completion of construction; and,
  - iii. the waiver applicant obtains all State and Federal permits that may be applicable to the site.
- C. Engineering Study Required. In the event that a waiver from storm water management control requirements is requested, the adequacy of downstream or shared off-site storm water management facilities to control storm water runoff shall be determined, reviewed and approved by an engineering study that is performed in accordance with the calculation methods presented in the Storm Water Manual. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the city as part of a watershed plan or other land use plan.

**Sec. 16.32.095. General Requirements for Storm Water Design Plans**

- A. Storm water design information shall be submitted as part of the preliminary plat, final plat and construction plans, in accordance with the site development process established by the city.
- B. A building permit shall not be issued for the land development activity until the required storm water design information and corresponding plans are approved by the city.
- C. At a minimum, the storm water design information submitted at each stage of the city development process shall include the specific required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies, guidance and calculation methods (unless equivalent methods are pre-approved by the city) presented in the Storm Water Manual. Additional storm water design information may be required as necessary to allow an adequate review of the existing or proposed site conditions.
- D. The submittal of storm water design information shall be subject to the requirements set forth in the minimum subdivision regulations, zoning ordinance, or other city regulations.
- E. Storm water design information shall be prepared under the supervision of and stamped by a professional engineer licensed to practice in the State of Kansas.
- F. The portions of the new development or redevelopment on which storm water management facilities and systems are located shall be shown on the preliminary and final plats for all residential subdivisions and recorded with the plat as permanent reserves or easements consistent with the policies stated in the Storm Water Manual. Non-residential plats and/or subdivisions having a total area less than or equal to fifteen (15) acres shall be required to demonstrate the viability of proposed storm water management facilities and systems. In such cases, the Director is authorized to allow contingent dedications for storm water facilities providing that the owner/developer enters into an agreement with the City guaranteeing the construction of the said facilities in accordance with a schedule approved in the said agreement.

G. Conformity to the Approved Plans.

1. Grading designs shown on approved master grading plans and the design of storm water facilities and controls shown on approved design plans shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved plans without prior approval of a plan amendment by the city.
2. Grading and storm water design plans shall be amended to meet all local ordinances and standards if the proposed site conditions change after plan approval is obtained, or if it is determined by the city during the course of grading or construction that the approved plan is inadequate.

H. Duty to Provide an Operations and Maintenance Plan.

1. An Operations and Maintenance Plan shall be included with the storm water design information submitted with the construction plan. The Operations and Maintenance Plan shall include the required operation and maintenance provisions for each storm water management facility and water quality volume reduction area that is serving, or will serve, the development or redevelopment. The Operations and Maintenance Plan shall include all of the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.
2. The Operations and Maintenance Plan shall include an executed legal document entitled "Restrictive Covenants for Storm Water Facilities" (Covenants). The property owner shall record the Covenants with the deed for the property. The location of the storm water management facility(s) and water quality volume reduction areas, the recorded location of the Covenants document, and inspection and maintenance guidance outlining the property owner's responsibility shall be shown on a plat that is recorded for the property.

I. Duty to Provide Storm Water Construction Information on As-Built Drawings.

1. Prior to the release of the performance bond, complete As-Built Drawings shall be provided to the Director, and shall include sufficient design information to show that the storm water facilities will operate as designed under the approved drainage plan.
2. The As-Built Drawings shall include the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.
3. The As-Built Drawings shall be prepared and stamped by a professional engineer licensed to practice in the State of Kansas.

**Sec. 16.32.096. Maintenance and Inspection of Storm Water Drainage Paths and Controls.**

- A. Duty to Inspect and Maintain Storm Water Systems and Controls. Property owners shall at all times properly maintain and shall at intervals in accordance with the Operations and Maintenance Plan inspect all storm water facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) so that they operate at their full function. Maintenance and inspection of privately-owned storm water management facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) shall be performed at the expense of the owner(s) of such facilities.
- B. Duty to provide inspection reports. After construction of each storm water management facility on the property is complete, property owners shall provide to the Director on a bi-

annual basis a completed and signed copy of the inspection report for each storm water management facility that is included with the Operations and Maintenance Plan for the property. The inspection report is due every two years no later than the date (month and day) of approval of the as-built plan for the property.

- C. Duty to Preserve Approved Grading Designs. Re-grading an individual lot or lots, or portions of a lot or lots, in a manner that is not in accordance the approved master grading plan, such that the direction(s) of storm water runoff is altered from the direction that would occur under the approved master grading plan, shall be considered a violation of this chapter.
- D. Duty to Preserve Existing Drainage Paths. Blockage of a channel, ditch, stream or any other drainage path or storm water system appurtenance that is located in a storm water easement or drainage easement shall be considered a violation of this chapter.
- E. Pollutant Removal for Maintenance. The removal of pollutants, sediment and/or other debris for the purpose of maintenance of storm water management facilities shall be performed in accordance with all city, State, and Federal laws.
- F. Inspection During Grading or Construction.
  - 1. During grading or construction, the property owner or his/her appointed designee shall conduct site inspections in accordance with the requirements stated in the Kansas General Permit for Storm Water Discharges from Construction Sites. The property owner will also ensure construction conformance with the approved drainage and construction plans. More stringent inspection requirements may be imposed as necessary for purposes of water quality protection and public safety and to pursue total conformance of the site with the approved plans.
  - 2. The following areas and items must be inspected throughout grading and construction to ensure that land disturbance activities do not cause adverse impacts to the performance of storm water management facilities and/or water quality volume reduction areas:
    - i. all unstabilized areas that drain to a permanent storm water facility or water quality volume reduction area;
    - ii. temporary and permanent storm water management facilities; and,
    - iii. all erosion prevention and sediment control measures.
- G. Inspection After Construction. Once the site has been stabilized and construction has ceased, the property owner or his/her appointed designee shall conduct routine inspections for the storm water management facilities and water quality reduction areas, based on the guidance provided in the Operations and Maintenance Plan and the requirements of the "Restrictive Covenants for Storm Water Facilities" for the property, as set forth in section 16.32.095.H.2. of this ordinance.
- H. Inspection Records. Property owners shall make available upon request any self-inspection reports, monitoring/maintenance records, compliance evaluations, notices of intent, and any other records, reports, receipts, and other documents related to compliance with this chapter and with any related local, State or Federal permit.
- I. Right-of-Entry. The Director or his/her designee shall have the right to enter the premises of any person discharging storm water to the MS4 or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any State or Federal discharge permit, limitation, or requirement. Dischargers shall allow the Director or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Failure of a property owner to allow entry onto a property for the purposes set forth in this section shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with the enforcement provisions of this chapter.



- J. Inspection and Notice by City. The city may periodically inspect these privately owned storm water controls. If the facility is not operating as shown in the approved As-Built Drawing, or should conditions be found that cause or may cause the pollution of downstream receiving waters or the erosion of downstream channels or the flooding of adjacent or downstream properties, the Director may issue a notice of violation in accordance with the enforcement provisions stated in this chapter and shall notify the property owner(s) of the potential violation(s). The Director may order the property owner(s) to perform corrective actions as are necessary to facilitate the proper operation of these facilities for the purposes of flood prevention, downstream channel stabilization, water quality treatment and/or public safety, and/or to ensure compliance with jurisdictional regulatory conditions.
- K. Failure to Perform Corrective Actions. If property owner(s) fail to make the necessary corrective actions in the timeframe specified in the enforcement provisions of this chapter, the city is authorized to perform the corrective actions at the expense of the owner(s). If the owner(s) fail to reimburse the city for the corrective actions upon demand, the city may assess the cost of the corrective actions to the owner and initiate any collection proceedings authorized by law.
- L. Access to Adjacent Properties. This ordinance does not authorize access by a property owner or site operator to private property adjacent to or downstream of the owner's property. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

**Sec. 16.32.097. Special Provisions for Open Channels.**

- A. No structure or land shall hereafter be developed, redeveloped, located, extended, converted, or structurally altered without full compliance with the terms of this section, the City of Wichita Floodplain Management Ordinance (Chapter 27.06) and other applicable local, state or federal regulations.
- B. Requirements for vegetative buffer zones or maintenance access areas that have been established in approved and adopted watershed plans have priority over the provisions of this section.
- C. Closure of open channels. Existing or proposed open channels may be enclosed if a maintenance plan approved by the City is provided; if the closed conduit conforms to the design criteria set in the Storm Water Manual.
- D. Access Easement Required. All open channels must have a minimum twenty (20) foot wide maintenance access on each side of the stream as measured from the top-of-bank on each side of the stream, except as required by KSA 24-126 as amended, and KAR 5-45-12 as amended for "streams" defined in KAR 5-45-1 as amended.

**Sec. 16.32.100. Enforcement actions.**

- A. The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States and/or the failure to comply with the provisions of this chapter and/or the failure to comply with and directive, citation, or order issued under this chapter; are violations of this chapter for which enforcement action may be taken.
- B. Prior to taking any enforcement action as specified in this section, a violator will be issued a notice of violation except when, in the opinion of the Director, an owner or contractor has repeatedly ignored the requirements of this chapter and has not made any reasonable intent to comply with these provisions. When issued, the notice of violation will detail the nature of the violation, actions to be taken to remedy the violation, actions to be taken to clean-up any pollutants, and any specific time periods within which to accomplish said actions. Failure to successfully comply with the notice of violation may result in enforcement action.

C. The enforcement actions to be taken under this chapter, as provided in Section 16.32.110 are as follows:

1. Criminal Penalty. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars. Each and every day during which any violation of any provision of this chapter is committed, continue, or permitted is a separate violation.
2. Stop Work Order. Notwithstanding other penalties provided by this chapter, whenever the Director or OCI, or their designees, finds that any owner or contractor on a construction site has violated, or continues to violate, any provision of this chapter or any order issued thereunder, the director or OCI may after reasonable notice to the owner or contractor issue a stop work order to the owner and contractors by posting such order at the construction site. Said order shall also be distributed to all city departments and divisions whose decisions may affect any activity at the site. Unless express written exception is made, the stop work order shall prohibit any further construction activity at building permit, grading permit, site development plan approval, or any other approval necessary to commence or to continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator. Failure to comply with the requirements of any stop work order is a violation of this chapter.
3. Administrative Penalty Process.
  - a. When the director finds that any stormwater discharger has violated or continues to violate the provisions set forth in this chapter, or the discharger's NPDES permit or any order issued thereunder, the director may issue an order for compliance to the discharger. Such orders may contain any requirements as might be reasonably necessary and appropriate to address noncompliance including, but not limited to, the installation of best management practices, additional self-monitoring, and/or disconnection from the MS4.
  - b. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial discharger responsible for noncompliance. Such orders shall include specific action to be taken by the discharger to correct the noncompliance within a time period specified by the order.
  - c. Notwithstanding any other remedies or procedures available to the city, any discharger who is found to have violated any provision of this chapter, or any NPDES permit or any order issued under this chapter, may be assessed an administrative penalty as follows:
    1. The minimum administrative penalty for any violation shall be no less than five hundred dollars (\$500) per day the violation is maintained and not more than two thousand five hundred dollars (\$2,500) per day for each day the violation is maintained;
    2. Failure to obtain required NPDES permit: up to two thousand five hundred dollars per violation;
    3. Failure to prepare stormwater pollution prevention plan: up to two thousand dollars per violation;
    4. Failure to install best management practices: up to one thousand eight hundred dollars per violation;
    5. Failure to maintain best management practices: up to one thousand dollars per violation;

6. Failure to perform required sampling and testing or provide testing reports: up to one thousand dollars per violation;
  7. Commencement of construction without an approved drainage plan: up to two thousand five hundred dollars (\$2,500) per day of noncompliance;
  8. Failure to comply with approved drainage plan: up to two thousand five hundred dollars (\$2,500) per day of noncompliance;
  9. Failure to maintain storm water management facilities: up to two thousand five hundred dollars (\$2,500) per day of noncompliance.
- d. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.
  - e. Separate but multiple violations (except for violations under subsection C.3.d) by the same person(s) on one or more sites within any period of twelve consecutive months shall be cause to double the amount of penalty assessed under section C.3.c above for each violation after the first.
  - f. Upon assessment of any administrative penalty, the city will bill the violator for said charge and the Director shall have such collection remedies as are available at law. (Ord. No. 44-123 § 10)

**Sec. 16.32.110. Applicability of enforcement actions.**

- A. Illegal dumping will be subject to criminal penalties process.
- B. Illegal connections will be subject to either the criminal or administrative penalty processes.
- C. Industrial violations will be subject to the administrative penalty process.
- D. Individual building sites not requiring a federal or state NPDES permit will be subject to the criminal penalty and the stop work order processes; however, any owner or contractor of such site found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.
- E. Individual building sites requiring a federal or state NPDES permit will be subject to the administrative penalty process.
- F. Subdivision developers in subdivisions not requiring a federal or state NPDES permit will be subject to the criminal penalty and stop work order processes; however, any such developer found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.
- G. Subdivision developers of subdivisions requiring a federal or state NPDES permit will be subject to the administrative penalty process.
- H. City contractors and utility companies working on projects not requiring a federal or State NPDES permit will be subject to the criminal penalty process.
- I. City contractors and utility companies working on projects requiring federal or state NPDES permit will be subject to the administrative penalty process.
- J. Property owners, subdivision developers, commercial and industrial developers, and city contractors working on new developments and redevelopments requiring compliance with the City of Wichita storm water quality or quantity management standards will be subject to the criminal penalty, stop work order and administrative penalty processes.
- K. Owners of storm water management facilities and systems that are required to be maintained in accordance with an approved Operations and Maintenance Plan will be subject to the criminal penalty and administrative penalty processes.

(Ord. No. 44-123 § 11)

**Sec. 16.32.120. Hearing and appeal.**

- A. Persons who desire to appeal an administrative requirement, violation or penalty invoked under this chapter may request a hearing and appeal as follows:
  - 1. Any party affected by a penalty, order, directive or determination issued or made, pursuant to this chapter may, within fourteen days of the issuance of such penalty, order, directive, or determination request a hearing before the Director to show cause why such should be modified or made to not apply to such person. Such request shall be in writing and addressed to the Director of Public Works at 455 North Main Street, Wichita, Kansas, 67202. The Director or his designee shall hold the requested hearing as soon as practical after receiving the request, at which time the person affected shall have an opportunity to be heard. At the conclusion of the hearing, the Director shall issue a written response to the person requesting the hearing affirming, modifying, or rescinding the penalty, order, directive, or determination issued or made.
  - 2. Any party aggrieved by the decision of the Director may appeal such decision to the City Council within fourteen days of receipt of the decision by filing notice of appeal with the city clerk. Upon hearing, the City Council may affirm, modify, or reverse the decision of the Director.

**Sec. 16.32.130. Enforcement personnel authorized.**

- A. The following personnel employed by the city shall have the power to issue notices of violations, criminal citations and implement other enforcement actions under this chapter:
  - 1. All deputies under the supervision of the superintendent of the office of central inspections;
  - 2. All authorized personnel under the supervision of the director of public works;
  - 3. All authorized personnel under the supervision of the City Health Officer.

(Ord. No. 44-123 § 13)

**Sec. 16.32.140. Other legal actions.**

Notwithstanding any other remedies or procedures available to the city, if any person discharges into the MS4 in a manner that is contrary to the provisions of this chapter, or any NPDES permit or order issued hereunder, the city attorney may commence an action for appropriate legal and equitable relief including damages and costs in the district court of Sedgwick County. The city attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

(Ord. No. 44-123 § 14)

**Sec. 16.32.150. Falsifying information.**

Falsifying information is a separate offense and deemed a misdemeanor. Any person who knowingly makes false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or any NPDES permit, or who falsifies, or tampers with any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine or not more than one thousand dollars or by imprisonment for not than six months, or by both.

(Ord. No. 44-123 § 15)

**Sec. 16.32.160. Supplemental enforcement actions.**

- A. Performance Bonds. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this chapter. The city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city permit or approval necessary to commence or continue construction or industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.
- B. Liability Insurance. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value reasonably determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

(Ord. No. 44-123 § 16)

**Sec. 16.32.170. Severability.**

If any provision of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

(Ord. No. 44-123 § 17)