

ADOPTED BY THE
MAYOR AND COUNCIL

October 18, 2005

ORDINANCE NO. 10209

RELATING TO STORMWATER QUALITY PROTECTION AND ENFORCEMENT; AMENDING THE TUCSON CODE BY ADDING STORMWATER QUALITY PROVISIONS AS A NEW ARTICLE II OF CHAPTER 26 OF THE TUCSON CODE; STATING PURPOSE; ESTABLISHING DEFINITIONS; PROVIDING ENFORCEMENT AUTHORITY; PROHIBITING UNLAWFUL ACTS; ESTABLISHING REQUIREMENTS; ESTABLISHING PENALTIES AND REMEDIES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The title of Tucson Code, Chapter 26, is hereby amended to read as follows:

Floodplain, Stormwater, and Erosion Hazard Management.

SECTION 2. The Tucson Code, Chapter 26, Article I, is amended to reserve Secs. 26-17 through 26-19.

SECTION 3. The Tucson Code, Chapter 26, is hereby amended to read as follows:

ARTICLE II Stormwater Management

Division 1. Purpose and Definitions

Sec. 26-20. Purpose.

It is the purpose of this Article to comply with the City of Tucson's Municipal Stormwater Permit and applicable federal (40 CFR§ 122.26) and state (ARS Title 49, Chap. 2 Article 3.1) regulations for stormwater discharges, to be consistent with the stormwater quality provisions of the federal Clean Water Act (33 U.S.C. § 1342), and to enable the City of Tucson to comply with all applicable stormwater quality provisions of federal, state, and local laws and regulations to ensure the future health, safety, and general welfare of the citizens of Tucson, as well as the protection and preservation of the local environment.

Sec. 26-21. Consistency.

This Article shall be interpreted to be consistent with the federal Clean Water Act and applicable state law and all provisions of the City of Tucson's Municipal Stormwater Permit.

Sec. 26-22. Severability.

If any provision, clause, sentence, or paragraph of this Article is held invalid, such invalidity will not affect the other provisions or application of this Article. To this end, the provisions of this Article are declared to be severable.

Sec. 26-23. Definitions.

- 1) *Authorized representative* means a person delegated powers or duties by the Manager pursuant to this Article.
- 2) *AZPDES* means Arizona Pollutant Discharge Elimination System.
- 3) *BMP* means Best Management Practice.
- 4) *Certified Industrial Hygienist* means a professional Industrial Hygienist certified by the American Board of Industrial Hygiene.
- 5) *City* means the City of Tucson, a municipal corporation and subdivision of the State of Arizona.
- 6) *Clean Water Act* means the Federal Water Pollution Control Act amendments of 1972, as amended (P.L. 92-500; Stat. 816; 33 United States Code §§ 1251 through 1376).
- 7) *Connection* means the juncture/location at which discharge may enter the municipal separate storm sewer system.
- 8) *Corrective Action Plan* is a plan required under this Article and approved by an authorized representative that consists of structural and nonstructural Best Management Practices to prevent stormwater pollution or remediate impacts to the stormdrain system. Based on

site conditions, the authorized representative will determine whether the corrective action plan will be prepared and certified by a Qualified Person registered with the State of Arizona as a professional engineer, or professional Landscape Architect; or a Qualified Person certified by the American Board of Industrial Hygiene, as a certified Industrial Hygienist.

- 9) *De Minimus discharge* means a discharge that is a low flow and/or low frequency event of relatively pollutant free water which is discharged with appropriate BMPs to reduce any pollutants to below the applicable surface water standard (A.A.C. Title 18, Chapter 11, Article 1).
- 10) *Discharge* means any generated or naturally occurring runoff or flow into, or through the City's municipal separate storm sewer system or waters of the U.S.
- 11) *Discharger* means any person who causes or allows a discharge or who owns property from which a discharge originates.
- 12) *Engineer* means a professional civil engineer, registered with the State of Arizona.
- 13) *Environment* means navigable waters, any other surface waters, groundwater, drinking water supply, land surface, subsurface strata, ambient air, biotic community, or wildlife habitat within or bordering on the City.
- 14) *Illicit connection* means a connection that causes, or otherwise allows, illicit discharges.
- 15) *Illicit discharge* means any discharge that is not composed entirely of stormwater except: discharges pursuant to and in compliance with an applicable NPDES or AZPDES permit or other written authorization from the Environmental Protection Agency or the Arizona Department of Environmental Quality; not including the City's Municipal Stormwater Permit; and discharges that are considered to be non-significant sources of stormwater pollution.
- 16) *Industrial facility* means the site of any industrial activity regulated under federal NPDES or state AZPDES stormwater permit requirements.
- 17) *Land disturbance activity* means any activity that is regulated under the federal NPDES or State AZPDES stormwater permit requirements for construction sites.
- 18) *Landscape Architect* means a professional Landscape Architect registered with the State of Arizona.

- 19) *Manager* means the City of Tucson Manager or the Manager's authorized representative.
- 20) *Municipal separate storm sewer system* means a system of conveyances, consisting of all structures, basins, and natural or manmade channels that can collect, detain/retain, receive, or convey stormwater or other liquid that is discharged to a water of the United States from, or through, private property, public property, common areas, easements or rights-of-way, infrastructure, including but not limited to swales, watercourses, channels, streets, culverts, stormdrains, curbs and gutters. For the purposes of this Article, the municipal separate storm sewer system does not include the following waters of the United States: the Santa Cruz River, Rillito Creek, Pantano Wash, Tanque Verde Creek, Rincon Creek, Sabino Creek, West Branch Santa Cruz River Diversion Channel, and Agua Caliente Wash.
- 21) *NPDES* means National Pollutant Discharge Elimination System.
- 22) *No-Exposure Certification* is a document certifying that federal and/or state no-exposure requirements have been met.
- 23) *Notice of Intent (NOI)* is a document describing the intent to operate an industrial facility or land disturbance activity in accordance with a general stormwater AZPDES/NPDES permit.
- 24) *Notice of Termination (NOT)* is a document certifying one of the following conditions:
 - a) a change of ownership or responsible party;
 - b) final site stabilization following a land disturbance activity;
 - c) discharge has permanently ceased; or
 - d) discharges are covered under another AZPDES/NPDES permit.
- 25) *Person* means an individual, resident, property owner, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the federal government, state of Arizona, or any political subdivision or agency of this state.
- 26) *Pollutant* means any solid, liquid, or gaseous substances that may have an adverse impact on human health, the environment, or the property of others, or which otherwise causes or contributes to a violation of any stormwater quality provision of federal, state, or local laws.
- 27) *Qualified Person* means a person who is knowledgeable and possesses the skills to assess conditions at the site that could impact stormwater quality and the effectiveness of the BMPs selected to control the quality of stormwater discharges. Based on site

conditions, the manager will determine whether the Qualified Person must also be registered with the State of Arizona as a professional civil engineer, or professional Landscape Architect; or whether the Qualified Person must be certified by the American Board of Industrial Hygiene, as a certified Industrial Hygienist.

- 28) *Stormwater* means precipitation runoff, to which no pollutant has been added by human activity.
- 29) *Stormwater Pollution Prevention Plan* is a document required under AZPDES/NPDES regulations or imposed pursuant to this Article describing the stormwater quality controls in place at a site.
- 30) *Waters of the United States or waters of the U.S.* means a water body that is claimed under the jurisdiction of the U.S. government, including rivers and streams (intermittent, ephemeral), dry washes, acequias, arroyos, natural ponds and wetlands.

Reserved: Sections 26-24 – 26-29.

Division 2. Powers and Duties

Sec. 26-30. Authorized representative.

The Manager may delegate any or all of the powers and duties set out in this Article to any persons as the Manager deems necessary. Any person who has been delegated any power or duty described under this Article is an authorized representative.

Sec. 26-31. General.

The Manager may adopt and enforce such rules, regulations, standards, processes and forms as the Manager deems necessary for the efficient administration and enforcement of this Article. The Manager may interpret and enforce this Article. Upon request of the Manager any other department of the City has the authority to assist in the exercise of powers and performance of duties under this Article.

Sec. 26-32. Authority to enter.

For the purposes of determining compliance with, and enforcement of, the provisions of this Article, authorized representatives shall, at reasonable times, be admitted to any property from which a discharge is known, or is suspected. When security measures requiring identification and clearance before entry are in place on such property, the owner or agent of the owner, or a lawful occupant of the property shall make all necessary arrangements to allow authorized representatives, upon presentation of official identification, to enter the property without delay. If such entry is refused or cannot be obtained, the Manager shall

have recourse to every remedy provided by law to secure lawful entry and take necessary action.

If authorized representatives have reason to believe that discharge conditions on, or emanating from, the property require immediate action to safeguard the public health or safety, they shall have the right to immediately enter, inspect the property and take such action, after making reasonable efforts to locate and obtain permission from the owner or an agent of the owner, or a lawful occupant of the property.

Sec. 26-33. Warrants, restraining orders, and injunctive relief.

The Manager is, for purposes of enforcing this Article, empowered to seek restraining orders, other injunctive relief, or search warrants as necessary to enforce this Article.

Sec. 26-34. Authority to inspect.

Authorized representatives may inspect properties that discharge or are suspected of discharging. Inspections may include reviewing records, reports and test results, conducting site surveys, and examining any wastes, chemicals, storage areas, storage containers, waste generating processes, treatment facilities, and discharge locations. Inspection methods may include photographing, videotaping, or collecting samples for analytical analysis, from any part of the site or from any materials present on the site.

Sec. 26-35. Authority to monitor.

Authorized representatives may conduct all monitoring and sampling necessary to ensure compliance with this Article and may establish such devices as are necessary to conduct such sampling or monitoring. Such devices shall be installed and operated so as to minimize impact to the owner and occupant of the property.

Sec. 26-36. Authority to abate.

If a person in violation of this Article fails to comply with an order to abate or a notice of violation with a requirement to immediately abate, the City may abate the problem itself or by private contractor, and assess the responsible party for the cost of such abatement including expenditure of City resources.

Reserved: Sections 26-37 – 26-39

Division 3. Prohibitions, Non-prohibited Discharges, and Requirements

Sec. 26-40. Prohibited Discharges.

The following are prohibited:

- 1) any discharge that is a source of pollutants;
- 2) allowing or causing any discharge that contributes a pollutant to stormwater;
- 3) any discharge that contributes to a violation of the City's Municipal Stormwater Permit, regardless of whether that discharge is covered under, and is in compliance with, an AZPDES/NPDES permit;
- 4) establishing, using, and/or maintaining any connection that allows a discharge that contributes a pollutant to stormwater;
- 5) depositing, dumping or storing any materials in a manner that may contribute a pollutant to, or obstruct the flow of, stormwater;
- 6) failing to comply with any applicable AZPDES/NPDES Permit, including any permit requirements to develop, implement, or comply with a Stormwater Pollution Prevention Plan (SWPPP);
- 7) failing to provide required information to the City including:
 - a) copies of the Notice of Intent, Notice of Termination, and/or No Exposure Certification as appropriate;
 - b) upon request, copies of the SWPPP, water quality monitoring results and/or hydrologic reports certifying compliance with discharge or retention requirements;
- 8) failing to develop, implement, or comply with a Stormwater Pollution Prevention Plan or a Corrective Action Plan utilizing Best Management Practices that is either required under an AZPDES/NPDES permit or imposed by the City pursuant to this Article, including requirements to implement good housekeeping, spill control and response, employee training, record keeping, proper material and waste management, practices for nonstormwater flows, and structural stormwater controls;
- 9) misrepresentation in any document pertaining to an approved plan, permit, or certification relating to a discharge activity; and
- 10) disabling or rendering inaccurate any sampling or monitoring device required under this Article.

Sec. 26-41. Non-Prohibited Discharges.

The following types of discharges are not prohibited under this Article unless they are found to be a source of pollutants:

- 1) Discharges in compliance with an AZPDES/NPDES permit;
- 2) Discharges in compliance with an approved Corrective Action Plan utilizing Best Management Practices.
- 3) Discharges of the following types of naturally occurring water are not prohibited:
 - a) stormwater;
 - b) rising groundwater;
 - c) springs and ponds;
 - d) diverted stream flow;
 - e) flows from riparian habitats and wetlands; and
 - f) pumped unpolluted groundwater.
- 4) Discharges that qualify for the AZPDES De Minimus General Permit are not prohibited as long as these discharges are in compliance with the permit. Qualifying discharges include:
 - a) discharges from installation and maintenance of potable water supply systems;
 - b) discharges from subterranean dewatering;
 - c) discharges from well development and maintenance and/or aquifer testing;
 - d) discharges of groundwater, surface water or potable water from hydrostatic testing;
 - e) discharges of groundwater, surface water or potable water associated with installation and maintenance of reclaimed water system transport discharges;
 - f) discharges from residential Non-contact cooling water (including overflow from air conditioning condensate and evaporative coolers);
 - g) discharges from charitable noncommercial car washes when only the exterior of vehicles are being washed with water only or when biodegradable soap is used;
 - h) discharges from building or street washing where only water or biodegradable soaps are used;
 - i) discharges of dechlorinated pool water; and
 - j) other de minimus discharges as specifically approved by ADEQ.

- 5) Additional types of discharges, which do not contribute to a violation of the City's Municipal Stormwater Permit may be allowed upon submittal of a copy of the discharger's written authorization from the Arizona Department of Environmental Quality or the Environmental Protection Agency. Such authorization shall be submitted to the City prior to the time of discharge, and must be retained for at least three years after the last discharge made pursuant to the authorization.

Sec. 26-42. Requirements.

- 1) Any person who is determined by the Manager to have the potential to be a discharger of pollutants can be required to develop and implement a Corrective Action Plan utilizing Best Management Practices (BMPs) to prevent stormwater pollution. Based on site conditions, the Manager will determine whether the Corrective Action Plan must be prepared and certified by a Qualified Person registered with the State of Arizona as a professional engineer, or professional Landscape Architect; or a Qualified Person certified by the American Board of Industrial Hygiene, as a certified Industrial Hygienist.
- 2) For land disturbing activities that fall under the jurisdiction of this Article, a Stormwater Pollution Prevention Plan must be prepared and certified by an engineer, or a landscape architect and submitted along with application for a grading permit to the City of Tucson Development Services Department.
- 3) Proof of all applicable City, state, and federal permits including supporting documents such as the Stormwater Pollution Prevention Plan, the Notice of Intent, the Notice of Termination, and the No-Exposure Certification shall be maintained on site for inspection by authorized representatives.
- 4) Any industrial facility or land disturbing activity seeking exemption from AZPDES/NPDES permitting requirements by retaining stormwater discharges on site must submit a hydrologic report certifying adequate containment in a 100 year storm event.
- 5) Any person that is required to have a Stormwater Pollution Prevention Plan or a Corrective Action Plan utilizing Best Management Practices must post notices to employees containing information about whom to contact and what procedures to follow in the event of an accidental discharge or spill. Dischargers shall have a trained employee or staff member who will be responsible for oversight of any necessary clean up or remediation.
- 6) In the event of a spill or release, the owner, operator, or the person who has control of the source or location of any spill or release, which may result in a discharge that is not in compliance with this Article, shall immediately take all reasonable safety precautions

including, if appropriate, calling 911 and completing the following steps:

- a) proceed with containment and clean up in accordance with:
 1. the orders of an involved health and safety agency, or if no such orders have been issued;
 2. the orders of an authorized representative, or if no such orders have been issued;
 3. the Stormwater Pollution Prevention Plan or approved corrective action plan utilizing Best Management Practices for the involved facility.
 - b) report any violations of the Tucson Fire Code or other such applicable safety or health codes in the manner required by such code;
 - c) notify the Tucson Department of Transportation, Stormwater Management Section and the Arizona Department of Environmental Quality of the release by telephone before noon of the next working day;
 - d) provide written notification, within five working days, to the Tucson Department of Transportation, Stormwater Management Section of the type, volume, cause of the discharge, corrective actions taken, and measures to be taken to prevent future occurrences.
- 7) Compliance with these requirements shall not relieve the discharger of any fines, penalties, or liability incurred, or that may be imposed by this Article or other applicable laws as a result of the discharge. In addition, compliance with these requirements shall not relieve the discharger from the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302.

Reserved: Sections 26-43 – 26-46.

Division 4 Enforcement

Sec. 26-47. Violation Notices.

- 1) Upon discovery of a violation of this Article, authorized representatives may issue to the violator a written notice stating the nature of the violation, the corrective action required, the time frame for corrective action, and the penalties for continued non-compliance. The notice shall be served either by personal service or certified mail,

upon the owner, the owner's agent, the occupant, or the lessee. The notice may also require the violator to:

- a) submit a Corrective Action Plan utilizing Best Management Practices to an authorized representative indicating the cause of the violation, corrective actions to prevent recurrence, and a proposed compliance schedule;
 - b) allow installation and operation of sampling and monitoring devices and pay all costs of installation, as well as costs for laboratory sample analysis, and submit results to the authorized representative;
 - c) clean up any material that has left the property or has the potential to impact stormwater runoff, ensure that the clean up has been completed, and make changes in operations to prevent future violations;
 - d) obtain and pay for the services of a Qualified Person to provide oversight and certify that corrective actions needed to resolve the violation have been completed;
 - e) prepare and implement a Corrective Action Plan utilizing Best Management Practices to prevent stormwater pollution, regardless of AZPDES/NPDES requirements. Depending on site conditions, the Manager may require that the corrective action plan be prepared by a Qualified Person or prepared and certified by an engineer;
 - f) stop work on clearing, dredging, grading, excavating, storing, transporting, and/or filling of land, new construction, improvements, alterations, or additions;
 - g) stop any activity that is in violation of this Article;
 - h) abate, within the time specified in the notice, any condition that is in violation of this Article; and
 - i) abate immediately any condition in violation of this Article, if the Manager determines that such condition presents an immediate threat to public health, safety, or the environment.
- 2) Authorized representatives may approve the compliance schedule or Corrective Action Plan utilizing Best Management Practices submitted by the violator, or may require an alternative compliance schedule or Corrective Action Plan utilizing Best Management Practices. This shall be done within the period specified in the notice.

- 3) If the Manager discovers a condition that the Manager determines is likely to cause or is causing a discharge that is in violation of the City's Municipal Stormwater Permit or that threatens public health, safety or the environment, the Manager may require an immediate cessation of activity and abatement.

Sec. 26-48. Penalties and corrective actions.

- 1) The remedies provided in this Section are cumulative and the City may seek one or more such remedies.
 - a) It is a civil infraction for any person to violate this Article or fail to comply with a Notice of Violation issued under this Article.
 - b) It is a misdemeanor for any person to violate this Article or fail to comply with a Notice of Violation issued under this Article.
 - c) Any person violating this Article shall be liable to the City for all damages, costs, fines and penalties incurred by the City as a result, and shall defend, indemnify, and hold harmless the City against any resulting claims, liabilities or damages.
- 2) Upon a finding that any person has violated this Article, the Court shall issue an order or, in the case of a criminal conviction, terms of probation, requiring the violator to do any or all of the following as appropriate:
 - a) submit a plan to an authorized representative indicating the cause of the violation, corrective actions to prevent recurrence, and a proposed compliance schedule;
 - c) allow installation and operation of sampling and monitoring devices and pay all costs of installation and laboratory sample analysis, and submit results to the authorized representative;
 - d) clean up any material that has left the property, or has the potential to impact stormwater runoff, ensure that the clean up has been completed, and make changes in operations to prevent future violations;
 - e) obtain and pay for the services of a Qualified Person to provide oversight and certify that corrective actions needed to resolve the violation have been completed;
 - f) prepare and implement a Corrective Action Plan utilizing Best Management Practices to prevent stormwater pollution, regardless of AZPDES/NPDES requirements. Based on site conditions, the Manager will determine whether the Corrective Action Plan must be prepared and certified by a Qualified Person

registered with the State of Arizona as a professional engineer, or professional Landscape Architect; or a Qualified Person certified by the American Board of Industrial Hygiene, as a certified Industrial Hygienist.

- g) stop work on clearing, dredging, grading, excavating, storing, transporting, and/or filling of land, new construction, improvements, alterations, or additions;
 - h) stop any activity that is in violation of this Article;
 - i) abate, within the time specified, any condition that is in violation of this Article; and
 - j) abate immediately any condition in violation of this Article, if the condition presents an immediate threat to public health, safety, or the environment.
- 3) The City Court of the City of Tucson shall have jurisdiction to issue to any person violating this Article the orders specified in this Section, and any other orders necessary to insure compliance with this Article. The City Court of the City of Tucson shall have jurisdiction to impose upon any person violating this Article the terms of probation specified in this Section, or any other terms of probation necessary to insure compliance with this Article.
- 4) If more than one person is identified as the owner of record, such persons shall be presumed to be jointly and severally in lawful possession and control of the activity or property. The transfer of ownership, possession, or control of real property to another person does not relieve the transferor of the responsibility for violations of this Article that occurred before the transfer.

Reserved: Sections 26-49 – 26-54.

SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this Ordinance become

....

....

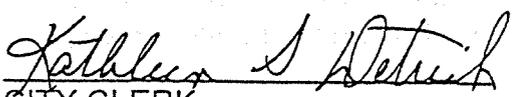
effective, an emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, October 18, 2005.



MAYOR

ATTEST:



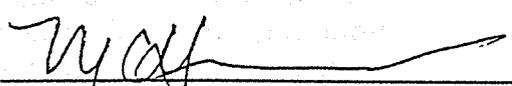
CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

BA:hm
8/10/05 4:00 PM