



*Public Programs...Personal Service*

**COCHISE COUNTY  
STORMWATER ORDINANCE  
ORDINANCE NO. \_\_\_\_\_**

**Cochise County**  
**Highway & Floodplain Department**  
**Flood Control District**  
**August 2018**

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**COCHISE COUNTY**  
**STORMWATER ORDINANCE**

ORDINANCE NO. \_\_\_\_\_

**SECTION 1 PURPOSE AND INTENT**

**1.01 Purpose**

1. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Cochise County through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal law (Environmental Protection Agency Clean Water Act [1972]) and provisions of the Arizona Revised Statutes (A.R.S.) and Title 49, Chapter 2, Article 3.1, the Arizona Administrative Code (A.A.C.) and Title 18, Chapter 9, Article 9. This ordinance establishes methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit.

**1.02 Intent**

1. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user or any activity.
2. To prohibit Illicit Connections and Discharges to the MS4.
3. To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

**SECTION 2 DEFINITIONS AND ACRONYMS**

1. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usages and to give this ordinance it's most reasonable application.

For the purposes of this ordinance, the following shall mean:

**ADEQ.** The Arizona Department of Environmental Quality.

**AZPDES.** Arizona Pollution Discharge Elimination System.

**Best Management Practices (BMPs).** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control erosion and sediment transport and site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs are included in construction General Permits and Stormwater Pollution Prevention Plans.

**BOS:** The Cochise County Board of Supervisors.

**Clean Water Act:** (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95 217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq., and any subsequent amendments thereto.

**Construction Activity:** Activities subject to AZPDES Construction Permits. Currently these include construction projects that will disturb one (1) or more acres within the permitted area, including those that are less than one (1) acre but are part of a larger common plan of development or sale if the larger common plan will ultimately disturb greater than one (1) acre. Such activities include but are not limited to clearing and grubbing, grading, excavating, building, and demolition.

**County:** Cochise County, Arizona.

**Department:** Currently, the Highway and Floodplain Department. Should Cochise County rename or reorganize departments, "Department" shall refer to that department responsible for implementing and enforcing this Ordinance.

**Director.** County Engineer/Floodplain Engineer/Head of the Department of the Floodplain Division or Designee of Cochise County.

**Endangering Discharge:** Any discharge that include any substance, pollutants, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, threaten to cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment.

**EPA:** The United States Environmental Protection Agency.

**Ephemeral Stream:** A stream that flows for brief periods in response to rainfall.

**Erosion:** The wearing away of land surface by water or wind which occurs from weather or runoff but is often intensified by human activity.

**Erosion Control:** A measure or activity that prevents Erosion

**Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**Illegal Discharge:** Any direct or indirect non-storm water discharge into the MS4, except as exempted in Section 7.01 of this ordinance.

**Illicit Connections:** An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or

conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**Industrial Activity:** Activities subject to AZPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**Intermittent Stream:** A stream or reach that flows continuously only at certain times of the year, as when it receives water from a spring or from another source, such as melting snow or rain.

**MS4 (Municipal Separate Storm Sewer System):** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural or man-made channels, or storm drains):

- Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
- Designed or used for collecting or conveying stormwater;
- Which is not a combined sewer; and d. Which is not part of a Publicly Owned Treatment Works.

**National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit:** Stormwater Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**NOI (Notice of Intent):** The application to operate under a permit such as Construction General Permit, Stormwater Pollution Prevention Plan.

**Non-Storm Water Discharge:** Any discharge to the storm drainage system that is not composed entirely of storm water.

**NOT (Notice of Termination):** The application to discontinue under a permit.

**Operation and Maintenance Plan:** A Plan prepared to identify the ownership, operation and maintenance responsibilities and as-built conditions.

**Perennial Stream:** A stream in which surface water flows continuously throughout the year.

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

**Pollutant:** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate

metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment or that may degrade, impair or pollute ground or surface water.

**Post-construction Stormwater Management Plan:** A site-specific document which describes the BMP's and activities to be implemented by a person or business to control erosion, sediment transport and to eliminate or reduce pollutant discharges and wastes to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Receiving Water.** Lake, river, stream (Perennial and Intermittent), wetland that receives stormwater discharges.

**Storm Drainage System:** Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, roadside ditches, and other drainage structures.

**Stormwater:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation, also known as Ephemeral Streams.

**Stormwater Pollution Prevention Plan (SWPPP):** A site-specific document which describes the BMP's and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Stormwater Site plan:** The Stormwater Site Plan documents include the SWPPP and NOI.

**Wastewater:** A subset of non-stormwater defined by any water or other liquid, other than uncontaminated stormwater, discharged from a property, vehicle, facility, building, pipe, or other structure and intended to be a liquid waste not meant for disposal in the storm sewer system. Examples include: wastewater in the sanitary sewer network, industrial process water, and hauled liquid waste.

**Waters of the United States:** Surface watercourses and water bodies as defined in 40 CFR § 122.2, including all-natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons.

### **SECTION 3 APPLICABILITY**

1. This ordinance shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by this ordinance. A website featuring the jurisdictions of MS4 mapping areas maintained by the County and is shown on the Floodplain website.

<https://www.cochise.az.gov/highway-and-floodplain/small-municipal-separate-storm-sewer-systems-ms4>

### **SECTION 4 RESPONSIBILITY FOR ADMINISTRATION**

1. The Department shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed upon the Department may be delegated in writing by the Director to persons or entities acting in the beneficial interest of the County.

### **SECTION 5 ULTIMATE RESPONSIBILITY**

1. The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

### **SECTION 6 SEVERABILITY**

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

### **SECTION 7 NON-STORMWATER DISCHARGES.**

#### **7.01 Prohibition of Non-Stormwater Discharges**

1. Except as provided in Part 2, the Department shall prohibit non-stormwater discharges into its MS4 unless the discharges are authorized by a separate NPDES or AZPDES permit.:
2. The following categories of non-stormwater discharges (occurring within the jurisdiction of the permittee) are prohibited if the discharges are identified by the Department as significant contributors of pollutants to the MS4. If any of the following categories of discharges are identified as a significant contributor, the Department must address the category as an illicit discharge:
  - a. Water line flushing
  - b. Landscape irrigation
  - c. Diverted stream flows
  - d. Rising ground waters

- e. Uncontaminated ground water infiltration
  - f. Uncontaminated pumped groundwater
  - g. Discharges from potable water sources
  - h. Foundation drains
  - i. Air conditioning condensate
  - j. Irrigation water
  - k. Springs
  - l. Water from crawl space pumps
  - m. Footing drains
  - n. Lawn watering
  - o. Individual residential car washing
  - p. Discharges from riparian habitats and wetlands
  - q. Dechlorinated swimming pool discharges
  - r. Street wash water, and
  - s. Discharges or flows from firefighting activities
3. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
  4. The prohibition shall not apply to any non-storm water discharge permitted under an AZPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drainage system.

## **7.02 Prohibition of Illicit Connections**

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

## **SECTION 8 COMMERCIAL, INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

### **8.01. Commercial, Industrial Stormwater Discharges**

1. Any person subject to a commercial, industrial or construction activity NPDES/AZPDES storm water discharge permit, shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to the allowing of discharges to the MS4.
2. The operator of a facility required to have a NPDES/AZPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the Department at the same time the operator submits the original Notice to ADEQ.

## **8.02 Construction Site Stormwater Runoff Pollution Control**

### **8.02.01 Introduction**

1. Runoff from construction sites may be a major source of pollution and erosion is subject to federal, state and local requirements to improve Stormwater quality. With few exceptions, these requirements will include the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP) for every construction activity as defined herein within the urbanized unincorporated areas of the County. That SWPPP may be reviewed by the State. SWPPPs may be reviewed at the construction site by the Department. Stormwater treatment measures or BMPs may be required along with inspections by the County or State to determine compliance with the SWPPP and the installation and management of the BMPs. In accordance with its own permit requiring it to reduce construction site Stormwater pollution in its urbanized area, Cochise County has established a construction site or land disturbance approval process administered by the Department.

### **8.02.02 Construction Site Regulation**

1. An owner or operator who intends to disturb an area of land that is equal to or greater than one acre, or that is less than one acre but is part of a larger plan of development shall obtain permit coverage from the Arizona Department of Environmental Quality. A copy of the Notice of Intent (NOI) to be bound by the State's General Construction Permit, or evidence of the State's construction permit obtained by the owner or operator, must be filed with the Department prior to the start of the land disturbance as required by ADEQ.
2. An owner or operator who intends to disturb an area of land that is equal to or greater than one acre, or that is less than one acre but is part of a larger plan of development that disturbs one or more acres of soil, must also obtain an approval letter of acceptance from the Department and pay applicable fees set by the Department as approved by the Board of Supervisors. This dual system of regulation is as required by Federal law, 40 CFR 122.34.b.4.i, and by the general permit for Cochise County MS4 issued by the Arizona Department of Environmental Quality, Section 6.4.4.
3. No Construction activity disturbance of the site is allowed until the Stormwater letter of acceptance along with the drainage analysis, the construction plans, the Stormwater Site Plan (SWPPP and NOI) and Operations and Maintenance plans have been reviewed, approved and issued by the Department.
4. A copy of the approval and the SWPPP for construction must be kept on the site or be available on the site during all work times.
5. To obtain an approval the owner or operator shall complete the following:
  - a. Submit to the Department, a Stormwater Site Plan no later than thirty (30) working days prior to the actual start of construction for review and acceptance.
  - b. This Stormwater Site Plan must consider possible water quality impacts and explain in sufficient detail the construction BMP's to be followed by the owner and all who work on the site. The site plan defines the BMPs to ensure that erosion will be minimized, sediment transport managed and that controls for other wastes are in place during the construction process.

- c. This Stormwater Site Plan will be reviewed by the Department and returned with any comments or Letter of Acceptance of the plans.
  - d. After changes have been made to the Stormwater Site Plan to address the Department's comments, the revised plan shall be resubmitted for review.
- 6. The SWPPP for the construction site is to remain at the site and is to be made available to the Department. At the start of construction and during construction the Department may inspect any site to determine that the SWPPP for the site is being followed and that the indicated BMPs have been properly installed and satisfactorily maintained. If the SWPPP has not been implemented and/or if the BMPs on site have not been satisfactorily installed or maintained the Department will notify the owner or operator of the deficiencies. If the owner or operator has failed to address satisfactorily these issues within Seven (7) days of notification of deficiencies, a compliance order will be issued by the Department and a complaint shall be referred to the County Attorney as provided herein and in A.R.S. 49-261. The Department may also seek an injunction to stop the work as provided herein and civil penalties or criminal penalties.

**8.02.03      Exemptions**

- 1. Coverage under a Department Stormwater approval for construction is not required for sites over one acre for:
  - a. Regular maintenance activities performed within the original line, grade or capacity of a facility;
  - b. Construction projects where the operator can prove that there is no reasonable probability that Stormwater can leave the site;
  - c. A site that qualifies for an erosivity waiver for activities in low risk soil conditions;
  - d. A site already covered by an individual AZPDES/NPDES permit with Stormwater provisions;
  - e. Emergency construction activities required to protect public health and safety;
  - f. Sites not within the MS4 jurisdiction.

**8.02.04      Transfers of Approvals**

- 1. An approval may be transferred by the submittal of a Department transfer of coverage form that includes assurances by the new owner that the approved SWPPP and BMP requirements will be met.

**8.02.05      Termination of Coverage**

- 1. Coverage under the construction approval will end when a notice of termination (NOT) is filed with the Department and an inspection by the Department has confirmed that the entire site has been stabilized and landscaping and paving complete. The Owner of the site must

continue to meet the requirements of any post-construction letter (Section 11.01.01 of this ordinance) issued by the Department.

## **SECTION 9 VIOLATIONS, ENFORCEMENT, PENALTIES AND AUTHORITY**

### **9.01 Violations**

1. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Regulation. Any person who violates or continues to violate any provision of this Regulation is subject to the enforcement actions provided herein.
2. If a violation is a nuisance, source of filth, or cause of sickness, the Director may order the owner or occupant to remove it within 24 hours at the expense of the owner or occupant. Notwithstanding, any other provisions of this Regulation, any condition caused or permitted to exist in violation of any of the provisions of this Regulation is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

### **9.02 Letter of Violation**

1. When the Director finds that any person has violated, or continues to violate, any provision of this Regulation, any order issued hereunder, any approval, or any condition of a permit, the Director may serve upon that person a written Letter of Violation, specifying the particular violation believed to have occurred and requesting the person to immediately investigate the matter and to seek a resolution whereby any unlawful acts will cease.
2. Investigation and/or resolution of the matter in response to a Letter of Violation shall in no way relieve the alleged violator of liability for any violations occurring before or after receipt of the Letter of Violation. Nothing in this subsection shall limit the authority of the Director to take any action, including emergency action or any other enforcement action, without first issuing a Letter of Violation.

### **9.03 Consent Order**

1. After a Letter of Violation, the Director may enter into an order settling the issuance of the Letter of Violation. The Director may agree to accept monetary payments as part of the negotiated terms of a consent order. The terms of a consent order shall be determined by the agreement of the parties.

### **9.04 Compliance Order**

1. If the Director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to § 49-203 (Powers and Duties of the Director and Department) , subsection A, paragraph 6, any provision of article 2 (Water Quality Standards) or 3 (Aquifer Protection Permits), 3.1 (Arizona Pollution Discharge Elimination System Program), 3.2 (Dredge and Fill Permit Program) or 3.3 (Underground Injection Control Permit Program) of ARS Title 49, Chapter 2 (Chapter 2), a rule adopted pursuant to article 2, 3, 3.1 of Chapter 2, a discharge limitation or any other condition of a permit issued under article 2, 3, 3.1 or 3.2 or 3.3 of Chapter 2 or is creating an imminent and substantial endangerment to the

public health or environment, the director may issue an order requiring compliance within a reasonable time period.

2. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.
3. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.
4. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted pursuant to § 49-321 (Appeals).
5. At the request of the Director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.

#### **9.05 Cease and Desist Orders**

1. When the Director finds that any person has violated, or continues to violate, any provision of this Regulation, any order issued hereunder, the terms of an approval or permit, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened introduction of pollutants to the County MS4 or any Storm Drainage System connected to the MS4 which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director may order the violator to immediately cease and desist all such violations and direct the violator to:
  - a. Immediately comply with all Regulation requirements; and,
  - b. Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting the violating activity.
2. Any person notified of a Cease and Desist Order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering activity. In the event of a person's failure to immediately comply with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the County MS4 or any Storm Drainage Systems connected to the MS4 and/or endangerment to persons or to the environment. The Director may allow the person to commence its activity when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further proceedings are initiated against the discharger under this Regulation. A person that is responsible, in whole or in part, for any activity presenting imminent endangerment shall submit a SWPPP modification describing the causes of the harmful activity and the measures taken to prevent any future occurrence, to the Director within 48 hours of receipt of the order. Issuance of a Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.
3. The cease and desist order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service. Service by certified mail shall be deemed complete upon mailing.

## **9.06 Injunctive Relief**

1. Whether or not a person has requested a hearing, the Director, through the County Attorney, may request a temporary restraining order, a preliminary injunction, a permanent injunction, or any other relief necessary to protect the public health if the Director has reason to believe of the following:
  - a. That a person is in violation of:
    - i. Any provision of article 2, 3, 3.1 or 3.2 or 3.3 of Chapter 2
    - ii. A rule adopted pursuant to § 49-203, subsection A, paragraph 6.
    - iii. A rule adopted pursuant to article 2, 3, 3.1 or 3.2 or 3.3 of Chapter 2.
    - iv. A discharge limitation or any other condition of a permit issued under article 2, 3, 3.1 or 3.2 or 3.3 of Chapter 2.
  - b. That a person is creating an actual or potential endangerment to the public health or environment because of acts performed in violation of Chapter 2.
2. Notwithstanding any other provision of this Regulation, if the Director through the County Attorney, has reason to believe that a person is creating an imminent and substantial endangerment to the public health or environment because of acts performed in violation of article 2, 3, 3.1 or 3.2 or 3.3 of Chapter 2 or a rule adopted or a condition of a permit issued pursuant to § 49-203, subsection A, paragraph 2, 6 or 7, the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.
3. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.
4. All civil penalties except litigation costs obtained under this section shall be deposited, in the County's general fund.
5. Except as applied to permits issued or authorized pursuant to article 3.1 or 3.2 or 3.3 of Chapter 2, it shall be an affirmative defense to civil liability under this section and § 49-261 for causing or contributing to a violation of a water quality standard established pursuant to Chapter 2, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:
  - a. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused or contributed to the violation of article 2 of Chapter 2 and is in compliance with that remedial or response action.
  - b. Otherwise resolved its liability for the release of a hazardous substance that caused or contributed to the violation of article 2 of Chapter 2 in whole or in part by the execution of a settlement agreement or consent decree with the director or administrator under this article, CERCLA or

any other environmental law and is in compliance with that settlement agreement or consent decree.

6. Subsection 5 of this section does not prevent the director from taking an appropriate enforcement action to address the release of a hazardous substance, pollutant or contaminant or the violation of a permit condition before or as an element of an approved remedial or response action, settlement agreement or consent decree.
7. In determining the amount of a civil penalty for a violation under article 3, 3.1 or 3.2 or 3.3 of Chapter 2, the court shall consider the following factors:
  - a. The seriousness of the violation or violations.
  - b. The economic benefit, if any, that results from the violation.
  - c. Any history of similar violations.
  - d. Any good faith efforts to comply with the applicable requirements.
  - f. The economic impact of the penalty on the violator.
  - g. The extent to which the violation was caused by a third party.
  - h. Other matters as justice may require.
8. A single operational upset that leads to simultaneous violations of more than one pollutant limitation in a permit issued or authorized pursuant to § 49-255.01 constitutes a single violation for purposes of any penalty calculation.
9. If a permittee holds both a permit issued or authorized pursuant to article 3 of Chapter 2 and a permit issued or authorized pursuant to article 3.1 or 3.2 or 3.3 of Chapter 2 and the permittee violates a similar provision in both permits simultaneously, the department shall not recover penalties for violations of both permits based on the same act or omission.

## **9.07 Suspension and Revocation of Approvals or Permits**

### **9.07.01 Suspension of Approval or Permit**

1. When the Director finds that the holder of an approval or permit has failed to comply with a Letter of Violation of this regulation or that an actual or threatened activity presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the County MS4 or any Storm Drainage System connected to the MS4, and incorporates a finding to that effect in the order, summary suspension of the approval or permit may be ordered pending proceedings for revocation or other action.
2. Upon suspension of the approval or permit, the holder of the approval or permit may immediately move to vacate the suspension order and the Director shall hear such motion within five (5) working days. In no event may a summary suspension remain in effect for more than twenty-five (25) working days.
3. Upon suspension of the approval or permit, the premises will thereupon be posted to show the permit suspension and access to the County MS4 will be prohibited. A person commits

an offense if the person reinstates County MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director.

#### **9.07.02 Revocation of Approval or Permit**

1. The Director may, after providing opportunity for hearing, revoke an approval or permit for violation of this Regulation or for interference with the regulatory authority in the performance of its duty.
2. Prior to revocation, the Director shall notify in writing the holder of the approval or permit, or the person in charge, of the specific reason(s) for which the approval or permit is to be revoked and that the approval or permit shall be revoked at the end of the twenty (20) working days following service of such notice unless a written request for hearing is filed with the regulatory authority by the holder of the permit within such twenty (20) working day period. If a request for hearing is timely filed, the hearing shall be held within twenty (20) working days of receipt of the request.
3. Upon delivery of notice of revocation of an approval or permit, the premises will thereupon be posted to show the revocation and access to the County MS4 will be prohibited. If the violator fails to comply with an order, the Director may take action as deemed necessary to prevent or minimize damage to the County MS4 or any Storm Drainage System connected to the MS4, or to minimize danger to the health and welfare of persons. An owner or operator commits a separate offense if the person reinstates County MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director.
4. A notice of revocation is properly served when it is delivered to the holder of the approval or permit, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder. A copy of the notice shall be filed in the records of the Department. The notice shall comply with the provisions of A.R.S. 41-1061.B.
5. Hearings held pursuant to the provisions of this Regulation shall be conducted in accordance with the requirements of A.R.S. 41-1061 et. seq.

#### **9.08 Civil Penalties**

1. A Person who violates any provision of this Ordinance, an approval or permit issued hereunder, a Discharge limitation in a permit or approval, or a cease and desist or other order issued, is subject to a civil penalty of not to exceed two thousand five hundred dollars (\$2,500) per day per violation pursuant to A.R.S. § 49- 371(A)(5). Pursuant to A.R.S. § 49-371(A)(5), the Director may request that the County Attorney commence an action in Superior Court to recover the civil penalties.
2. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate.

#### **9.09 Criminal Violations**

1. It is unlawful to:
  - a. Discharge without an approval or permit or appropriate authority.
  - b. Fail to monitor, sample or report discharges as required by this Regulation.
  - c. Violate a discharge limitation.
  - d. Violate a water quality standard.

2. A person who with criminal negligence performs an act prohibited under subsection 1 of this section is guilty of a class 6 felony.
3. A person who knowingly performs an act prohibited under subsection 1 of this section is guilty of a class 5 felony.
4. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection 1 of this section is guilty of a class 2 felony.
5. A violation of any provision of Chapter 2 for which a penalty is not otherwise prescribed is a class 2 misdemeanor.
6. The County Attorney may enforce this section at the request of the Director.

#### **9.10 Abatement Assessment and Lien**

1. If abatement of the violation is ordered by the Superior Court or other court with jurisdiction, the Director may, at his discretion, take actions necessary to abate or remove the nuisance or the source of the violating activity. Within twenty (20) working days after abatement of the violation, the Director shall issue an Assessment Statement to the owner of the property on which such nuisance or violating activity was located.
2. The Assessment Statement shall include the following information:
  - a. A description of the assessed costs, which shall include the actual costs of the removal or abatement, incidental costs, and the costs of any additional inspections.
  - b. Notification that the property owner must pay the assessed costs within thirty days after receipt of the Assessment Statement or by such other date as may be specified for payment in the Assessment Statement unless an appeal is requested.
  - c. Notification that the property owner may appeal the assessment to the Director in writing within thirty working days after receipt of the Assessment Statement; and,
  - d. Notification that failure to pay the assessed costs may result in a lien being placed on the property on which the nuisance or source of filth was located.
3. The property owner may appeal the assessment to the Director for a hearing within thirty days after receipt of the Assessment Statement.
  - a. After a hearing, the Director may sustain, modify or revoke the Assessment Statement.
  - b. If the Director sustains or modifies a cost assessment following an appeal of an Assessment Statement, the assessed costs must be paid within thirty (30) working days of the Director's decision or by such other time as may be specifically provided by the Director.
4. If the property owner does not pay the assessed costs after the time provided in (2.) (b) or (3.) (b) above has expired, the Director may assess the lots or tracts of land on which the nuisance was abated or removed.
  - a. The assessment, for the date of its recording in the office of the Cochise County Recorder, is a lien on the lot or tract of land until paid.
  - b. Any assessment recorded under this Regulation is prior and superior to all other liens, obligations or other encumbrances, except liens for general taxes and prior recorded mortgages.

### **9.11 Remedies Not Exclusive**

1. The remedies listed in this Regulation are not exclusive of any other remedies available under any applicable federal, state, county or local law and it is within the discretion of Cochise County to seek cumulative remedies.

## **SECTION 10 MONITORING OF DISCHARGES**

### **10.01 APPLICABILITY**

1. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

### **10.02 RIGHT OF ENTRY AND INSPECTIONS**

1. The Department or its authorized agent shall be permitted to enter at all reasonable times and inspect and evaluate any facility, including construction and post-construction activity subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Department.
2. Facility operators shall allow the Department ready access to all parts of the premises for the purposes of inspection, free samples for sampling, examination and copying of records and documents, at a reasonable cost that must be kept under the conditions of an AZPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
3. The Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Department to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Department has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Department access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with an AZPDES permit to discharge stormwater associated with industrial activity or, construction activity commits an offense if the person denies the Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
7. If the Department has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and

welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

8. If the Department has been refused access to the premises, then the Director may seek issuance of a search warrant from any court of competent jurisdiction in addition to issuing a compliance order, seeking an injunction and assessing appropriate civil or criminal penalties under section 9.00 herein and Title 49, Arizona Revised Statutes.

## **SECTION 11 POST-CONSTRUCTION STORMWATER MANAGEMENT**

### **11.01 Introduction**

1. The goal of this post-construction stormwater management program is to protect public safety and public infrastructure, reduce erosion on private properties and stream channels, and protect the quality of Waters of the U.S. to the maximum extent practicable. The goals are achieved by maintaining and/or restoring natural drainage patterns, minimizing grading and disturbance, and minimizing the extent of impervious cover, as well as, encouraging the use of a variety of BMP's for reducing the pollutant loadings from newly developed and redeveloped sites. This will be accomplished by requirements to, among other things, reduce the magnitude and extent of impervious cover and site disturbance, remove pollutants from runoff prior to the introduction of Stormwater to the County MS4, and promote effective operation and maintenance of all Stormwater facilities.

#### **11.01.01 Applicability**

1. The post-construction requirements in this Section apply to permanent Stormwater management facilities, systems and/ or devices for new developments and re-developments for any owner or operator who intends to disturb an area of land that is equal to or greater than one acre, or that is less than one acre but is part of a larger plan of development that disturbs one or more acres of soil. The owner or operator must obtain an approval letter of acceptance from the Department and pay applicable fees set by the Department as approved by the Board of Supervisors. Stormwater management during construction activities is regulated separately pursuant to Section 8.00 of this Regulation.

### **11.02 Objectives**

1. To protect the health, safety and general welfare of the residents of the County, as well as, to protect, sustain and enhance the quality of the Waters of the U.S. in and adjacent to the County, drainage and Stormwater management practices shall be utilized as directed herein to achieve the following objectives:
  - a Accommodate site development and redevelopment in a manner that protects public safety and that is consistent with federal and state water quality requirements and the requirements of the Phase II Stormwater permit for the County.
  - b Protect water quality to the maximum extent practicable by removing and/or treating (if necessary) pollutants prior to the introduction of Stormwater to the County MS4 or any Storm Drainage System connected to the MS4 throughout the County.

- c Promote effective long-term operation and maintenance of all permanent Stormwater management facilities.
- d Treat (if necessary) and release Stormwater as close to the source of runoff as possible using a minimum of structures and maximizing reliance on natural processes.
- e Address certain requirements of the Municipal Separate Storm Sewer System (MS4), National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater regulations.
- f Reduce the environmental impacts of Stormwater pollution from existing developed sites undergoing redevelopment while encouraging development and redevelopment in areas designated for growth.

### **11.03 Post-construction Site Regulation**

1. A post-construction stormwater management plan along with an Operation and Maintenance Plan (Section 11.08 of this ordinance) must be submitted to the Department at the time the Stormwater Site Plan is submitted (see section 8.02.02, paragraph 3) that must include BMP's to control discharges of pollutants, erosion and sediment transport to the maximum extent practicable.
2. This post-construction stormwater management plan must consider possible water quality impacts and explain in sufficient detail the post-construction BMP's to be followed by the owner and all who work on the site. These BMPs must ensure that erosion will be minimized, sediment transport managed and that controls for other pollutants and wastes are in place to the maximum extent practicable during the post-construction operation phase.
3. This post-construction stormwater management plan will be reviewed by the Department and returned with any comments or Letter of Acceptance of the plans.
4. After changes have been made to the post-construction stormwater management plan to address the Department's comments, the revised plan shall be resubmitted for review.
5. No operations of the site is allowed until the post-construction stormwater management plan approval has been issued.
6. A copy of the approval and the post-construction stormwater management plan must be kept on the site or be available on the site during all work times.
7. If the post-construction stormwater management plan or the operations and maintenance plan has not been implemented and/or if the BMPs on site have not been satisfactorily installed or maintained, the Department will notify the owner or operator of the deficiencies. If the owner or operator has failed to address satisfactorily these issues within 7 calendar days of notification of deficiencies, a compliance order will be issued by the Department and a complaint shall be referred to the County Attorney as provided herein and in A.R.S. 49-261. The Department may also seek an injunction to stop the operations as provided herein and civil penalties or criminal penalties.

### **11.04 General Requirements**

1. The management of Stormwater on site, both during and upon completion of the land disturbances described in Section 11.01, shall be accomplished in accordance with standards and criteria of this Regulation and the requirements of the Floodplain Regulations

for Cochise County. The design of any temporary or permanent facilities and structures and the utilization of any natural drainage systems shall be in full compliance with this Regulation and any other applicable regulation.

2. The intent of these design standards is to encourage environmentally sound stormwater management practices that provide necessary drainage facilities while protecting the hydrologic and hydraulic characteristics and water quality of the site and watershed. Development shall be required to incorporate stormwater management control.
3. The stormwater management system shall not create an adverse impact on stormwater quality in either upstream or downstream areas. Offsite areas, which drain to or across a site proposed for development, shall be addressed in the Drainage Analysis and Construction Plans prepared for the development. No Analysis or Construction Plans shall be approved unless it provides information sufficient to assure that the runoff from the project shall not adversely impact water quality in downstream areas.
4. Where deemed necessary by the Director, the applicant shall construct storm drains to handle on-site runoff to not create any adverse impact due to the proposed development, to the maximum extent permitted under the Cochise County Floodplain Regulations, provide on-site/off-site easements, and provide for the conveyance of off-site runoff to an acceptable outlet in the same watershed.
5. Any Stormwater management facilities regulated by this Regulation that would be located in or adjacent to Waters of the U.S. or wetlands shall continue to be subject to approval by the U.S. Army Corps of Engineers (USACOE) or other agencies through their permit processes. Proof of approval by the USACOE shall be provided by the applicant prior to the start of construction.
6. Any Stormwater management facility or part thereof regulated by this Regulation that will be located in Cochise County Flood Control District, or other County-owned rights-of-way or that will drain across or onto any other Flood Control District or other County-owned rights-of-way shall be subject to written approval, licensing or permitting by the appropriate authority. Excluding the USACOE approval process detailed in paragraph 5 above, documentation of such aforementioned approval, licensing or permitting shall be provided by the applicant at the time of application.
7. Stormwater drainage to impaired waters or unique waters may be subject to additional performance criteria or may need to utilize or restrict certain Stormwater management practices.

## **11.05 Construction and Operation Responsibilities**

### **11.05.01 General Responsibilities**

1. The owner of permanent Stormwater management facilities shall be responsible for the proper operation and maintenance of those facilities during and after construction. All permanent on-site BMPs shall be operational prior to the use by any development or phase of development dependent on those BMPs.
2. The owner of permanent Stormwater management facilities for a tract shall be responsible for the proper installation and function of those facilities in accordance with the approved Stormwater Management Plan. All temporary soil erosion and sedimentation control measures shall be removed or converted to their permanent configuration in accordance with an approved erosion control plan. This requirement in no way precludes the authority of

the Director to determine when sufficient stabilization has occurred on a site in order to convert to the permanent Stormwater management facilities.

**11.05.02 Report with Stormwater Management Plan Application**

1. For all post-construction activities governed by this Regulation the Applicant shall submit with their Drainage Analysis, Construction Plans and Stormwater Site plan, a Stormwater Management Plan Report, which shall contain the information necessary to allow the Department to review the application. It may be necessary for some applications covering large areas to have the report prepared by a professional Civil Engineer licensed by the State of Arizona.

**11.06 Ownership and Maintenance**

**11.06.01 Ownership**

1. All Stormwater management facilities, systems and/ or devices identified within an approved Stormwater Management Plan shall be owned and maintained by one, or a combination of, the following entities:
  - a. An individual for his or her own on-lot Stormwater management facilities not constructed as part of a subdivision and/or land development plan.
  - b. Where individual on-lot Stormwater management facilities, system and/ or devices are proposed in a subdivision or other development greater than one acre, the subdivision and/or land development plan and plat shall contain a note in a form satisfactory to the Department designating the entity responsible for operation and maintenance of the on-lot facilities consistent with an approved operation and maintenance plan.
  - c. An entity that owns or has a perpetual right to access the land on which the Stormwater management facilities, system and/ or devices are located. The operation and maintenance obligation runs with the land and is binding upon the initial grantees of each lot and his, her, or their heirs, administrators, successors or assigns. Stormwater management facilities, systems and/ or devices or the ownership of the land on which they are located may not be deeded or dedicated to the County or the Flood Control District.

**11.06.02 Requirements for Covenants, Codes and Restrictions**

1. The subdivision and/or land development plan and plat shall contain a note in a form satisfactory to the Department granting to the Department the right, but not the duty, to enter upon the premises to repair or restore Stormwater management facilities, system and/ or devices in the event that the responsible person or entity fails to do so, to charge and assess the costs thereof to the owner and to enforce said charges and assessments by lien upon the property. In addition, the deed for each lot shall contain a covenant binding on the grantee and all successors in interest designating the responsibility for operation and maintenance of the on-lot facilities.
2. In addition to the above, developers of parcels with more than one (1) dwelling unit that are intended for sale and will not be held by a single owner, shall record with the County Recorder a declaration of covenants and restrictions in a form satisfactory to the Department describing the responsibility for operation and maintenance of the on-lot Stormwater

management facilities, systems and/ or devices, consistent with an approved Operation and Maintenance Plan, prior to the sale of any individual lots. The terms of this covenant and restriction shall run with the land and be binding upon the initial grantees of each lot within the subdivision and his, her or their heirs, administrators, successors or assigns.

**11.06.03 Homeowners or Condominium Association Ownership (If Applicable)**

1. Where a homeowners' association is created to own and manage common facilities, the subdivision and/or land development plan and plat shall contain a note in a form satisfactory to the Department designating the entity responsible for construction and/or maintenance of the Stormwater management facilities consistent with an approved Operation and Maintenance Plan and, in the event that the responsible entity fails to do so, granting to the Department the right, but not the duty, to enter upon the premises to repair or restore said facilities, to charge and assess the costs thereof to each owner of property within the development and to enforce said charges and assessments by lien upon each property within the development. In addition, the developer shall record with the Cochise County Recorder a declaration of covenants in a form satisfactory to the County setting forth the rights and responsibilities of the homeowners' association for operation and maintenance of the Stormwater management facilities, system and/ or devices, prior to the sale of individual lots. The terms of this covenant and restriction shall run with the land and be binding upon the initial grantees of each lot within the subdivision, his, her or their heirs, administrators, successors and assigns.

**11.07 Operation and Maintenance Plans**

1. An Operation and Maintenance Plan shall be prepared to identify the ownership, operation and maintenance responsibilities and as-built conditions for all Stormwater management facilities. At a minimum, the operation and maintenance plan shall include the following:
  - a. Any obligations concerning perpetuation and/or maintenance of natural drainage or infiltration facilities, and other facilities identified within the Stormwater permit.
  - b. A description of the permanent Stormwater management practices on the site, explaining how each practice is intended to function and operate over time.
  - c. All drainage and access easements shall be depicted and any site restrictions to be recorded against the property shall be identified on the plan. All such easements and restrictions shall be perfected to run with the land and be binding upon the landowner and any successors in interest.
  - d. Ownership of and responsibility for operation and maintenance of Stormwater management facilities, including names and contact information, shall be required.
  - e. A description of all Stormwater management facilities, written in a clear manner, consistent with the knowledge and understanding of the intended user.

- f. A general description of operation and maintenance activities and responsibilities for facilities held in common or on-lot, including but not limited to: lawn care, vegetation maintenance, clean out of accumulated debris and sediment (including from grates, trash racks, inlets, etc.), liability insurance, maintenance and repair of Stormwater management facilities, landscaping and planting, payment of taxes and construction of any kind associated with the use, benefit and enjoyment of the facilities by the owners.
- g. A description of routine maintenance actions and schedules necessary to ensure proper operation of Stormwater management facilities.
- h. Written statement by owner giving assurances that no action will be taken by any lot owner to disrupt or in any way impair the effectiveness of any Stormwater management facilities, setting forth in deed restrictions the ability but not the duty of the Department to take corrective measures if it is determined at any time that stipulated permanent Stormwater management facilities have been eliminated, altered, or improperly maintained, including the ability of the Department to cause the work to be done and lien all costs against the property should the required corrective measures not be taken by the lot owner, following written notification, within a period of time set by the Director.
- i. An explanation of how the parties responsible for the long-term operation and maintenance of Stormwater management facilities shall make records of the installation and of all maintenance and repairs and shall retain the records until the site use changes and new permits and operation and maintenance plans are requested and approved. These records shall be submitted to the Department as established by the Operation and Maintenance Plan or if otherwise required by the Department.

**11.07.01      Recording of Operation and Maintenance Plans**

1. The owner of any land upon which permanent Stormwater management facilities and/or BMPs will be placed, constructed or implemented as described in an approved Drainage Analysis, Construction Plan and the Operations and Maintenance Plan shall record the following documents with the Cochise County Recorder within 21 days of approval of the Operations and Maintenance Plan by the County.
  - a. Any necessary Operations and Maintenance Agreement(s); and,
  - b. Necessary access and/or drainage easements. Items and/or conditions may be required to be included in any Operation and Maintenance Agreement where determined necessary by the Department to guarantee the satisfactory operation and maintenance of all permanent Stormwater facilities, system and/ or devices. The Agreement shall be subject to the review and approval of the Department.

### **11.08 Drainage Provisions and Flood Control Regulations**

1. Provisions for on-site Stormwater retention/detention and off-site Stormwater drainage both entering and leaving the property may be required by the Cochise County Flood Control District. This Stormwater Regulation and all amendments hereto shall be consistent with and subject to the Regulations and provisions of the Floodplain Regulations adopted by the Cochise County Flood Control District.
2. Erosion Control measures should be in conformance with standards identified in the Cochise County Floodplain Regulations or other EPA, ADEQ or locally approved method.
3. Stormwater pollution prevention is to be addressed through the use of BMPs to the maximum extent practicable to comply with federal, state, county or local regulations or ordinances.

### **SECTION 12 NOTIFICATION OF SPILLS**

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies, and ADEQ.
2. In the event of a release of non-hazardous materials, said person shall notify the County in person or by phone no later than the next business day. Contact Information is:

Highway and Flood Plain Department

1415 Melody Lane, Building F

Bisbee, AZ 85603

Phone: 520-432-9300

Department Website:

<https://www.cochise.az.gov/highway-and-floodplain/small-municipal-separate-storm-sewer-systems-ms4>

3. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### **SECTION 13 VIOLATIONS DEEMED A PUBLIC NUISANCE**

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

**END**