

CHAPTER 14.29

ILLICIT DISCHARGE DETECTION AND ELIMINATION

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14.29.010: Definitions: The following definitions control for the purpose of this Chapter:

(1) “Best Management Practices” or “BMPs” shall mean schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and structural or managerial 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 site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(2) “City” shall mean the City of Kennewick, Washington, a municipal corporation.

(3) “Clean Water Act” means the federal Water Pollution Control Act (33 USC Section 1251 et seq.) and any subsequent amendments thereto.

(4) “Construction Activities” means any activities subject to the National Pollutant Discharge Elimination System (NPDES) construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

(5) “City Manager” shall mean the City Manager of the City of Kennewick, Washington or his or her designee.

(6) “Discharge” means adding, introducing, releasing, leaking, spilling, casting, throwing or emitting any pollutant or placing any pollutant in a location where it is likely to pollute waters of the State.

(7) “Ecology” means the Washington State Department of Ecology.

(8) “Erosion” means the process by which ground surface is worn away by action of wind, water, ice or gravity.

(9) “Groundwater” means water in a saturation zone or stratum beneath the surface of the land or below a surface water body.

(10) “Hazardous Materials” means 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.

(11) “Hyper-chlorinated” means water that contains more than 10 mg/L chlorine.

(12) “Illicit Connection” means any drain or conveyance, whether on the surface or subsurface, which allow an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater and wash water to enter the storm drain system and any connection to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the city or any government agency. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by the City.

(13) “Illicit Discharge” or “Illegal Discharge” means any direct or indirect non-stormwater discharge to the City’s separate storm sewer system (MS4), except as expressly allowed by this Chapter.

(14) “Industrial Activity” means any activities subject to the NPDES Industrial Permits as defined in 40 CFR Section 122.26(b)(14).

(15) “Industrial Waste” means any liquid, gaseous, solid, slurry or other waste substance or any combinations of these resulting from any process or industry, manufacturing, trade or business.

(16) “Municipal Separate Stormwater Sewer System” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (a) Owned or operated by the City of Kennewick;
- (b) Designed or used for collecting or conveying stormwater;
- (c) Which is not part of a Publicly Owned Treatment Works (POTW).

(17) “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” means a permit issued by the Washington State Department of Ecology under authority delegated pursuant to 33 USC Section 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.

(18) “Non-Point Source” means a diffuse source of pollution that does not result from a pollutant discharge at a specific single location (such as a single pipe) but generally results from human or human-induced activities which introduce pollutants into waters of the State through land runoff, precipitation, atmospheric deposition or percolation.

(19) “Non-Storm Water Discharge” means any discharge to the storm drain system that is not composed entirely of storm water.

(20) “Point Source” means any discernable confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or other vessel or other floating craft, from which any pollutant is or may be discharged.

(21) “Pollutant” means 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, solid wastes and yard wastes, refuse rubbish, garbage, litter or other discarded or abandoned objects, articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances

and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries and concrete rinses); and noxious or offensive matter of any kind.

(22) “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(23) “Sediment” means soils or other particulate materials eroded or otherwise separated by parent materials and transported or deposited by the action of wind, water, ice or gravity or by illegal dumping.

(24) “Storm Drain System” means the City’s Municipal Separate Storm Sewer System.

(25) “Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

(26) “Waters of the State” means any surface watercourses and water bodies as defined in 40 CFR § 122.2 including all natural waterways and defined channels and depressions in the earth that may carry water. (Ord. 5272 Sec. 1, 2009)

14.29.020: Administration: The City Manager, or his or her designee, shall administer, implement and enforce the provisions of this Chapter. (Ord. 5272 Sec. 1, 2009)

14.29.030: Prohibition of Illicit Discharges:

(1) No person shall discharge or cause to be discharged into the municipal storm drain system any materials, other than stormwater. Examples of prohibited contaminants include but are not limited to:

- (a) trash or debris;
- (b) construction materials;
- (c) petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
- (d) antifreeze and any other automotive product;
- (e) metals in either particulate or dissolved form;
- (f) flammable or explosive materials;
- (g) radioactive material;
- (h) batteries;
- (i) acids, alkali or bases;
- (j) paints, stains, resins, lacquers or varnishes;
- (k) degreasers and solvents;
- (l) drain cleaners;
- (m) pesticides, herbicides or fertilizers;
- (n) steam cleaning wastes;
- (o) swimming pool or spa filter backwash;
- (p) chlorine, bromine or other disinfectants;
- (q) domestic animal wastes;
- (r) sewage;
- (s) recreational vehicle waste;
- (t) animal carcasses;
- (u) food wastes;
- (v) silt, sediment, concrete, cement or gravel;
- (w) dyes;
- (x) chemicals not normally found in uncontaminated water;

- (y) any other process associated discharge except as otherwise allowed in this Chapter; and
 - (z) any hazardous material or waste not listed above.
- (2) No person shall connect any apparatus discharging any pollutant, in any quantity, to any part of the storm drain system or waters of the State except as explicitly authorized by an approved NPDES discharge permit or by an approved plan for compliance or BMP.
- (3) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES Permit, waiver, or waste discharge order issued by Ecology, provided that the discharge is in full compliance with all requirements of the permit, waiver, or order. (Ord. 5272 Sec. 1, 2009)

14.29.040: Allowable Discharges: Discharges from the following activities shall be considered allowable discharges unless the City Manager, or his or her designee, determines the type of discharge, whether singly or in combination with others is causing, or is likely to cause, pollution of waters of the State. They include but are not limited to:

- (1) diverted stream flows;
- (2) rising ground water;
- (3) uncontaminated ground water infiltration;
- (4) uncontaminated pumped ground water;
- (5) foundation drains;
- (6) air conditioning condensation;
- (7) irrigation water from agricultural sources that is commingled with urban stormwater;
- (8) springs;
- (9) water from crawl space pumps;
- (10) footing drains;
- (11) flows from riparian habitats and wetlands; and
- (12) discharges for emergency fire fighting activities. (Ord. 5272 Sec. 1, 2009)

14.29.050: Conditional Discharges: The following types of conditional discharges shall not be considered illegal or illicit discharges for the purposes of this Chapter if the discharges meet the stated conditions, or unless the City Manager, or his or her designee, determines the type of discharge, whether singly or in combination with others is causing, or is likely to cause, pollution of waters of the State:

- (1) Potable water, including water from water line flushing, hyper-chlorinated water line flushing, fire hydrant system flushing and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the storm drain system;
- (2) Lawn watering and other irrigation runoff if minimized;
- (3) Swimming pool water discharges. Swimming pool water shall be de-chlorinated to a concentration of 0.1 ppm or less, pH adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the storm drain system;
- (4) Street and sidewalk wash water, water used to control dust and routine external building wash down that does not use detergents are permitted if the discharge is minimized.
- (5) Other conditional discharges including non-stormwater discharges in compliance with the requirements of a stormwater pollution prevention plan, reviewed and approved by the City Manager, or his or her designee, which addresses control of such

discharges by applying approved BMPs to prevent contaminants from entering waters of the State. (Ord. 5272 Sec. 1, 2009)

14.29.060: Prohibition of Illicit Connections: The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This 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. A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. (Ord. 5272 Sec. 1, 2009)

14.29.070: Compliance with other NPDES Permits: Any person or company subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City Manager, or his or her designee, prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan. (Ord. 5272 Sec. 1, 2009)

14.29.080: Notification of Spills:

(1) 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 storm water, MS4 or waters of the State from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(2) In the event of such a release of a hazardous material, said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the City's Municipal Services Department in person or by phone, email or fax within 24 hours. 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. (Ord. 5272 Sec. 1, 2009)

14.29.090: Enforcement Procedures: When the City Manager, or his or her designee, finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the City Manager, or his or her designee, may order compliance through one or more of the following procedures. Recurring violations will result in enforcement procedures with escalating requirements. The City Manager, or his or her designee, may, at his or her discretion, choose the following enforcement procedures appropriate to the violation:

(1) **Verbal Warning.** The City Manager, or his or her designee, may direct compliance with this Chapter through a verbal warning issued to the violator. A verbal warning will include specific information describing the violation, specific actions required to remedy the violation, an expected time for performance and referral to technical guidance available to the violator.

(2) **Written Notice of Violation.** The City Manager, or his or her designee, may require compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The elimination of illicit connections or discharges;
- (b) The violating discharges, practices or operations shall cease and desist;
- (c) The performance of the monitoring, analyses and reporting;

- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of the MS4 facilities;
- (e) Implementation of source control or treatment BMPs; and
- (f) Payment of a fine.

If abatement of a violation and/or restoration of the MS4 facilities is required, the notice shall set forth a date within which remediation or restoration must be completed. Such notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by the City or a contractor designated by the City Manager, or his or her designee, and expense thereof shall be charged to the violator.

(3) **Show Cause Hearing.** The City Manager, or his or her designee, may order the responsible person who has violated or continues to violate this Chapter to appear before the City Manager, or his or her designee, and show cause why the proposed enforcement action should not be taken. Notice of the hearing shall be served on the responsible person specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action and a request that the responsible person show cause why the proposed enforcement action should not be taken. A show cause hearing shall not be a bar against, or prerequisite for, taking any action against the responsible person. (Ord. 5272 Sec. 1, 2009)

14.29.100: Appeal of Notice of Violation:

(1) Any person receiving a Notice of Violation may appeal the determination of the City Manager, or his or her designee, to the Kennewick Appeals Commission pursuant to Chapter 4.04 of the Kennewick Municipal Code.

(2) Petitions for appeal must be made in writing to the City Clerk within ten (10) days of the taking of an action or making of a decision or, if written, within ten (10) days of delivery, publication, posting, or mailing, whichever is the shorter period. The petition must set out the action or decision appealed and the error claimed to have been made. The City Clerk will determine a date for hearing and give reasonable notice to the petitioner. If the petitioner indicates that a hearing must be held immediately, the City Clerk shall refer the matter to the Commissioners for a hearing date. (Ord. 5272 Sec. 1, 2009)

14.29.110: Abatement by the City:

(1) The City Manager, or his or her designee, is authorized to direct abatement of any violation of this Chapter that constitutes an immediate threat to the health, safety or well-being of the public, or results from persistent non-compliance by a violator. Any expense related to such abatement undertaken by the City shall be fully reimbursed by the property owner and/or responsible party.

(2) Within 30 days after the abatement by the City, the City Manager, or his or her designee, shall notify the property owner and/or responsible person of the cost of abatement, including administrative costs. Unpaid charges shall, after 30 calendar days, be assessed an additional penalty of 5% of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. A lien against the violator's property will be sought for unpaid charges, penalties, and interest.

(3) Violators desiring to dispute such charges must file a written request with the City Clerk for the City to reconsider the charges along with full payment of the charges within ten (10) days of being notified of the charges. Where a request has merit, the City Manager, or his or her designee, shall convene a hearing on the matter pursuant to Chapter 4.04 of the Kennewick Municipal Code. In the event the person's appeal is successful, the payment, together with any interest accruing thereto, shall be returned.

(4) The City may add the costs of preparing administrative enforcement actions to the charges. (Ord. 5272 Sec. 1, 2009)

14.29.120: Administrative Fines: For repeat violations of this Chapter and persistent non-compliance with written enforcement directives, the City Manager, or his or her designee, may order payment of administrative fines. The fines in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided for by law. An administrative fine may be no less than \$100 and no more than \$5,000 per violation. (Ord. 5272 Sec. 1, 2009)

14.29.130: Injunction and/or Civil Penalties:

(1) It shall be unlawful for any person to violate any provisions or fail to comply with any of the requirements of this Chapter. If a person has violated or continues to violate the provisions of this Chapter, the City may:

- (a) Petition for a preliminary or permanent injunction restraining the person from activities, which would create further violations, or compelling the person to perform abatement or remediation of the violation; and/or
- (b) Assess civil penalties in an amount not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) per day for each day of violation. Payment of this penalty does not relieve the person of the duty to correct the violation.

(2) In the event more than one person is determined to have violated this Chapter, all applicable civil penalties may be imposed against each person and recoverable damages, costs and expenses may be allocated among the persons on any equitable basis. The City may recover all attorneys' fees, court costs and other expenses associated with enforcement of this Chapter. (Ord. 5272 Sec. 1, 2009)

14.29.140: Severability: If any section, subsection, paragraph, sentence, clause, or phrase of this Chapter is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Chapter. (Ord. 5272 Sec. 1, 2009)