

ORDINANCE NO. 2494

AN ORDINANCE REGULATING THE DISCHARGE DETECTION AND ELIMINATION OF NON-STORM WATER DISCHARGES TO THE CITY STORM DRAINAGE SYSTEM

BE IT ORDAINED BY THE CITY OF MITCHELL, SD:

Section 1: There is hereby enacted a new article to be included within Title 8 in the Mitchell SD Code of Ordinances as follows:

ARTICLE B. Illicit discharge, Detection and Elimination of Non-Storm Water Discharges To the City Storm Drainage System.

SECTION:

- 8-9B- 1: Purpose/Intent
- 8-9B- 2: Definitions
- 8-9B- 3: Applicability
- 8-9B- 4: Responsibility for Administration
- 8-9B- 5: Severability
- 8-9B- 6: Ultimate Responsibility
- 8-9B- 7: Discharge Prohibitions
- 8-9B- 8: Suspensions of MS4 Access
- 8-9B- 9: Industrial or Construction Activity Discharges
- 8-9B-10: Monitoring of Discharges
- 8-9B-11: Requirement to Prevent, Control, and Reduce Stormwater Pollutants by Use of Best Management Practices
- 8-9B-12: Watercourse Protection
- 8-9B-13: Notification of Spills
- 8-9B-14: Enforcement
- 8-9B-15: Appeal of Notice of Violations
- 8-9B-16: Enforcement Measures After Appeal
- 8-9B-17: Cost of Abatement of the Violation
- 8-9B-18: Injunctive Relief
- 8-9B-19: Compensatory Action
- 8-9B-20: Violations Deemed a Public Nuisance
- 8-9B-21: Criminal Prosecution
- 8-9B-22: Remedies Not Exclusive

8-9B-1: PURPOSE/INTENT:

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Mitchell, South Dakota through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. 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 process.

The objectives of this ordinance are:

- (a) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user;
- (b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and,
- (c) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance.

8-9B-2: DEFINITIONS:

Unless a provision explicitly states otherwise, the following terms shall mean:

Authorized Enforcement Agency: The Public Works Department of the City, its director, or employees designated to enforce this ordinance.

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 site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City: The City of Mitchell, South Dakota.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to NPDES Construction Permits. NPDES Storm Water Phase II permits are required for construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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-stormwater discharge to the storm drain system, except as exempted in Section 8-9B-7 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 drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether 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 drain system which has not been documented in plans, maps, or equivalent records and approved by an Authorized Enforcement

Agency.

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

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the U.S. Environmental Protection Agency (USEPA) (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.

Non-Stormwater Discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Owner or Operator as defined by 40 CFR 122.2: The owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Person: Any individual, occupant, tenant, 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, ordinances, 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; and noxious or offensive matter of any kind.

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

Storm Drainage System: 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, 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.

Stormwater Pollution Prevention Plan (SWPPP): A document which describes the BMPs 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.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

8-9B-3: APPLICABILITY:

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an Authorized Enforcement Agency.

8-9B-4: RESPONSIBILITY FOR ADMINISTRATION:

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

8-9B-5: SEVERABILITY:

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.

8-9B-6: ULTIMATE RESPONSIBILITY:

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.

8-9B-7: DISCHARGE PROHIBITIONS:**Prohibition of Illegal Discharges.**

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if de-chlorinated - typically less than one PPM chlorine), firefighting activities, street wash water, and any other water source not containing pollutants.
- b) Discharges specified in writing by the Authorized Enforcement Agency as being necessary to protect public health and safety.
- c) Dye testing is an allowable discharge, but requires a verbal notification to the Authorized Enforcement Agency prior to the time of the test.
- d) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and

administered under the authority of the USEPA, 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 drain system.

Prohibition of Illicit Connections.

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

8-9B-8: SUSPENSION OF MS4 ACCESS:

Suspension due to Illicit Discharges in Emergency Situations.

The City of Mitchell, South Dakota, or other Authorized Enforcement Agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge:

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the Authorized Enforcement Agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Authorized Enforcement Agency.

8-9B-9: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES:

Any person subject to an industrial or construction activity NPDES stormwater 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 of Mitchell, South Dakota, or other Authorized enforcement Agency prior to the allowing of discharges to the MS4.

8-9B-10: MONITORING OF DISCHARGES:

Applicability.

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

Access to Facilities.

- a) The City of Mitchell, South Dakota, or other Authorized Enforcement Agency shall be

- permitted to enter and inspect facilities 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 Authorized Enforcement Agency.
- b) Facility operators shall allow the City of Mitchell, South Dakota, or other Authorized Enforcement Agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
 - c) The City of Mitchell, South Dakota, or other Authorized Enforcement Agency shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Authorized Enforcement Agency to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - d) The City of Mitchell, South Dakota, or other Authorized Enforcement Agency 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.
 - e) 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 City of Mitchell, South Dakota, or other Authorized Enforcement Agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - f) Unreasonable delays in allowing the City of Mitchell, South Dakota, or other Authorized Enforcement Agency 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 a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Authorized Enforcement Agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
 - g) If the City of Mitchell, South Dakota, or other Authorized Enforcement Agency 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.

8-9B-11: REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES:

The Authorized Enforcement Agency will adopt requirements identifying BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-

structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with the requirements of the NPDES permit.

8-9B-12: WATERCOURSE PROTECTION:

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

8-9B-13: NOTIFICATION OF SPILLS:

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 storm water, the storm drain system, or water 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 of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Authorized Enforcement Agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Mitchell, South Dakota, or other Authorized Enforcement Agency within three (3) 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 (3) years.

8-9B-14: ENFORCEMENT:

Notice of Violation.

Whenever the City of Mitchell, South Dakota, or other Authorized Enforcement Agency finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Authorized Enforcement Agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- a) The performance of monitoring, analyses, and reporting;
- b) A plan for the correction of deficiencies;
- c) The elimination of illicit connections or discharges;
- d) That violating discharges, practices, or operations shall cease and desist;
- e) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- f) Payment of a fine to cover administrative and remediation costs; and
- g) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

8-9B-15: APPEAL OF NOTICE OF VIOLATION:

Any person receiving a Notice of Violation may appeal the determination of the Authorized Enforcement Agency. The notice of appeal must be received within seven (7) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 25 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

8-9B-16: ENFORCEMENT MEASURES AFTER APPEAL:

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven (7) days of the decision of the municipal authority upholding the decision of the Authorized Enforcement Agency, then representatives of the Authorized Enforcement Agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

8-9B-17: COST OF ABATEMENT OF THE VIOLATION:

Within seven (7) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment plus any legal fees to process the lien. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of current market value (percentage per annum) shall be assessed on the balance beginning on the 30th day following discovery of the violation.

8-9B-18: INJUNCTIVE RELIEF:

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Authorized Enforcement Agency may 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.

8-9B-19: COMPENSATORY ACTION:

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Authorized Enforcement Agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek clean-up, etc.

8-9B-20: VIOLATIONS DEEMED A PUBLIC NUISANCE:

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.

8-9B-21: CRIMINAL PROSECUTION:

Any person that has violated or continues to violate this ordinance shall be liable to prosecution to the fullest extent of the law, and shall be subject to a fine of \$1000.00 per violation per day.

8-9B-22: REMEDIES NOT EXCLUSIVE:

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Authorized Enforcement Agency to seek cumulative remedies.

Section 2: All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3: The City Finance Officer shall cause notice of the adoption of this ordinance to be published in the official newspaper; and if no referendum shall be invoked, then this ordinance shall become effective 20 days after the completed publication.

Adopted this 19th day of January, 2015

Mayor

Attest:

City Finance Officer

(Seal)

First Reading: January 5, 2015

Second Reading: January 19, 2015

Adoption: January 19, 2015

Published: _____