

ORDINANCE NO. 2006-167

AN ORDINANCE TO ADOPT STORMWATER POLLUTION PREVENTION AND EROSION CONTROL STANDARDS AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS,

Section 1. That the following code, 3 copies of which are on file with the City Clerk, are hereby adopted by reference as though they were copied herein fully:

Stormwater Pollution Prevention and Erosion Control Standards

Section 2. That any matters in said codes which are contrary to existing ordinances of the City of Bentonville, Arkansas shall prevail, and that any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. That within said codes, when reference is made to the duties of a certain official named therein, that designated official of the City of Bentonville who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of said code are concerned.

Section 4: That this Ordinance is necessary to preserve the public peace, health, safety and welfare, and because of such, an emergency is declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and APPROVED this 24th day of October, 2006.

APPROVED:

Terry Black Coberly
MAYOR

ATTEST:

Suzanne Grider
CITY CLERK

Stormwater Pollution Prevention and Erosion Control

Section 100 General Provisions

(A) Purpose

The purpose and objectives of this Article are as follows:

1. To maintain and improve the quality of water impacted by the storm drainage system within the City of Bentonville.
2. To prevent the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential, and construction sites into the storm drainage system within the City of Bentonville.
3. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
5. To facilitate compliance with state and federal standards and permits issued by ADEQ to responsible parties of construction sites within the City.
6. To enable the City to comply with all federal and state laws and regulations applicable to the National Pollutant Discharge Elimination System (NPDES) permitting requirements for stormwater discharges.

(B) Responsibility of Administration

The City Official shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the City Official may be delegated in writing by the City Official to persons or entities acting in the beneficial interest of or in the employ of the City.

(C) Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ADEQ: Arkansas Department of Environmental Quality.

Best Management Practices (BMP's): a technique or series of techniques which, when used in an erosion control plan, is proven to be effective in controlling construction-related runoff, erosion and sedimentation.

City: the City of Bentonville, Arkansas

City Official: is the Mayor of Bentonville, Arkansas, or duly authorized representatives designated by the Mayor.

Clearing: the act of cutting, removing from the ground, burning, damaging or destroying trees, stumps, hedge, brush, roots, logs, or scalping existing vegetation.

Commercial: pertaining to any business, trade, industry, or other activity engaged in for profit.

Construction Site: any location where construction activity occurs.

Contaminated: containing harmful quantities of pollutants.

Contractor: any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors, and material suppliers delivering materials to the site.

Discharge: any addition or release of any pollutant, stormwater or any other substance whatsoever into the storm drainage system.

Discharger: any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any owner of a construction site or industrial facility.

Domestic Sewage: sewage origination primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

Earthwork: the disturbance of soils on a site associated with clearing, grading, or excavation activities.

EPA: Environmental Protection Agency.

Erosion: the wearing away of the ground surface as a result of the movement of wind, water and/or ice.

Excavation: to expose or uncover by digging, scooping, or removing soil.

Garbage: means decaying or rotting animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Grading: any land disturbance or land fill, or combination thereof.

Groundwater: any water residing below the surface of the ground or percolation into or out of the ground.

Harmful Quantity: the amount of any substance that the City Official determines will cause an adverse impact to storm drainage system or will contribute to the failure of the City to meet the water quality based requirements of the NPDES permit for discharges from the MS4.

Hazardous Substance: any substance identified or listed as a hazardous waste by the EPA pursuant to current regulations.

Household Hazardous Waste (HHW): any material generated in a household (including single and multiple residences) that would be classified as hazardous.

Illegal Discharge: see illicit discharge below.

Illicit Discharge: means any discharge to the storm drainage system that is prohibited under this Article.

Illicit Connection: any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system.

Industrial Waste: (or commercial waste) any wastes produced as a by-product of any industrial, institutional or commercial process or operation, other than domestic sewage.

Land Alteration: the process of grading, clearing, filling, excavation, quarrying, tunneling, trenching, construction or similar activities.

Mechanical Fluid: any fluid used in the operation and maintenance of machinery, vehicles and any other equipment, including lubricants, antifreeze, petroleum products, oil and fuel.

Mobile Commercial Cosmetic Cleaning (or mobile washing): power washing, steam cleaning, and any other method of mobile cosmetic cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.

Municipal Separate Storm Sewer System (MS4): the system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the City and designed or used for collection or conveying stormwater, and not used for collecting or conveying sanitary sewage.

Non-stormwater discharges: septic systems, sanitary sewers and others; industrial NPDES discharges, urban return flows, water diversions, runoff from confined animal feeding lots.

NPDES: the National Pollutant Discharge Elimination System.

NPDES Permit: a permit issued by EPA and or ADEQ 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

NOT: Notice of Termination

Notice of Violation: a written notice detailing any violations of this Article and any action expected of the violators.

Oil: any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

Owner: the person who owns a facility, part of a facility, or land.

Person: any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

Permittee: the applicant in whose name a valid permit is duly issued pursuant to this article and his/her agents, employees and others acting under his/her supervision or control.

Pesticide: a substance or mixture of substances intended to prevent, destroy, repel or migrate any pest.

Pet Waste (or animal waste): excrement and other waste from domestic animals.

Petroleum Product: a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

Pollutant: any substance attributable to water pollution, including but not limited to rubbish, garbage, solid waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, pet waste, animal waste, domestic sewage, industrial waste, sanitary sewage, wastewater, septic tank waste, mechanical fluid, oil, motor oil, used oil, greases, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances, hazardous waste, soil and sediment.

Pollution: the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or

injurious to humans, animal life, plant life, property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Potable Water: water that has been treated to drinking water standards and is safe for human consumption.

Private Drainage System: all privately or publicly owned ground, surfaces, structures or systems, excluding the MS4, that contribute to or convey stormwater, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface.

Public Improvement Plans: engineering drawings subject to approval by the City Official for the construction of public improvements.

Qualified Person: a person who possesses the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.

Release: to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

Rubbish: non-putrescible solid waste, excluding ashes, that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Sanitary Sewage: the domestic sewage and/or industrial waste that are discharged into the City sanitary sewer system and passes through the sanitary sewer system to the City sewage treatment plant for treatment.

Sanitary Sewer: the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

Sediment: soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

Septic Tank Waste: any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and aerated tanks.

Shall: means mandatory; May: discretionary.

Site: the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid Waste: any garbage, rubbish, refuse and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations, and residential, community and institutional activities.

State: the State of Arkansas.

Storm Drainage System: all surfaces, structures and systems that contribute to or convey stormwater, including private drainage systems, the MS4, surface water, groundwater, Waters of the State and Waters of the United States.

Stormwater: runoff resulting from precipitation.

Stormwater Pollution Prevention Plan (SWP3): a document that describes the Best Management Practices to be implemented at a site, to prevent or reduce the discharge of pollutants.

Subdivision Development: includes activities associated with the platting of any parcel of land into two or more lots and includes all construction activity taking place thereon.

Surface Water: water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow and runoff.

Uncontaminated: not containing harmful quantities of pollutants.

Used Oil (or Used Motor Oil): any oil that as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties.

Utility Agency: private utility companies, City departments or contractors working for private utility companies or City departments, engaged in the construction or maintenance of utility distribution lines and services, including water, sanitary sewer, storm sewer, electric, and gas, telephone, television and communication services.

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

Water of the State (or water): any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction to the State.

Water Quality Standard: the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or Federal regulatory standards to be necessary to protect those uses.

Waters of the United States: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to water identified in this definition; and any waters within the federal definition of “waters of the United States” at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

Wetlands: an area that is regularly saturated by surface or groundwater and subsequently is characterized by a prevalence of vegetation that is adapted for life in saturated soil conditions. Examples include: swamps, bogs, fens, marshes, and estuaries.

Yard Waste: leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

(D) Abbreviations. The following abbreviations when used in this Article shall have the designated meanings:

ADEQ—Arkansas Department of Environmental Quality
BMP—Best Management Practices
CFR—Code of Federal Regulations
EPA—U. S. Environmental Protection Agency
HHW—Household Hazardous Waste
NOI—Notice of Intent
NOT—Notice of Termination
MS4—Municipal Separate Storm Sewer System
NPDES—National Pollutant Discharge Elimination System
SWP3—Stormwater Pollution Prevention Plan

Section 200 Prohibitions and Requirements

(A) Prohibitions

1. No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed herein. Common stormwater contaminants include trash, yard waste, lawn chemicals, pet waste, and wastewater, and oil, petroleum products, cleaning products, paint products, hazardous waste and sediment.
2. Any discharge shall be prohibited by this Section if the discharge in question has been determined to be a source of pollutants to the storm drainage system.
3. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. 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.
4. No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste, to the storm drainage system, or allow such a connection to continue.
5. No person shall maliciously destroy or interfere with BMP's implemented pursuant to this Chapter.

(B) Exemptions. The following non-stormwater discharges are deemed acceptable and not a violation of this Section:

1. A discharge authorized by an NPDES permit other than the NPDES permit for discharges from the MS4;
2. Uncontaminated waterline flushing and other infrequent discharges from potable water sources;
3. Infrequent uncontaminated discharge from landscape irrigation or lawn watering;
4. Discharge from the occasional non-commercial washing of vehicles or the non-commercial washing of vehicles by charitable organizations.
5. Uncontaminated discharge from foundation, footing or crawl space drains, sump pumps and air conditioning condensation drains;
6. Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs;
7. Diverted stream flows and natural riparian habitat or wetland flows;
8. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials.

(C) Requirements Applicable to Certain Dischargers

1. **Private Drainage System Maintenance.** The owner of any private drainage system shall maintain the system to prevent or reduce the discharge of pollutants. This maintenance shall include, but is not limited to, sediment removal, bank erosion repairs, maintenance of vegetative cover, and removal of debris from pipes and structures.

2. Minimization of Irrigation Runoff. A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation systems shall be managed to reduce the discharge of water from a site.
3. Cleaning of Paved Surfaces Required. The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Code.
4. Maintenance of Equipment. Any leak or spill related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants. Vehicles, machinery and equipment must be maintained to reduce leaking fluids.
5. Materials Storage. In addition to other requirements of this Code, materials shall be stored to prevent the potential release of pollutants. The uncovered, outdoor storage of unsealed containers of hazardous substances is prohibited.
6. Pesticides, Herbicides and Fertilizers. Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.
7. Prohibition on use of pesticides and fungicides banned from manufacture. Use of any pesticide, herbicide or fungicide, the manufacture of which has been either voluntarily discontinued or prohibited by the Environmental Protection Agency, or any Federal, State or City regulation is prohibited.
8. Open Drainage Channel Maintenance. Every person owning or occupying property through which an open drainage channel passes shall keep and maintain that part of the drainage channel within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the drainage channel. In addition, the owner or occupant shall maintain existing privately owned structures adjacent to a drainage channel, so that such structures will not become a hazard to the use, function, or physical integrity of the drainage channel.

(D) Release Reporting and Cleanup. Any person responsible for a known or suspected release of materials which are resulting in or may result in illegal discharges to the storm drainage system shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a hazardous material, said person shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release. In the event of such a release of non-hazardous materials, said person shall notify the City Stormwater Control Inspector no later than 3:30 p.m. of the next business day.

(E) Authorization to Adopt and Impose Best Management Practices. The City may adopt and impose requirements identifying Best Management Practices for any activity, operation, or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMP's are required, every person undertaking such activity or operation, or owning or operating such facility shall implement and maintain these BMP's at their own expense.

Section 300 Stormwater Discharges From Construction Activities

(A) Construction Sites Requiring an Approved NOI and NOT. This section applies to all construction sites where construction on a site will disturb soil or remove vegetation on 5 (five) or more acres of land during the life of the construction project.

1. An approved NOI (Notice of Intent) received from ADEQ for the project shall be provided and posted on the job site. This should be posted at the entrance of the job site, available 24/7. This can be a photocopy of the original.
 - a. An approved SWP3 shall be provided and posted at the same location as NOI.
 - b. A copy of engineer plans for erosion control shall be posted at the same location as NOI.
 - c. The inspection reports for the job site shall be posted at the same location as NOI.
 - d. Rain gauge.
2. An approved NOT (Notice of Termination) for the project shall be provided to the City Official after the said project has been completed to standards.

(B) General Requirements for Construction Sites.

1. Responsibility. The owner/developer of a site of construction activity shall be responsible for compliance with the requirements of this ordinance, State and Federal regulations as well.
2. Waste Disposal. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of Best Management Practices. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited.
3. Concrete. Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained on construction sites for proper disposal. Release of these materials is prohibited.
4. Erosion and Sediment Control. Best Management Practices shall be implemented to prevent the release of sediment from construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking.

Excessive sediment tracked onto public streets shall be removed immediately.

5. Completion. Upon completion of permitted construction activity on any site, the property owner and subsequent property owners will be responsible for continued compliance with the requirements of this ordinance, in the course of maintenance, reconstruction or any other construction activity on the site.

(C) Construction Sites Requiring an Approved SWP3. This section applies to all construction sites where construction on a site will disturb soil or remove vegetation on one (1) or more acres of land during the life of the construction project. An approved Stormwater Pollution Prevention Plan (SWP3) for the project must be provided and implemented by the construction site owner as follows:

1. The area disturbed shall be assumed to include the entire property area unless all applicable plans specifically exclude certain areas from disturbance.
2. For sites subject to plan review by any City Division or Department, the plan will not be released for construction until an approved SWP3 has been obtained.
3. A review of the SWP3 submitted for the site will be completed and notification will be given of either an approval of the SWP3 or a request for revisions will be made. Construction activity, including any soil disturbance or removal of vegetation, shall not commence on the site until the approval and implementation of the SWP3.
4. The owner/developer bears the responsibility for implementation of the SWP3 and notification of all contractors and utility agencies on the site.

(D) Subdivision Developments Requiring an Approved SWP3. Where construction of a subdivision development will disturb soil or remove vegetation on one (1) or more acres of land during the life of the development project, approved Stormwater Pollution Prevention Plans (SWP3's) for the project must be provided and implemented by the subdivision owner/developer as follows:

1. The area disturbed shall be assumed to include the entire platted area.
2. SWP3's must be provided by the subdivision owner/developer.
3. SWP3's must be provided for all phases of development, including sanitary sewer construction, storm drainage system construction, waterline, street and sidewalk construction, general grading and the construction of individual homes. The subdivision owner/developer will not be required to provide an SWP3 for the activities of utility agencies within the subdivision.
4. The subdivision owner/developer shall provide a copy of the approved SWP3's to all utility agencies prior to their working within the subdivision.
5. The subdivision owner/developer bears the responsibility for implementation of the approved SWP3's for all construction activity within the development, excluding construction managed by utility agencies.
6. The subsequent owner of an individual lot bears the responsibility for continued implementation of the approved SWP3's for all construction activity

within or related to the individual lot, excluding construction managed by utility agencies.

(E) Stormwater Pollution Prevention Plans. Preparation and implementation of Stormwater Pollution Prevention Plans for construction activity shall comply with the following:

1. SWPPP General Requirements. At a minimum the following shall be provided on the SWPPP.
 - a. Name and address of the owner of the property where construction activity is proposed; of the land developer; and of the applicant.
 - b. The existing and proposed topography of the site taken at a contour interval sufficiently detailed to define the topography over the entire site.
 - c. Contour intervals sufficient to show on and off-site drainage.
 - d. The site's property limits shown in true location with respect to the plan's topographic information.
 - e. The proposed grading and land disturbance including: surface area involved; limits of grading including limitation of mass clearing and grading wherever possible; and provisions to preserve topsoil and limit disturbance.
 - f. Appropriate and applicable information from the Federal Emergency Management Agency (FEMA) flood maps and federal and state protected wetland maps.
 - g. Specifications for a sequence of construction operations shall be contained on the SWPPP describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The specifications for the sequence of construction shall, at a minimum, include the following activities:
 - clearing and grubbing for those areas necessary for installation of perimeter controls.
 - installation of sediment basins and traps.
 - construction of perimeter controls.
 - remaining clearing and grubbing.
 - road grading.
 - grading for the remainder of the site.
 - utility installation and whether storm drains will be used or blocked until the completion of project.
 - final grading, landscaping, or stabilization.
 - operation and maintenance, inspection of practices.
 - removal of sediment controls.
 - h. Changes to the sequence of construction operations may be modified by the person conducting land disturbing activity or their representatives and do not constitute a violation unless measures to control stormwater runoff and sediments are not utilized.

- i. If the SWPPP is designed by and carries the seal and/or signature of a “designated design professional” (Professional Engineer, Certified Landscape Architect, Certified Professional in Erosion and Sediment Control), it shall be given approval pending plan review. If the SWPPP is prepared by someone other than a “designated design professional” the City Official shall review the SWPPP, and after review notify the landowner/land developer of approval or denial within seven (7) days after receipt of the SWPPP. If the approval or denial has not been received within said such seven (7) day period by the landowner/land developer, then the SWPPP shall be deemed approved.
- j. If the SWPPP carries the seal and/or signature of a “designated design professional” it shall include placement of the following statement.
“The undersigned certifies this plan has been designated in accordance with federal NPDES guidelines and approved erosion, sediment and stormwater ordinances, programs, regulations, standards and criteria of the City of Bentonville.”

2. Preparation

- a. The SWP3 shall be prepared under the direction of a qualified person.
- b. The SWP3 shall provide a 24 hour contact name, address and phone number of the project owner for purposes of correspondence and enforcement.
- c. The SWP3 shall identify existing natural resources such as streams, forest cover and other established vegetative cover.
- d. The SWP3 shall specify and provide detail for all BMP’s necessary to meet the requirements of this ordinance, including any applicable BMP’s that have been adopted and imposed by the City.
- e. The SWP3 shall specify when each BMP will be installed, and for how long it will be maintained within the construction sequence. Multiple plans may be required for major phases of construction such as rough grading, building construction and final grading.
- f. The SWP3 shall delineate all anticipated disturbed areas and specify the vegetative cover that must be established in those areas to achieve final stabilization.

3. Implementation

- a. The SWP3 shall be posted at the entrance or accessible area that can be readily available on the project site 24/7.
- b. BMP’s shall be installed and maintained by qualified persons. The owner/developer or their representative shall be able to provide upon the City Official’s request a copy of the SWP3 on site and shall be prepared to respond to unforeseen maintenance of specific BMP’s.
- c. The owner/developer or their representative shall inspect all BMP’s every 14 days and within 24 hours after a rainfall of one half of an inch or more as measured at the site or generally reported in the Bentonville area.

- d. Based on inspections performed by the owner/developer/or their representative or by authorized City Officials, modifications to the SWP3 will be necessary if at any time the specified BMP's do not meet the objectives of this ordinance. In this case, the owner/developer or authorized representative shall meet with authorized City Official to determine the appropriate modifications. All modifications shall be completed within seven (7) days of the referenced inspection, except in circumstances necessitating more timely attention, and shall be recorded on the owner's copy of the inspection report.

(F) Requirements for Utility Construction.

1. Utility agencies shall be responsible for compliance with the requirements of this ordinance.
2. Utility agencies shall develop and implement Best Management Practices (BMP's) to prevent the discharge of pollutants on any site of utility construction within the City. In addition, the City may adopt and impose BMP's on utility construction activity.
3. Utility agencies shall implement BMP's to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately.
4. Prior to entering a construction site or subdivision development, utility agencies shall have obtained from the owner a copy of any SWP3's for the project. Any disturbance to BMP's resulting from utility construction shall be repaired immediately by the utility company in compliance with the SWP3.

(G) Grading Permit

1. Findings—The city has experienced development activity causing the displacement of large amounts of earth and the removal of tree cover. Significant problems resulting from such development include flooding, soil erosion and sedimentation, unstable slopes, and impaired quality of life. These problems are a concern because of their negative effects on the safety and general welfare of the community.
2. Purpose—The purposes of this chapter are to:
 - a. Prohibit the indiscriminate clearing of property.
 - b. Prevent excessive grading, clearing, filling, cutting, or similar activities.
 - c. Substantially reduce flooding, erosion and sediment damage within the city.
 - d. To safeguard the safety and welfare of citizens.
 - e. Establish reasonable standards and procedures for development, which prevent potential flooding, erosion and sediment damage.
 - f. Prevent the pollution of streams, ponds and other watercourses.
 - g. Minimize the danger of flood loss and property loss due to unstable slopes.

- h. Preserve natural vegetation, which enhances the quality of life of the community.
 - i. To conceal hillside scars.
3. General requirements—Persons engaged in land alteration activities regulated by this chapter shall take measures to protect neighboring public and private properties from damage by such activities. The requirements of this chapter, however, are not intended to prevent the reasonable use of properties.
- a. Any person who engages in land alteration activities regulated by this chapter without obtaining a grading permit shall be required to restore the land, to the maximum extent practicable to its original condition immediately.
 - b. The permit applicant shall have on the project site at all times an agent who is a competent superintendent capable of reading and thoroughly understanding the plans, specifications and requirements for areas of tree protection for the type of work being performed. The superintendent shall have full authority to issue orders or direction to employees working on site, without delay and to promptly supply such materials, labor, equipment, tools, and incidentals as may be required to complete the work in a proper manner. If no superintendent is on site, the city official may issue the notice of violation and stop work order to the person conducting the violation.
4. Grading Permit Required.
- a. Any person proposing to engage in clearing, filling, excavating, quarrying, construction or similar activities on any piece of disturbed land of 1 acre or larger shall apply to the City Engineer or his/her assigns for a grading permit as specified in this chapter before construction or expanding a vehicular use area or when expanding or rehabilitation of a building and landscaping are required. The City Engineer may exempt the need for the permit on a limited case-by-case basis. No land shall be altered or cleared to the extent regulated in this chapter unless approved by a permit.
5. Conformance to Phase II Regulations. Grading plans shall conform to the Phase II Stormwater Regulations as established by United States Environmental Protection Agency's regulations, Region VI published in the July 6, 1998 Federal Register or it's latest revisions.

SECTION 400 Enforcement Personnel Authorized

(A) The Transportation Engineer or their designee shall have the power to issue Notices of Violations, citations and implement other enforcement actions under this ordinance as provided by the City of Bentonville.

(B) Right of Entry and Sampling

1. Whenever an authorized enforcement person has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this ordinance, the enforcement person shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this ordinance. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.
2. The Transportation Engineer or his or her assigns shall have the right to cause to be set up on the property of any discharger to the storm drainage system such devices that are necessary to conduct sampling of discharges.

(C) Enforcement Procedures. This policy establishes a formal enforcement procedure to be followed by the City of Bentonville when enforcement action is necessary on sites that do not comply with the City's Stormwater Pollution Prevention, Erosion Control Ordinance. Enforcement cases can be generated in any of three ways: (1) through the construction review process; (2) through complaints from individuals, groups, etc; and (3) through referrals from City/State agencies. Procedures to be followed for each of these methods are outlined below.

1. Submissions from the General Public. Members of the General Public may submit information pertaining to this ordinance to the City of Bentonville, Transportation Engineering Department. The Engineer will consider such submissions as they pertain to the implementation and enforcement of this ordinance and will provide written or verbal response to the person submitting the information.
2. Construction Review. Every effort is made to use the Construction Review process to correct deficiencies in site compliance whenever possible. Should that process fail to achieve expected results or the site reviewer feels that a violation is serious enough to warrant enforcement action, the following procedures shall be followed:
 - a. Issuance of Notice of Violation: If site deficiencies are noted, the Permittee or their on-site representative shall be given a notice of violation. The notice of violation shall be specific as to the noted violation, corrective measures to be taken, and time frame allowed completing the work.
 - b. Compliance Review: At the end of the time period specified above, a follow-up site inspection shall take place to determine whether compliance has been achieved.

Depending on that determination, the following actions may occur:

1. Site Violations Corrected: If all previous site violations have been corrected, the site reviewer shall issue an inspection report stating that fact and the site shall be returned to a normal Construction Review status.

2. Previous Violations Not Corrected: If previously noted violations have not been satisfactorily corrected, the further actions may be initiated as outlined in the following section.
3. Referrals from other agencies. Referrals from other agencies will be handled in the following manner:
 - a. Cases will be referred directly to the Transportation Engineer. At this point the Engineer working with the referral agency will determine if enforcement actions are warranted and if proper documentation has been obtained. If a determination is made that action is required, the enforcement process will be set into motion.
 - b. Cases received by the Engineer will be handled on a first come first served basis. All enforcement actions will be initiated by a site inspection to verify site conditions that caused the case to be referred. If conditions have been corrected or do not exist as stated in the referral, the case will be returned to file for documentation and reporting purposes. If conditions exist as stated in the referral, enforcement actions will proceed.
4. Once site conditions have been verified and the site is determined to be in a state of non-compliance, two avenues of enforcement can be pursued, one for the infrequent offender and one for the frequent offender.
 - a. Infrequent Offender. If a Permittee is being reviewed for the first time or it has been at least 3 years since the last violation (36 months has elapsed since last violation), notice to comply will be issued to the Permittee informing them they are not in compliance with the City's Stormwater Pollution Prevention and Erosion Control Ordinance, the steps needed to be taken to get into compliance, and that they have an established time frame to complete the work. At the end of the period a re-inspection will be conducted to check for compliance. If all work has been satisfactorily completed the case will be returned to file for documentation and reporting purposes. If the work has not been satisfactorily completed within the established time frame a Stop Work Order will be issued to the Permittee.
 - b. Frequent Offender. If a Permittee has been cited for a violation three or more times in the preceding 36 months they will be considered repeat offenders. Repeat offenders will be issued a Stop Work Order upon verification of non-compliance with the City's Stormwater Pollution Prevention and Erosion Control Ordinance and the steps needed to be taken to get into compliance will be outlined along with an established time frame to complete the work. At the end of the period a re-inspection will be conducted to check for compliance. If all work has been satisfactorily completed the case will be returned to file for documentation and reporting purposes. If the work has not been satisfactorily completed within the established time frame a citation shall be issued to the Permittee.

D. Enforcement Options for Failure to Comply Notice

1. City of Bentonville Transportation Engineering Department or Community Development may issue a Stop Work Order to any persons violating any provision of the City's Stormwater Pollution Prevention and Erosion Control

Ordinance by ordering that all site work stop except that necessary to comply with any administrative order.

- a. The Transportation Engineering Department has primary responsibility for the administration and enforcement of this Stop Work Order.
 - b. Representatives of the Transportation Engineering Department, the City Engineer and Code Enforcement Officers may serve as the City's designee, with full authority to enforce all municipal infraction provisions of this Chapter.
 - c. In addition to all other means of enforcement provided for by law and in this Chapter, the Transportation Engineer, Stormwater Inspector, Code Enforcement officers, or police officers may issue a "stop work order" to any person who violates any provision of this Chapter. A stop work order also may be issued on the basis of information received setting forth the facts of the alleged violation.
 - d. Any person who receives such a stop work order shall immediately cease the activity that constitutes the violation. The person shall comply with all terms and conditions imposed by the person issuing the order before the activity may resume.
 - e. A person who receives a stop work order may appeal the issuance of the stop work order to the City Council within 10 days after the issuance of the stop work order.
 - f. If there has not been an appeal of the Stop Work Order made to the City Council within the designated 10 days of issuance of the stop work order and no reasonable attempt has been made to rectify the violation within 21 days of issuance of the stop work order, the Transportation Engineer may at his/her discretion impose a fine in accordance with the schedule of fines found in Item 'H' of this Section 400.
2. City of Bentonville Transportation Engineering Department may initiate penalties as stipulated herein. Complete information concerning enforcement and penalties is described below.
 3. Appeal Process for Stop Work Order.
 - a. Any violation notice issued pursuant to this chapter may be appealed in writing to the City Council within 10 days of the date of the violation notice.
 - b. Any party aggrieved by the decision of the Transportation Engineer denying a waiver or a variance of the requirements of this chapter may appeal such decision to the City Council, in writing, within 10 days of the date of the written denial.
 - c. An appeal to the City Council pursuant to this section is a prerequisite to any court action by the aggrieved party.

(E) Action without Prior Notice. Any person who violated a prohibition or fails to meet a requirement of this Chapter will be subject, without prior notice, to one or more of the enforcement actions, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

(F) Criminal Penalties. The violation of any provision of this ordinance shall be deemed a municipal offense. Any person in violation of this ordinance shall, upon an adjudication of guilt or a plea of no contest, be fined according to the schedule of fines. Each separate day on which a violation is committed or continues shall constitute a separate offense.

(G) Other Legal Action. Notwithstanding any other remedies or procedures available to the City, if any person discharges into the storm drainage system in a manner that is contrary to the provisions of this ordinance, an Attorney acting on behalf of the City may commence an action for appropriate legal and equitable relief including damages and costs in any court of competent jurisdiction. The Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

(H) Violations/Schedule of Fines. A violation of any of the foregoing provisions shall be punished in accord with the following schedule of fines:

Offense	Fine (per offense)
First	\$ 500
Second	\$1,000`
Third	\$2,000
Fourth and subsequent offenses	\$4,000

SECTION 500 Termination

(A) Upon completion of construction activities a copy of the Notice of Termination filed with ADEQ shall be filed with the Transportation Engineering Department indicating compliance with the provisions of this chapter.

SECTION 600 Maintenance of Stormwater Facilities

(A) Maintenance Responsibility. Those stormwater management systems approved in compliance with this chapter that will function as an integral part of the system maintained by the city shall be dedicated to the city. All areas and/or structures to be dedicated to the city must be dedicated by plat or separate instrument and accepted by action of the City Council. All stormwater management systems accepted as dedications by the city shall be maintained by the city. Maintenance of all other stormwater management systems approved in compliance with this chapter shall be accomplished by the legal entity responsible for maintenance, which may include an approved entity as identified in the following:

1. Local government—a county, municipality, municipal service taxing unit, special district, or other appropriate governmental unit;
2. Special district—an active water control district, a drainage district, or a special assessment district;
3. State or federal agency—an appropriate state or federal agency;

4. Public entity—an officially franchised, licensed, or approved communication, water, sewer, electrical, stormwater, or other public utility;
5. Developer or property owner—a developer or property owner who provides a bond or other assurance of continued financial capability to operate and maintain stormwater management systems and who executes a legal maintenance agreement with the city; or
6. Property owner association—property owner associations able to comply with the following provisions:
 - a. The association provides a binding legal instrument through which it assumes full responsibility for stormwater management system operation and maintenance.
 - b. The association has sufficient powers to operate and maintain the system, establish rules, assess members, contract for services, exist perpetually and, if dissolved, to provide alternative operation and maintenance services.
 - c. The association can provide a bond or other assurances of financial capability to operate and maintain services.