

ORDINANCE NO. 2010-05

AN ORDINANCE OF THE CITY OF EAST WENATCHEE, WASHINGTON AMENDING EAST WENATCHEE MUNICIPAL CODE CHAPTER 13.05 AND ADDING A NEW CHAPTER 13.30 ADOPTING CONSTRUCTION AND POST-CONSTRUCTION STORMWATER DISCHARGE STANDARDS, CONTAINING A SEVERABILITY CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

THE CITY COUNCIL OF THE CITY OF EAST WENATCHEE DO ORDAIN AS FOLLOWS:

Section 1: Purpose.

- (1) The City of East Wenatchee ("City") is a non-charter code city duly incorporated and operating under the laws of the State of Washington.
- (2) The City Council finds that it is in the best interests of the City and its citizens to amend Title 13 of the East Wenatchee Municipal Code ("EWMC") and adopt an ordinance regulating stormwater discharges to the municipal separate storm sewer system ("MS4") during construction and providing standards for post-construction stormwater management for the following reasons:
 - (a) On January 17, 2007, the Washington State Department of Ecology (DOE) issued the Eastern Washington Phase II Municipal Stormwater Permit - National Pollutant Discharge Elimination System ("NPDES") and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Eastern Washington. The permit was modified on June 17, 2009 providing a deadline for compliance with the following requirements by February 16, 2010 with an effective date no later than February 16, 2011:
 - (i) Section S5(B)(4) of the permit, requires the City to develop, implement and enforce a program to reduce pollutants in stormwater runoff from construction activities.
 - (ii) Section S5(B)(5) of the permit, requires the City to develop, implement and enforce a program a program to address post-construction runoff from new development and redevelopment projects.
 - (b) An expanding population and increased development of land have led to water quality degradation through the introduction of sediment, nutrients, metals, oil and grease, toxic materials, and other detrimental substances from uncontrolled discharges resulting in pollutants from stormwater runoff entering the City's stormwater system. The

stormwater runoff entering the City's stormwater system. The resulting siltation and the contribution of other pollutants from construction sites, can cause physical, chemical and biological harm to surface waters and can damage public and private stormwater management systems.

- (c) Post-construction stormwater management in areas undergoing development is necessary since runoff from these areas has been shown to significantly effect receiving waters.

Section 2: Authority.

- (1) RCW 35A.11.020 and RCW 35A.12.190 authorize the City Council to adopt ordinances of all kinds to regulate its municipal affairs as appropriate to the good government of the City.
- (2) RCW 90.48.520 prohibits the discharge of toxicants to waters of the State of Washington which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

Section 3: Amendment 1. The City Council amends Chapter 13.05 EWMC – Definitions to the East Wenatchee Municipal Code as set forth in Appendix “A”.

Section 4: Amendment 3. The Council adds a new Chapter 13.30 EWMC – Construction and Post-Construction Stormwater Management to the East Wenatchee Municipal Code as set forth in Appendix “B”.

Section 5: Findings of Fact. The City Council adopts by reference the findings of fact and conclusions as set forth in the attached Exhibit “C”.

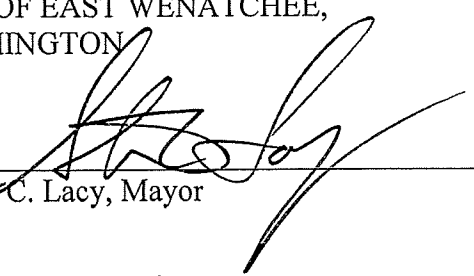
Section 6: Severability. If a court of competent jurisdiction declares any provision in this Ordinance to be contrary to law, such declaration shall not affect the validity of the other provisions of this Ordinance.

Section 7: Publication. The City Council directs the City Clerk to publish a summary of this Ordinance. The summary shall consist of the title of this Ordinance.

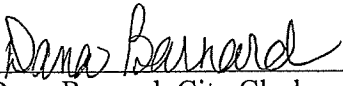
Section 8: Effective Date. This Ordinance becomes effective five days after the date its summary is published.

Passed by the City Council of East Wenatchee, at a regular meeting thereof on 9th day of February, 2010.

CITY OF EAST WENATCHEE,
WASHINGTON

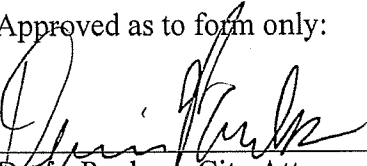
By 
Steven C. Lacy, Mayor

ATTEST:



Dana Barnard, City Clerk

Approved as to form only:



Devin Poulson, City Attorney

FILED WITH THE CITY CLERK: 2/3/10
PASSED BY THE CITY COUNCIL: 2/9/10
PUBLISHED: 2/12/10
EFFECTIVE DATE: 2/16/10

SUMMARY OF ORDINANCE NO. 2010-05
Of the City of East Wenatchee, Washington

On the 9th day of February, 2010, the City Council of the City of East Wenatchee, Washington, passed Ordinance No. 2010-05. A summary of the content of said Ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EAST WENATCHEE, WASHINGTON AMENDING EAST WENATCHEE MUNICIPAL CODE CHAPTER 13.05 AND ADDING A NEW CHAPTER 13.30 ADOPTING CONSTRUCTION AND POST-CONSTRUCTION STORMWATER DISCHARGE STANDARDS, CONTAINING A SEVERABILITY CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

Dated: February 9, 2010

CITY CLERK, DANA BARNARD

Chapter 13.05
DEFINITIONS

13.05.010 Purpose and applicability

The purpose of this chapter is to provide a primary source for the definition of terms used in Titles 13, 15, 16, 17, and 18 of the East Wenatchee Municipal Code. The definitions herein are applicable to those titles within the context of their use. These definitions do not supersede or replace the definitions of other terms found in the enumerated titles.

13.05.020 Definitions

A. “A” Definitions

1. “All Known, Available, and Reasonable” (“AKART”) means methods of prevention, control, and Treatment. The most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. Best Management Practices (BMPs) typically applied to nonpoint source pollution controls are considered a subset of the AKART requirement. The Stormwater Management Manual for Eastern Washington may be used as a guideline, to the extent appropriate, for developing best management practices to apply AKART for storm water discharges. AKART and Best Available Treatment (BAT) are roughly equivalent state and federal terms for the same concept.

B. “B” Definitions

1. “Best Management Practices (BMPs)” means schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, and structural and/or managerial practices approved by the City that, when used singly or in combination, prevent or reduce the release of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems.

C. “C” Definitions

1. “Certified Erosion and Sediment Control Lead” (CESCL) means an individual who is knowledgeable in the principles and practices of erosion and sediment control. The CESCL shall have the skills to assess: the site conditions and construction activities that could impact the quality of stormwater; and the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges. The CESCL shall have current certification through an approved erosion and sediment control training program that meets the minimum training standards established by Ecology.

2. “City” means the city of East Wenatchee, Washington, a municipal corporation of the state of Washington, acting by and through its city council, unless such authority shall be delegated to other persons.

3. “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

4. “Common plan of development or sale” means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders; a development plan that may be phased over multiple years, but is still under a consistent plan of long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and new parking lot at the same facility . If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

4.5. “Construction Activity” means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more and projects less than one acre that have the potential to discharge runoff to the County’s storm drain system. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

D. “D” Definitions

1. “Director” means the city of East Wenatchee public works director who is charged with certain duties and responsibilities by this chapter, or any other person the director may appoint.

2. “Discharge” means runoff leaving the premises via overland flow, built conveyance systems, or infiltration facilities. A hydraulic rate of flow, specifically fluid flow; a volume of fluid passing a point per unit of time, commonly expressed as cubic feet per second, cubic meters per second, gallons per minute, gallons per day, or millions of gallons per day.

E. “E” Definitions

1. “Existing condition” means the impervious surfaces, drainage systems, land cover, native vegetation and soils that exist at the site with approved permits and engineering plans when required. If sites have impervious areas and drainage systems that were built without approved permits, then the existing condition is defined as those that existed prior to the adoption of this Manual February 16, 2011. These conditions can be verified by record aerial photography, or other methods.

F. “F” Definitions

1. “Flow path” means the route that stormwater runoff follows between two points of interest.

G. “G” Definitions

1. “Good Housekeeping Practices” means simple common sense, Best Management Practices which tend to focus more on the human side versus the technical side. Such activities include but are not limited to waste segregation, preventative maintenance, training and awareness, tidiness and safety.

2. “Groundwater” means Water in a saturated zone or stratum beneath the surface of the land or below a surface water body

H. "H" Definitions

1. "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.
2. "Hyperchlorinated" means water that contains more than 10 mg/Liter of chlorine.

I. "I" Definitions

1. "Illicit Discharge" means any direct or indirect discharge to the municipal separate storm sewer system that is not composed entirely of storm water, except discharges pursuant to a NPDES permit and discharges exempted in EWMC 13.20.050.

2. "Illicit Connection" means either of the following:

a. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that 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 the city or,

b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the city.

3. "Impervious Surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development and/or a hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces that similarly impede the natural infiltration of urban runoff. See also "Non-Pollutant Generating Impervious Surface" and "Pollutant Generating Impervious Surfaces."

3.4. "Industrial Activity" means manufacturing, processing or raw materials storage areas at an industrial plant. These activities are subject to NPDES Industrial Stormwater Permits as defined in 40 CFR, Section 122.26 (b)(14).

J. "J" Definitions- reserved

K. "K" Definitions- reserved

L. "L" Definitions- reserved

1. "Land Disturbing Activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to

clearing, grading, filling, and excavation. Compaction associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

M. “M” Definitions- reserved

1. “Material Storage Facilities” means an uncovered area where bulk materials (liquid, solid, granular, etc.) are stored in piles, barrels, tanks, bins, craters, or other means.

2. “Maximum Extent Practicable” (“MEP”) refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act, which reads as follows: “Permits for discharges from municipals storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.” As an undefined term it is intended to be flexible to allow the development of site-specific conditions based upon the best professional judgment of the regulatory authority. MEP means that less effective treatment may not be substituted when it is practicable to provide more effective treatment.

3. “Municipal Separate Storm Sewer System (MS4)” means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of East Wenatchee and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

N. “N” Definitions

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

2. “New development” means the conversion of previously undeveloped or pervious surfaces to impervious surfaces and managed landscape areas not specifically exempt. Projects that add new lanes on an existing roadway or otherwise expand the pavement edge are included in the definition of new development.

3. “Non-Pollutant Generating Impervious Surfaces (NPGIS)” are considered to be insignificant sources of pollutants in stormwater runoff. Roofs that are subject to only atmospheric deposition or normal heating, ventilation, and air conditioning vents are considered NPGIS, unless the roofing material is uncoated metal. The following may also be considered NPGIS: paved bicycle pathways and pedestrian sidewalks that are separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, infrequently used maintenance access roads, and “in-slope” areas of roads. Sidewalks that are regularly treated with sand, sald or other de-icing/anti-icing agents are not considered NPGIS.

3.4. “Non-Stormwater Discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

O. O Definitions

1. “Outfall” means point source as defined in 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances with connect segments of the same stream or other waters of the State and are used to convey water of the State.

2. “Owner, occupier or operator” means any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as with the owner or as the owner’s agent.

P. “P” Definitions

1. “Person” means any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as either the owner or as the owner's agent.

2. “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 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.

3. “Pollutant Generating Impervious Surfaces (PGIS)” are surfaces that are considered to be significant sources of pollutants in stormwater runoff. Such surfaces include those that are subject to vehicular use, industrial activities, or storage of erodible or leachable materials that receive direct rainfall or run-on or blow-in rainfall. Metal roofs are considered to be PGIS unless coated with an inert, non-leachable material. Roofs that are subject to venting of indoor pollutants from manufacturing, commercial or other operations or processes are also considered PGIS. A surface, whether paved or not, will be considered PGIS if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled land of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

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

Q. “Q” Definitions

1. “Qualified Personnel” means staff members or contractors who have had professional training in the aspects of stormwater management for which they are responsible and are under the function control of the City.

R. “R” Definitions

1. “Redevelopment” is the replacement or improvement of impervious surfaces on a developed site.

2. “Responsible Party” means any individual, partnership, firm, company corporation, association, governmental entity or any other legal entity; or their legal representatives, agents, or assigns that is named on a stormwater maintenance agreement as responsible for the operation and maintenance of one or more stormwater BMP.

1.3. “Runoff” means water that travels across the land surface, or laterally through the ground near the land surface, and discharges to water bodies either directly or through a collection and conveyance system. Runoff includes stormwater and water from other sources that travels across the land surface.

S. “S” Definitions

1. “Start of Construction” means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

1.2. “Storm Drainage System” means privately or publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, 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.

2.3. “Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow.

3.4. “Stormwater Management Manual for Eastern Washington” means the technical manual (Publication No. 04-10-076) published by the Department of Ecology in September 2004 or latest edition thereof including any amendments by the Washington State Department of Ecology.

5. “Stormwater Management Plan (SWP)” means a document which describes the Best Management Practices and activities to be implemented 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 waters of the State to the Maximum Extent Practicable.

4.6. “Stormwater Management Program” means a set of actions and activities designed to reduce the discharge of pollutants from the regulated small MS4 to the maximum extent practicable and to protect water quality, and comprising the components listed in S5 or S6 of the NPDES Phase II Permit and any additional actions necessary to meet the requirements of applicable TMDLs.

7. “Stormwater Pollution Prevention Plan (SWPPP)” means a detailed plan that identifies potential sources of pollution and describes the practices that will be used to prevent stormwater pollution. These should include erosion and sediment control, good housekeeping, conservation techniques, and infiltration practices. The plan shall identify procedures that shall be implemented and maintained throughout construction.

T. “T” Definitions

1. “Total Maximum Daily Load” (“TMDL”), also known as a “Water Cleanup Plan.” A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant’s sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The calculation shall include a margin of safety to ensure that the water body can be used for the purposes the state has designated. The calculation must also account for reasonable variation in water quality. Water quality standards are set by states, territories, and tribes. They identify the uses for each water body, for example, drinking water supply, contact recreation (swimming), and aquatic like support (fishing), and the scientific criteria to support that use. The Clean Water Act, section 303, establishes the water quality standards and TMDL programs.

U. “U” Definitions

1. “Underground Injection Control” (“UIC”) means the federal regulatory program established to protect underground sources of drinking water from UIC well discharges. A UIC well is defined as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system which includes an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. Examples of UIC wells or a subsurface infiltration systems are drywells, drain fields, catch basins, pipe or french drains, and other similar devices that discharge to ground.

V. “V” Definitions- reserved

W. “W” Definitions

1. “Water quality” is a term used to describe the chemical, physical, and biological characteristics of water, usually in respect to its suitability for a particular purpose.

2. “Water quality standards” means the minimum requirements of purity of water for various uses; levels or measures of water quality considered necessary to protect a beneficial use. In Washington State, the Department of Ecology sets water quality standards.

3. “Waters of the state” includes those waters as defined as “waters of the United States” in 40 CFR 122.2 within the geographic boundaries of Washington State and “waters of the state: as defined in Chapter 90.48 RCW with includes: lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, wetlands, and all other surface waters and watercourses within the jurisdiction of the state of Washington

X. “X” Definitions - reserved

Y. “Y” Definitions- reserved

Z. “Z” Definitions- reserved

CHAPTER 13.30
CONSTRUCTION AND POST CONSTRUCTION STORMWATER

SECTIONS:

- 13.30.010 Purpose
- 13.30.020 Applicability
- 13.30.030 Responsibility for Administration
- 13.30.040 Ultimate Responsibility
- 13.30.050 General Requirements
- 13.30.060 Specific Requirements
- 13.30.070 Review
- 13.30.080 Inspection and Monitoring
- 13.30.090 Operation and Maintenance of Stormwater Facilities
- 13.30.100 Right of Entry
- 13.30.110 Requirement to Prevent, Control and Reduce Stormwater Pollutants
- 13.30.120 Spills
- 13.30.130 Investigation
- 13.30.140 Violations, Enforcement and Penalties
- 13.30.150 Fees
- 13.30.160 Other Regulations
- 13.30.170 Adoption by Reference
- 13.30.180 Effective Date
- 13.30.190 Severability

13.30.010 Purpose

The purpose of this ordinance is to safeguard persons, protect property and prevent damage to the environment caused by stormwater runoff from land-disturbing activities, new development, and redevelopment. The ordinance seeks to meet that purpose through the following specific objectives:

- A. Prevent accelerated soil erosion and control stormwater runoff resulting from earth changes both during and after construction through the use of best management practices.
- B. Eliminate the need for costly maintenance and repairs to roads, embankments, ditches, streams, wetlands, and stormwater control facilities due to inadequate soil erosion and stormwater runoff control.
- C. Reduce stormwater runoff rates and volumes, soil erosion and non-point source pollution, whenever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.
- D. Ensure compliance with the Eastern Washington Phase II Municipal Stormwater Permit.

13.30.020 Applicability

- A. This ordinance shall be applicable to all land-disturbing activities, new subdivisions, and redevelopment projects disturbing greater than or equal to one acre and to projects of less than one acre that are part of a common plan of development or sale.

B. All new and existing stormwater structures shall be subject to the requirements of this chapter as well as all enforcement remedies provided in this chapter.

C. Partial exemptions or exceptions may be granted in accordance with the Stormwater Management Manual for Eastern Washington (“SWMMEW”). Jurisdiction-wide exemptions to the requirements in the SWMMEW shall be approved by the Washington State Department of Ecology.

D. The following practices shall be exempted from the requirements of this chapter:

1. Forest practices regulated under Title 222 WAC.
2. Commercial agriculture practices involving working the land for production.
3. Oil and gas field activities including construction of drilling sites, waste management pipes, access roads, transportation and treatment infrastructure.
4. Road and parking area preservation and maintenance including:
 - a. Pothole and square cut patching;
 - b. Crack sealing;
 - c. Resurfacing with in-kind material without expanding the road prism.
 - d. Overlaying existing asphalt or concrete pavement with bituminous surface treatment (BST or “chip seal”), asphalt or concrete without expanding the area of coverage; Shoulder grading;
 - e. Reshaping or re-grading drainage systems;
 - f. Vegetation maintenance.

13.30.030 Responsibility for Administration

Administration, implementation, interpretation and enforcement of this chapter shall be the responsibility of the City Engineer or the City Engineer’s designated representative. The City Engineer may develop such instructions, policies and forms as are necessary to carry out the provisions of this chapter. Any powers granted or duties imposed upon the City may be delegated by the City Engineer to persons or entities acting in the beneficial interest of or in the employ of the City.

13.30.040 Ultimate Responsibility

Any person who undertakes or causes to be undertaken any land development shall ensure that soil erosion, sedimentation and increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution. The standards set forth herein and promulgated in accordance with this chapter are minimum standards and are not intended to ensure compliance by any person or to ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

13.30.050 General Requirements

All land disturbing activities, new development and redevelopment unless otherwise exempted shall be required to comply with the standards and requirements set forth by this chapter and the

Stormwater Management Manual for Eastern Washington (SWMMEW), as now exists or is hereafter amended, including specified local options approved by the City Council.

Projects meeting the regulatory threshold and not qualifying for an Erosivity Waiver from the Washington State Department of Ecology, shall prepare a Stormwater Pollution Prevention Plan (SWPPP),

The SWMMEW (latest edition), including technical specifications, (or approved local equivalent), shall be utilized as the basis for decisions about design, implementation, maintenance and performance of structural and non-structural post-construction stormwater BMPs. The SWMMEW, includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Use of BMPs from other technical stormwater manuals approved by Ecology shall be consistent with Douglas County climate, soils, and specific site conditions appropriate for said BMP use may be accepted upon approval of the City Engineer. Stormwater practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Eastern Washington Phase II Municipal Stormwater Permit requirements.

Use of BMPs not designed, constructed and maintained in accordance with the SWMMEW as noted above, shall be subject to City and Department of Ecology approval and must be monitored for performance to demonstrate that they meet the minimum water quality performance standards of the Eastern Washington NPDES Phase II Municipal Stormwater Permit requirements.

The SWMMEW, may be updated and expanded from time to time by the Department of Ecology, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

13.30.060 Specific Requirements

The following specific requirements apply to all land-disturbing activities, new development and redevelopment unless otherwise exempted. The following core elements shall be implemented in accordance with the SWMMEW.

A. Core Element #1: Prepare a Stormwater Site Plan

The SWP shall be implemented beginning with initial soil disturbance and continue until final stabilization

The SWP shall bear the names(s) and address(es) of the owner(s) or developer(s) of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by associated fees.

The SWP shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the SWP. As required the plan shall note that a Certified Erosion and Sediment Control Lead (CESCL) be onsite or on call on all days when construction or grading activity takes place.

B. Core Element #2: Construction Stormwater Pollution Prevention. Prepare and maintain a Construction Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall be

implemented beginning with initial soil disturbance and be maintained until final stabilization. Elements of a SWPPP include the following:

1. Preserve Vegetation/Mark Clearing Limits
2. Establish Construction Entrance
3. Control Flow Rates
4. Install Sediment Controls
5. Stabilize Soils
6. Protect Slopes
7. Protect Inlets
8. Stabilize Channels and Outlets
9. Control Pollutants
10. Control De-Watering
11. Maintain BMPs
12. Manage the Project

C. Core element #3: Source Control of Pollution. Apply all known, available and reasonable source control BMPs. Operational and structural source control BMPs shall be selected, designed and maintained according to the SWMMEW.

D. Core Element #4: Preservation of Natural Drainage Systems. Preserve natural drainage systems to the extent possible at the site. All outfalls must address energy dissipation as necessary.

E. Core Element #5: Runoff Treatment. When the technical thresholds/requirements for basic treatment, metals, treatment, oil treatment or phosphorus treatment are met, the property owners shall select, design, size, construct, operate and maintain stormwater quality and flow control facilities for any discharge of stormwater to a storm drainage system or into surface water. Methods for runoff treatment are subject to review and approval by the City.

F. Core element #6: Flow Control. Projects that result in 10,000 square feet or more of new impervious surfaces shall construct stormwater flow control facilities for any discharge of stormwater to a stormwater drainage system or into surface water. Methods for flow control are subject to review and approval by the City.

G. Core element #7: Operation and Maintenance. Where structural BMPs are required, property owners shall operate and maintain the facilities in accordance with an approved Operation and Maintenance plan, prepared in accordance with the Stormwater Management Manual for Eastern Washington. The Operation and Maintenance Plan shall address all stormwater facilities and BMPs, and identify the party(s) responsible for maintenance and operation and the long term funding mechanism that will support proper maintenance.

H. Core element #8: Local Requirements.

1. Design Standards

- a. Design Event : 100-Year 24 hour Type II SCS synthetic rainfall event

- b. Site runoff Design: Full Retention
 - c. Treatment Flow: 6 month short duration storm
 - d. Treatment bypass is required
2. Additional requirements for all land-disturbing activities:
- a. Construction site operators shall control all waste including but not limited to discarded building materials, concrete truck washout, chemicals, litter and sanitary waste at construction sites to prevent stormwater pollution and non-stormwater discharges.
 - b. Construction site operators shall implement and maintain erosion and sediment control BMPs to reduce or eliminate stormwater pollution.

13.30.070 Review

The City shall review documents required under this chapter and submitted as part of an application of a proposed land-disturbing activity, development or redevelopment project. Required documents must be reviewed and accepted as complete by the City prior to the start of construction.

13.30.070 Inspection and Monitoring

All BMPs shall be inspected, maintained, and repaired as needed to assure the continued performance of their intended function. The SWPPP shall identify an inspection and maintenance schedule. Specific BMP inspection and maintenance guidance is contained in the SWMMEW.

The SWPPP shall be retained on-site or within reasonable access to the site. The SWPPP shall be modified whenever there is a significant change in the design, construction or maintenance of any BMP.

The responsible party or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule identified in the approved SWPPP. The purpose of such inspections will be to determine the overall effectiveness of the SWPPP and the need for additional control measures. All inspections shall be documented in written form and submitted to the City upon request or as specified in the approved SWPPP.

13.30.090 Operation and Maintenance of Stormwater Facilities

A. The property owner(s) shall be responsible for the continual performance, operation and maintenance of all stormwater facilities in accordance with the standards and requirements of the City and remain responsible for any liability as a result of these duties.

B. New stormwater facilities shall have a written operation and maintenance (O&M) plan. Furthermore, existing facilities may be required to develop a written O&M Plan.

- 1. The O&M plan shall at a minimum address all stormwater facilities and BMPs at the site and address the long-term funding mechanism to support O&M.

**Exhibit
B**

2. The O&M plan shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner(s). As such the O&M plan shall be recorded and filed with the County Auditor.
 3. The property owner(s) shall maintain a log of inspection and maintenance activities, and shall provide a copy of the inspection and maintenance log upon request by the City or other agency with jurisdiction. At a minimum a copy of these records shall be submitted to the City annually.
- C. All stormwater facilities, BMPs, O&M plans, and records shall be subject to inspection by the City.
- D. The City may assume ownership of privately owned residential facilities only if the following conditions have been met:
1. The facility shall be located entirely upon a parcel or tract, which must be transferred to City ownership.
 2. All necessary easements or dedications entitling the City to properly access and maintain the facility have been conveyed to the City.
 3. The City has determined that the facility is in the dedicated public road right-of-way or that maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 - a. Flooding
 - b. Downstream erosion
 - c. Property damage due to improper function of the facility
 - d. Safety hazard associated with the facility
 - e. Degradation of water quality
 - f. Degradation to the general welfare of the community, and
 4. The City has inspected the facility and any construction deficiencies have been repaired at the property owner(s) expense prior to the City assuming ownership.
- E. The City may, in its sole discretion, decline acceptance of a facility after considering costs associated with maintenance by the City, and the protection of or improvements to the health, safety and welfare of the community based upon review of the existence of, or potential for:
- a. Flooding
 - b. Downstream erosion
 - c. Property damage due to improper function of the facility
 - d. Safety hazard associated with the facility
 - e. Degradation of water quality
 - f. Degradation to the general welfare of the community

13.30.100 Right of Entry

A. Inspection and Sampling

The City may enter and inspect a site subject to regulation under this chapter as often as may be necessary to determine compliance. Inspections may occur before, during and after construction.

(1) The City shall have access to all parts of the premises for the purposes of inspection, sampling and examination of discharges to the stormwater system, and the performance of any additional duties as defined by State and Federal law.

(2) The City has the right to set up such devices as are necessary to conduct monitoring and/or sampling of the premises' stormwater discharge.

(3) The City has the right to require an owner or occupier of premises to install such sampling and monitoring equipment, as the City deems necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or occupier at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the premises shall be promptly removed by the owner or occupier upon the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be paid by the owner or occupier.

(5) Property owner(s) shall upon request provide the City access to all records related to the operation and maintenance of the stormwater facilities and BMPs including but not limited to Stormwater Site Plans, Stormwater Pollution Prevention Plans, and Operation and Maintenance Plans and records.

B. Search Warrants

Unless entry is consented to by the owner or person(s) in control of a site or portion of a site or unless conditions are reasonably believed to exist which create imminent hazard, the City shall obtain a search warrant, prior to entry, as authorized by the laws of the State of Washington.

C. Emergency Access

In the event the violation constitutes an immediate danger to public health or public safety, the City is authorized to enter upon private property, without giving prior notice, to take any and all measures necessary to abate the violation. The City shall be entitled to recover all costs of abatement from the owner(s) or occupier.

13.30.110 Requirement to Prevent, Control and Reduce Stormwater Pollutants

The owner(s) or occupier of any activity, operation or facility that may cause or contribute to pollution or contamination of stormwater or the storm drainage system shall provide, at the owner's or occupier's expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for property that is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

13.30.120 Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected release of materials that are resulting or may result in pollutants discharging into stormwater, the storm drain system, or waters of the State, the person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of a release of hazardous materials, the responsible person shall immediately notify emergency response agencies and the City of the occurrence. In the event of a release of non-hazardous materials, the responsible person shall immediately notify the City.

13.30.130 Investigation

The City shall investigate reports of discharges from construction sites and stormwater facilities. The City's first priority for investigation and resolution are health and safety. Investigation of a violation of this chapter may be initiated by the City upon observation or report of any suspected violation.

13.30.140 Violations, Enforcement and Penalties

- A. It is unlawful for any person to violate any provision or fail to comply with any of the requirements set forth in this chapter. Any person who has violated or continues to violate the requirements of this chapter may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the City may enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city is authorized to seek costs of the abatement in accordance with EWMC 8.20.120.
- B. Enforcement. Enforcement action shall be taken accordance with the provisions of Chapter 8.20 EWMC.
- C. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the city may impose alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, cleanup, or other alternative actions deemed appropriate by the city.
- D. Suspension of MS4 Access
 - 1. Emergency Cease and Desist Orders. When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city may issue an order to the violator directing the violator to immediately cease and desist all such violations and directing the violator to:
 - (a) Immediately comply with all ordinance requirements; and
 - (b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

- (c) Any person notified of an emergency order under this Subsection shall immediately comply and stop or eliminate the endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the city may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.
2. **Suspension in Emergency Situations.** The city 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 city 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.
 3. **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. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the city.
- E. **Cost of Abatement of the Violation.** The owner of the property or person responsible for the violation will be notified of the cost of abatement, including administrative costs. Payment in full shall be due within 30 days and on the 31st day interest may be applied at a rate of eight percent per annum. After 90 days, if payment in full has not been received, a lien may be filed on the property and foreclosed as provided in Chapter 35.67 RCW. The director may approve a payment plan of equal payments evenly spaced over no more than 12 months.
- F. **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 city to seek cumulative remedies. The city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including but not limited to sampling and monitoring expenses.

13.30.150 Fees

Application, review and inspections fees for Stormwater Pollution Prevention Plans and Stormwater Plans shall be established by resolution of the City Council.

13.30.160 Other Regulations

This chapter is not intended to modify or repeal any other rule, regulation or provision of law. The requirements of this chapter are in addition to the requirements of any other chapter, rule, regulation or other provision of law. Where a conflict arises, whichever provision is more restrictive or imposes greater protection of health, welfare, public safety or the environment shall control.

13.30.170 Adoption by Reference

The city of East Wenatchee adopts by this reference the *Stormwater Management Manual for Eastern Washington*, Department of Ecology Publication Number 04-10-076 dated September 2004, and any amendments. A copy of *Stormwater Management Manual for Eastern Washington* has been filed with the City Clerk.

13.30.180 Effective Date

Section 13.30.170 of this chapter shall be effective five days after publication of the ordinance enacting this chapter. All other sections of this chapter shall be effective as of February 16, 2011.

13.30.190 Severability

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application thereof shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

Findings of Fact

1. The City of East Wenatchee is regulated under the National Pollutant Discharge Elimination System (“NPDES”) Phase II Program administered by the Washington State Department of Ecology (DOE). The City’s Eastern Washington Phase II Municipal Stormwater Permit - and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Eastern Washington was issued on January 17, 2007 and was subsequently modified on June 17, 2009. The permit has an effective date of February 16, 2007.
2. In accordance with Section S5(B)(4) of the NPDES Phase II Permit, the City is required to develop and adopt Construction Stormwater regulations to reduce pollutants in stormwater runoff from construction activities by February 16, 2010. Regulations must be implemented and enforced by February 16, 2011.
3. In accordance with Section S5(B)(5) of the NPDES Phase II Permit, the City is required to develop, and adopt Post-Construction Stormwater regulations to address stormwater management from new and redevelopment projects by February 16, 2010. Regulations must be implemented and enforced by February 16, 2011.
4. **Public Involvement.** The City, in partnership with Chelan County, Douglas County, and the City of Wenatchee adopted a Public Involvement, Education and Outreach Plan in February 2008. The following outreach efforts were initiated specific to the proposal:
 - a) A public open house was held on November 16, 2009 at the Wenatchee Convention Center to provide information relative to the proposed regulations for Construction Stormwater control and Post-Construction Stormwater management. Copies of the draft documents were available at the open house.
 - b) A Steering Committee was formed in 2008 involving a diverse group of people representing various businesses, agencies and local citizens. The Steering Committee held meetings in 2009 (September 30, and November 4) to review various documents related to the Construction Stormwater control and Post-Construction Stormwater management.
 - c) A Workshop was held with the East Wenatchee Planning Commission on January 25, 2010.
 - d) A duly advertised public hearing was held by the East Wenatchee Planning Commission on February 2, 2010 to obtain public comment on the proposed ordinance.
5. **Environmental Review.** An Environmental Checklist was prepared on October 1, 2009. A threshold determination and environmental review pursuant to RCW 43.21C the State Environmental Policy Act was completed and a Determination of Non-significance was issued on October 30, 2009. The comment period

**Exhibit
C**

- deadline for the DNS was November 17, 2009. No comments were received indicating that the proposal would have a probable significant adverse impact on the environment.
6. The proposed Construction and Post-Construction regulations will reduce soil erosion and control stormwater runoff resulting from land-disturbing activities both during and after construction through the use of best management practices which will improve and maintain water quality in compliance with the Clean Water Act.
 7. The proposed regulations will reduce the need for costly maintenance and repairs to roads, embankments, ditches, streams, wetlands, and stormwater control facilities due to uncontrolled soil erosion and surface water runoff.
 8. The proposed regulation provides for reduced stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.
 9. The proposed regulations have been developed in partnership with the City of Wenatchee, Chelan County and Douglas County to provide local consistency in the approach to compliance with the NPDES Phase II Permit.
 10. The Wenatchee Valley Stormwater Technical Advisory Committee has worked with a Steering Committee comprised of elected officials, developers, designers, business representatives, citizens and environmental groups in the development of these regulations and programmatic elements associated with compliance with the NPDES Phase II Permit.
 11. East Wenatchee has adopted a Comprehensive Plan in accordance with the requirements of the Growth Management Act (GMA), RCW Chapter 36.70A.
 12. RCW Chapters 35A.63.100 and 36.70A.040 authorize the adoption of development regulations.
 13. In accordance with RCW 36.70A.106, the proposed amendments were submitted to the Washington State Department of Commerce and other state and local agencies on November 2, 2009.
 14. The Notice of Public Hearing was published in the Wenatchee World on January 22, 2010.
 15. The East Wenatchee Planning Commission conducted a duly advertised public hearing on February 2, 2010. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
 16. The East Wenatchee Planning Commission has reviewed the entire record including the goals and policies of the comprehensive plans and public testimony as it relates to the proposed development regulations.

CONCLUSIONS

1. It is the determination of the responsible official that no more than a moderate effect on the environment is a reasonable probability as a result of the proposed action. The proper exercise of the threshold determination process as required by WAC 197-11 is that an environmental impact statement is not required to be prepared for this project. The procedural and substantive requirements of the State Environmental Policy Act have been satisfied.
2. Adoption of the proposed ordinance is in compliance with the conditions and requirements of the Eastern Washington NPDES Phase II Municipal Stormwater Permit.
3. The proposed text amendment is consistent with and implements the goals and policies in the Greater East Wenatchee Area Comprehensive Plan.
4. Proper legal requirements of RCW 36.70A.106 and Title 19 EWMC were met and the community was given the opportunity to comment on the proposal at duly noticed public workshops and a public hearing.
5. Approval of the proposal will not be detrimental to the public health, safety, and general welfare.