

RESOLUTION 196-10

SEDGWICK COUNTY STORM WATER MANAGEMENT CODE

WHEREAS, Sedgwick County is regulated under the Kansas Water Pollution Control General MS4 Permit (MS4 Permit) and Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES); and

WHEREAS, the MS4 Permit requires Sedgwick County to implement best management practices associated with the MS4 Permit's six minimum control measures; and

WHEREAS, the MS4 Permit requires Sedgwick County to implement best management practices to attenuate the discharge of each total maximum daily load regulated parameter identified in the MS4 Permit; and

WHEREAS, the conditions of the MS4 Permit broadly apply to activities, such as the permitting and inspections of development, the adoption and enforcement of relevant regulations, the detection and elimination of non-storm water discharges, the maintenance and operations of County facilities and other activities, that are conducted by Sedgwick County and which have been identified by the United States Environmental Protection Agency and the Kansas Department of Health and Environment as relevant to pollutants that may be discharged to the Sedgwick County Municipal Separate Storm Sewer System; and

WHEREAS, the Board of County Commissioners finds it necessary to adopt the Sedgwick County Storm Water Management Code in order to comply with the MS4 Permit.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, THAT THE SEDGWICK COUNTY STORM WATER MANAGEMENT CODE BE AND IS HEREBY ADOPTED.

SECTION I. THE SEDGWICK COUNTY STORMWATER MANAGEMENT CODE.

ARTICLE I. IN GENERAL

Sec. 1. Acronyms.

The following abbreviations, when used in this Code, shall have the designated meaning:

BMP	-	Best Management Practices
CFR	-	Code of Federal Regulations
CLOMR	-	Conditional Letter of Map Revision
EPA	-	U.S. Environmental Protection Agency
HHW	-	Hazardous Household Waste
ILC	-	Individual Lot Certification

KAR	-	Kansas Administrative Regulations
KDHE	-	Kansas Department of Health and Environment
KSA	-	Kansas Statutes Annotated
KS-CGP	-	Kansas General Permit for Storm water Discharges from Construction Sites or Construction General Permit
LOMR	-	Letter of Map Revision
MS4	-	Municipal Separate Storm Sewer System
NOI	-	Notice of Intent
NOTO	-	Notice of Transfer of Ownership
NOV	-	Notice of Violation
NPDES	-	National Pollutant Discharge Elimination
SWPPP	-	System Storm Water Pollution Prevention Plan
TMDL	-	Total Maximum Daily Load
USC	-	United States Code

Sec. 2. Definitions.

Unless otherwise expressly stated or unless the context clearly indicates a different intention, the following terms shall, for the purposes of this Code, have the meanings indicated in this section:

- (1) As-built plan means a drawing showing the actual state of permanent storm water facilities as installed.
- (2) Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (3) Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (4) Commercial means pertaining to any business, trade, industry or other activity engaged in for profit.
- (5) Construction activity means any construction practices or work including, but not limited to, clearing, grubbing, grading, and excavation which disturbs one (1.0) acre or more; or which is part of a larger common plan of development or sale which disturbs a cumulative total area of one (1.0) acre or more during the life of the project.

- (6) Construction general permit (KS-CGP) refers to the Kansas General Permit for Storm water Discharges from Construction Sites.
- (7) Construction related waste means waste that is generated through construction, land development and land-disturbing activities that may cause adverse impacts to water quality. Construction related waste includes, but is not limited to, discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site.
- (8) Contractor means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.
- (9) County means Sedgwick County, Kansas.
- (10) Development means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.
- (11) Director means the person appointed to the position of the Director of the Sedgwick County Department of Environmental Resources or his/her duly authorized representative.
- (12) Discharge means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
- (13) Discharger means 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.
- (14) Drainage plan refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or for issuance of a building permit.
- (15) Earthwork means the disturbance of soils on a site associated with clearing, grading, or excavation activities.
- (16) Facility means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.
- (17) Fertilizer means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

- (18) Final stabilization means all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the cover which is typical for undisturbed areas, unpaved areas, or areas not covered by permanent structures, in the geographic location of the construction site, has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (19) Garbage means putrescible 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.
- (20) Hazardous household waste (HHW) means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.
- (21) Hazardous material means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
- (22) Impervious area or impervious cover means the number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.
- (23) Illegal discharge means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Article III of this Code.
- (24) Illicit connection is defined as either of the following:
- a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any 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 Sedgwick County; or,
 - b. any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved in writing by Sedgwick County.

- (25) Individual Lot Certification (ILC) means the Individual Lot Certification that is required by the KS-CGP to be completed when the permittee transfers ownership of a lot or a portion of the overall construction activity that is covered under the KS-CGP.
- (26) Industrial activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).
- (27) Industry means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES storm water discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity.
- (28) Kansas Construction General Permit (KS-CGP) means the Kansas Water Pollution Control General Permit and Authorization to Discharge Storm Water Runoff from Construction Activities under the National Pollutant Discharge Elimination System, State of Kansas General Permit No. S-MCST-0701-1.
- (29) Kansas Industrial General Permit means the industrial general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
- (30) Land disturbance means the disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.
- (31) Municipal separate storm sewer system (MS4) (also storm water drainage system) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are owned or operated by Sedgwick County, Kansas which is designed or used for collecting or conveying stormwater.
- (32) MS4 Permit means the Kansas Water Pollution Control General MS4 Permit and Authorization to Discharge Under the National Pollutant Discharge Elimination System, Kansas Permit No. M-AR94-SU01 and General Permit No. G-UA-0604-SO01.
- (33) National Pollutant Discharge Elimination System (NPDES) means the national system for the issuance of permits under 42 USC Section 1342 and includes any state or interstate program which has been approved by the USEPA Director, in whole or in part, pursuant to 42 USC Section 1342.

- (34) Non-storm water discharge means any discharge to the MS4 or to surface waters directly that is not composed entirely of storm water.
- (35) Notice of Intent (NOI) means the notice of intent that is required by either the Kansas Industrial General Permit or the KS-CGP.
- (36) Notice of Transfer of Ownership (NOTO) means the notice of transfer of ownership required by the KS-CGP.
- (37) Notice of Violation (NOV) means a written notice provided by the Director to the owner or contractor detailing any violations of this Code and any corrective action expected of the violators.
- (38) Oil means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.
- (39) Owner(s) or operator(s) means the party or parties that either individually or taken together meet the following two criteria: 1) they have operational control over the site specifications; 2) they have the day-to-day operational control of those activities at the construction site necessary to ensure compliance. For a typical commercial construction site, the owner or general contractor is herein defined to be the "owner or operator". For a typical residential development (subdivision), the owner or an authorized representative is herein defined to be the "owner or operator". Each owner or operator who individually does not engage in construction activity of greater than one (1.0) acre must apply when the construction activity is part of a larger common plan of development.
- (40) Person or person(s) means any individual or group of individuals, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (41) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.
- (42) Petroleum product means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.
- (43) Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to dredged spoil, spoil waste, incinerator residue, sewage, sewage sludge, garbage, refuse, rubbish, litter, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment,

rock, sand, soil, yard waste, paints, varnishes, hazardous household wastes, used motor oil, anti-freeze, animal waste, floatables, pesticides, herbicides, fertilizers, and industrial, municipal, and agricultural waste discharged into water and/or any substance, debris, matter that may be carried downstream by storm water runoff, and/or any substance or matter that may be dissolved in storm water runoff.

- (44) Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (45) Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (46) Qualified personnel means persons who possess 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.
- (47) Redevelopment or redevelopment site means a change to previously existing improved property, including but not limited to the demolition or building of structures, filling, grading, paving, or excavating.
- (48) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.
- (49) Rubbish means nonputrescible 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 grass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).
- (50) Sewage means the domestic sewage and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to the city sewage treatment plant for treatment.
- (51) Site means the land or water area where development or redevelopment is physically located or being conducted, including lands adjacent to the development that is not subject to land disturbing activities but that is used as a staging area or for other uses in connection with the new development or redevelopment.

- (52) Storm water means storm water runoff induced by atmospheric precipitation, including snow melt runoff and surface runoff and drainage.
- (53) Storm water drainage connection means any drain or conveyance, whether on the surface or subsurface, which was constructed or is intended to allow discharges of storm water runoff to enter the MS4 or to surface waters directly, regardless of whether said drain or conveyance had been previously allowed, permitted, or approved by Sedgwick County.
- (54) Storm water drainage system. See the definition for municipal separate storm sewer system (MS4).
- (55) Storm water management facility or storm water control facility means any structure or installation used to manage storm water quality, flow rate, or volume.
- (56) Storm Water Manual refers to the latest version, as amended, of the document on file with the Director entitled City of Wichita/Sedgwick County Storm Water Manual.
- (57) Storm Water Pollution Prevention Plan (SWPPP) means a document required by KDHE and/or Sedgwick County which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction activity.
- (58) Subdivision development means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction taking place thereon.
- (59) Surface water (or surface waters) means all of the following:
- (a) streams, including rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps and cavern streams, and any alluvial aquifers associated with these surface waters; and,
 - (b) lakes, including oxbow lakes and other natural lakes and man-made reservoirs, lakes and ponds; and,
 - (c) wetlands, including water bodies meeting the technical definition for jurisdictional wetlands given in the "corps of engineers wetlands delineation manual," as published in January 1987; and,
 - (d) surface waters of the state means all surface waters occurring within the borders of the state of Kansas or forming a part of the border between Kansas and one of the adjoining states.
- (60) Undisturbed property means real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.

- (61) United States Environmental Protection Agency (USEPA) means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.
- (62) Water quality standard means the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses.
- (63) Waters of the state (or water) means 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 of the state.
- (64) Waters of the United States means 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 waters identified in this definition; and any water 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.
- (65) Watershed means the cumulative area that drains to a common point.
- (66) Watershed plan means an engineering and planning study for the drainage system and/or land areas of a watershed that may include a plan for storm water management in the watershed. Watershed plans can include, but are not limited to, the analysis of flooding problems, water quality problems, potential storm water capital improvements, land use patterns, and regulatory issues for existing and potential future land use conditions and address solutions to these problems.
- (67) Wetland means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- (68) Wastewater: means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

- (69) Yard waste means leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Sec. 3. Findings of Fact.

(a) The surface waters of Sedgwick County are subject to the discharge of pollutants, both through inappropriate non-storm water discharges into the MS4 or the surface waters directly, and through the wash off and transport of sediment, wastes, and other pollutants found on the land and built surfaces by storm water runoff occurring as a result of atmospheric precipitation events.

(b) Further, such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.

(c) Further, this Code will 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.

(d) Further, such discharges are inconsistent with the provisions and goals of the Clean Water Act, the United States Federal and State of Kansas NPDES programs, and other Federal and state requirements for water quality and environmental preservation.

(e) Further, a reasonable establishment of restrictions and regulations on activities within Sedgwick County is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the County and within downstream communities, and to comply with the provisions of the County's responsibilities under the Clean Water Act, the NPDES program and the Kansas MS4 Permit.

Sec. 4. Purpose of Code.

It is the purpose of this Code to promote the public health, safety, and general welfare and to minimize public and private losses due to the discharge of pollutants into the MS4 or the surface waters directly by provisions designed to:

- (1) regulate the contribution of pollutants to the Sedgwick County MS4 or to the surface waters directly, as required by the Kansas MS4 Permit;

- (2) establish methods for controlling the introduction of pollutants into the MS4 in order to comply with the requirements of the MS4 permit, including but not limited to:
 - (1) prohibiting illegal connections and non-storm water discharges to the MS4 or to surface waters directly;
 - (2) prohibiting the discharge of sediment and other construction related waste to the MS4 or to surface waters directly from construction activities;
 - (3) facilitating compliance with county standards and permits by owners of developed, redeveloped and undeveloped properties within the unincorporated area;
 - (4) regulating the design, construction and maintenance of best management practices that are implemented to reduce pollutants in storm water runoff from new developments and redevelopments; and,
 - (5) establishing the legal authority to carry out the plan reviews, inspections, surveillance and monitoring procedures necessary to ensure compliance with this Code;
- (3) minimize the potential for expenditure of public money for the costly clean-up of polluted surface waters; and,
- (4) ensure that those who are responsible for non-storm water discharges into the Sedgwick County MS4 or into surface waters directly assume responsibility for their actions.

Sec. 5. Applicability of Code.

The provisions of this Code shall apply to all unincorporated areas of Sedgwick County, Kansas, except when and where otherwise stated in this Code.

Sec. 6. Interpretation of Code.

The provisions of this Code are not intended to repeal, abrogate, or impair any other code, chapter, rule, regulation or other provision of law. However, where the provisions of this Code conflict or overlap with such code, chapter, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control. In the interpretation and application of the provisions of this Code, all provisions shall be:

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the governing body; and,
- (3) deemed neither to limit or repeal any other powers granted under state statute.

Sec. 7. Warning and disclaimer of liability.

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

(b) The provisions of this Code shall not create liability on the part of Sedgwick County, or any officer or employee thereof, for any pollution that results from reliance on the provisions of this Code or any administrative decision lawfully made thereunder.

Sec. 8. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. If a person has violated or continues to violate the provisions of this Code, the Director may petition for a preliminary or permanent injunction, within a court of proper jurisdiction, restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 9. Severability.

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

Sec. 10. Saving clause.

All rights and remedies of Sedgwick County, and the property owners and residents thereof, are expressly saved as to any and all violations of the Sedgwick County Code, or any prior resolution that have accrued at the time of the effective resolution. Sedgwick County shall have all the powers that existed prior to the effective date of this resolution as to all such accrued violations.

Secs. 11 to 29. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 30. Designation and duties of the Director

The Director of the Sedgwick County Department of Environmental Resources shall administer, implement, and enforce the provisions of this Code. Any powers granted or duties imposed upon the Director by this Code may be delegated by the Director to persons or entities acting in accordance with this Code and in the beneficial interest of or in the employ of Sedgwick County.

Sec. 31. Compliance monitoring.

(a) Right of entry. The Director shall have the right to enter the premises of any person discharging storm water to the MS4 or to surface waters directly at any reasonable time to determine if the discharger/discharge is in compliance with all requirements of this Code, and/or with any state or federal discharge permit, limitation or requirement. Dischargers shall allow the Director ready access to all parts of the premises for purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties related to the determination, correction or elimination of the discharge in question.

(b) Records. Subject to the requirements of Section 31(a), dischargers shall make available upon request any SWPPPs and modifications thereto, permits, design and construction documents, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this Code and with any other state or federal discharge permit.

(c) Sampling. The Director shall have the right to install and operate on the discharger's property such devices that are necessary to conduct sampling of storm water discharges.

Sec. 32. Unlawful acts.

The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States; the failure to comply with the provisions of this Code; the failure to comply with any SWPPP or plan developed as required by this Code; or the failure to comply with any directive, citation, or order issued under this Code are violations of this Code for which notice of violations may be issued and enforcement action may be taken.

Sec. 33. Notice of violation and order to comply.

(a) Whenever the Director or his/her authorized designee under this Code has probable cause to believe that a person, owner, operator, firm or corporation is committing or has committed a violation of any provision of this Code, the Director or such authorized designee may first cause a notice of violation and order to comply to be served upon said person, owner, operator, firm or corporation responsible therefore. Such notice shall:

- (1) be in writing;
- (2) include a description of the real estate and/or street address sufficient for identification;
- (3) specify the violation(s) that exists and the corrective action(s) required;
- (4) allow a reasonable time for the performance of any act it requires to correct the said violation;
- (5) state the amount of fines or penalties associated with each violation.

(b) Notice of violations shall be served upon the person(s) or owner(s) or operator(s) deemed responsible for such violations; provided that such notice shall be deemed to be properly served upon such person(s) or owner(s) or operator(s) if a copy thereof is delivered to him or her

personally or if not found, by leaving a copy thereof at the place of business, residence, construction activity or property where the violation(s) occurred, or at his or her usual place of abode, with a person of suitable age and discretion who shall be informed of the contents thereof, or by sending a copy thereof by mail to his or her last known address, or if the envelope with the copy is returned showing it has not been delivered to him or her, by posting a copy thereof in a conspicuous place in or about the area of violation.

Such notice may require without limitation:

- (1) the performance of monitoring, analyses, and reporting;
- (2) the elimination of illegal discharges and/or illicit connections;
- (3) the revision and/or resubmission and approval of development or construction plans, including but not limited to SWPPPs;
- (4) that violating discharges, practices, or operations causing or the source of such discharges or potential discharges of pollutants shall cease and desist;
- (5) the abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and,
- (6) payment of any associated fine or penalty to cover administrative and remediation costs; and
- (7) the implementation or redesign/repair of source control or treatment BMPs.

(c) Prosecution of violations. In case any notice of violation and order to correct is not promptly complied with, the Director may request the County Counselor to institute an appropriate action or proceeding against any person, owner, operator, firm and/or corporation responsible for the violation:

- (1) Stop Work Order. To restrain, correct or remove the violation or to compel such person, owner, operator, firm or corporation to refrain from any further execution of work;
- (2) Cease and Desist Order. To restrain from performing the activity(s) not in compliance with the provisions hereof, or in violation of a plan or specification under which an approval, permit or certificate was issued;
- (3) Requirement for Corrective Action. To correct the construction, installation, alteration, removal, demolition, use or maintenance of best management practices and storm water management facilities;
- (4) Withholding Certificate of Occupancy. To prevent from occupying or using the structure(s) or development(s) or any part thereof erected, constructed, installed or altered in violation of, or not in compliance with the provisions hereof, or in violation of a plan or specification under which an approval, permit or certificate was issued;
- (5) Compliance Order. To comply with the plan(s) approved by the Director under this Code or any directive, citation, or order issued under this Code;
- (6) Compliance Order. To comply with the provisions of this Code.
- (7) Fines and Penalties. Additionally, or in the alternative, the Director may proceed with fines and penalties section hereof.

Sec. 34. Violation penalties.

(a) Whenever the Director or his/her authorized designee under this Code has probable cause to believe that a person, owner, operator, firm or corporation is committing or has committed a violation of any provision of this Code, the Director or such authorized designee may serve upon such accused person a uniform complaint and notice to appear, or in the alternative, may sign a complaint against the accused person and cause a notice to appear to be issued according to the provisions of KSA 19-1401, et seq., the Code for enforcement of County codes and resolutions. Pursuant to KSA 19-101d, prosecution for any such violation shall be conducted in the manner provided by law in the district court under the code for the enforcement of County codes and resolutions as provided by KSA 19-4701, et seq. Writs or processes necessary for the prosecution of such violations shall be substantially in the form of writs and process as shown in KSA 19-4738. The County shall provide all necessary supplies, forms and records at its own expense.

(b) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within three (3) days of the decision upholding the decision of the Director, then the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Director or his/her designated contractor to enter upon the premises for the purposes set forth above.

(c) The owner of subject private property shall reimburse Sedgwick County for its direct and related expenses required to abate the violation and/or restore the property. Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the Director or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this section shall become liable to Sedgwick County by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of 10 percent (10%) per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

Sec. 35. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Code is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated in accordance with Chapter 19 of the Sedgwick County Code.

Sec. 36. Remedies not exclusive.

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

Sec. 37. Procedures.

Procedures for prosecution of violations of this Code shall be pursuant to Chapter 8 of the Sedgwick County Code, with the exception of Section 8-5.

Sec. 38. Classification of violations and schedule of fines.

The following schedule of fines for violations of this Code is established. Such fines are payable in accordance with K.S.A. 19-4716. The minimum fine for any violation shall be no less than two hundred and fifty dollars (\$250) per day the violation for each day is maintained and not more than two thousand five hundred (\$2,500) per day for each day the violation is maintained.

Violation Description	Convictions for Violations Which Occur Within 12-month period		
	First	Second	Third
Failure to obtain required NDPEs permit from KDHE	\$250	\$500	\$1000
Failure to prepare or comply with a SWPPP	\$250	\$500	\$1000
Failure to maintain BMPs	\$250	\$500	\$1000
Illegal discharges or dumping	\$250	\$1000	\$2500
Failure to comply with an approved drainage plan	\$250	\$1000	\$2500
Failure to inspect storm water control facilities	\$50	\$250	\$500
Failure to maintain storm water control facilities	\$250	\$500	\$1000
All other violations	\$250	\$500	\$1000

Sec. 39. Separate offense.

Each day that any violation of this Code occurs after the passage of the reasonable time for performance of any act required by a notice of violation(s) and order(s) to comply has been served in accordance with the terms and provisions hereof shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person, owner, operator, firm or corporation is found guilty of a violation hereunder and it shall appear to the Court that the violation complained of as prescribed in this Code is continuing, then in addition to the penalty as set forth, the Court may enter such order as it deems appropriate to cause the violation to be abated.

Sec. 40. Effect of plan approval.

The approval of a SWPPP or any other plan or specification required under this Code shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of the Sedgwick County Building Code or of this Code. No plan approval presuming to give authority to violate or cancel the provisions hereof shall be valid, except insofar as the work or use which it authorized is lawful. The approval of a SWPPP or any other plan or specification shall not prevent the Director from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this Code or of any other County code or resolution or from revoking any certificate of approval when issued in error.

Sec. 41. Procedures for appeals from the requirements of this Code.

(a) The Director shall hear and decide appeals from the requirements of this Code.

(b) The Storm Water Appeals Board shall hear appeals from any decision or determination made by the Director in the enforcement or administration of this Code. Such appeals shall be in writing and shall specify the grounds for appeal. Such appeals shall be filed with the Director within thirty (30) days of the decision or determination appealed from. The Director shall notify the Storm Water Appeals Board that an appeal has been filed. A nonrefundable processing fee of \$300.00 shall be paid to the Department of Environmental Resources at the time of the filing of an appeal. The Storm Water Appeals Board shall fix a reasonable time for the appeals, giving notice to the appealing party or parties at least fifteen (15) days prior to such hearing. Appeals shall be decided within a reasonable time. At appeal hearings, any party may appear in person, by agent or by attorney. The Storm Water Appeals Board may reverse or affirm, in whole or in part, or modify the decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances;

(c) Any person aggrieved by the decision or determination of the Storm Water Appeals Board may appeal such decision or determination to the Board of County Commissioners. The Board of County Commissioners will review such decision or determination in the manner provided above for appeals from decisions by the Director; except that such appeals shall be filed with the County Clerk and the notice to the appealing party or parties shall be provided at least five (5) days prior to such hearings.

Sec. 42. Construction Site Inspection Fees.

Amount. Construction site inspection fees shall be assessed for construction and land disturbing activities that require submittal of a SWPPP in accordance with the provisions of this Code as set forth below. All fees provided for herein are for regulatory purposes, and shall be payable to the Sedgwick County Treasurer and deposited in and credited to the County general fund.

Construction Activity Size	Fee (Base Fee = \$75)
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1 acre or less	Base Fee
Greater than 1 acre	Base Fee + \$15 per acre

Secs. 43 to 49. Reserved.

ARTICLE III. GENERAL

Sec. 50. Surface water protection.

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

Sec. 51. Existing eroding areas.

(a) Upon written notification from the Director, the owner of a property which exhibits unstable, exposed or eroding soil conditions less than one (1) acre in size shall correct the problem within a thirty (30) calendar day period. This period may be extended upon request if conditions warrant.

(b) Minimum correction measures shall include soil stabilization and revegetation of all exposed soil surfaces and otherwise engaging in vegetative erosion prevention and sediment control BMPs. Before commencing corrective measures, the owner may consult with the Director to determine an acceptable method of correction.

- (c) This section does not apply to:
- (1) exposed soil caused by farming activities; and,
 - (2) minor land disturbing activities at individual locations, such as gardening, the installation of septic tanks, posts or poles, building or grounds maintenance and landscaping, are exempt from this provision, provided that the activity does not result in prolonged or permanent soil exposure and the exposed area is not equal to or greater than one (1) acre.

Secs. 52 to 59. Reserved.

ARTICLE IV. ILLEGAL DISCHARGES

Sec. 60. Discharge prohibitions.

(a) No person shall dump, litter, discharge or cause to be discharged into the MS4 or surface waters directly any solid, liquid or other discharge that is not composed entirely of storm

water, except as allowed in subsection (b). Discharges to the MS4 or surface waters that are not excepted in subsection (b) are in violation of this Code.

(b) The following non-storm water discharges are deemed acceptable and not a violation of this Code:

- (1) water line flushing;
- (2) diverted stream flow;
- (3) rising groundwaters;
- (4) uncontaminated groundwater infiltration as defined under 40 CFR 35.2005 (20) to separate storm sewers;
- (5) uncontaminated pumped groundwater;
- (6) contaminated groundwater if authorized by KDHE and approved by the County;
- (7) discharges from potable water sources;
- (8) foundation drains;
- (9) air conditioning condensate;
- (10) irrigation waters
- (11) springs;
- (12) water from crawl space pumps;
- (13) footing drains;
- (14) individual residential car washing;
- (15) flows from riparian habitats and wetlands;
- (16) de-chlorinated swimming pool discharges excluding filter backwash;
- (17) street wash water (excluding street sweepings which have been removed from the street);
- (18) discharges or flows from emergency fire fighting activities;
- (19) heat pump discharge waters (residential only);
- (20) treated wastewater meeting requirements of a NPDES permit;
- (21) other discharges determined not to be a significant source of pollutants to waters of the United States, a public health hazard or a nuisance; and,
- (22) discharges specified in writing by the Director as being necessary to protect public health and safety.

(c) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the USEPA and/or KDHE, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the Director for any discharge to the storm drain system.

(d) The construction, use, maintenance or continued existence of illicit connections to the MS4 or to surface waters directly 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. A person is

considered to be in violation of this Code if the person connects a line conveying sewage to the MS4 or to surface waters directly, or allows such a connection to continue.

Sec. 61. Illegal dumping.

It shall be illegal for any person to intentionally dump liquids or solids that are hazardous material or are considered by KDHE to be TMDL regulated parameters in Sedgwick County on the ground where there is potential exposure to rain or storm water and potential for the pollutant to reach the MS4.

Sec. 62. Suspension of MS4 Access.

(a) Suspension due to Illicit Discharges in Emergency Situations. The Director may, without prior notice, suspend storm water drainage connection(s) to the MS4 or to surface waters directly to a person, owner or operator 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 surface waters. If the discharger fails to comply with a suspension order issued in an emergency, the Director 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.

(b) Suspension due to the Detection of Illicit Discharge. Any person, owner or operator discharging to the MS4 or to surface waters directly in violation of this Code may have their storm water drainage connection(s) to the MS4 or to surface waters terminated if such termination would abate or reduce an illegal discharge. The Director will notify the violator of the proposed termination of its MS4 access. The violator may petition Sedgwick County for a reconsideration and hearing. It is a violation of this Code to reinstate a storm water drainage connection(s) to the premises that has been terminated pursuant to this Article, without the prior approval of the Director.

Sec. 63. Hazardous material discharges.

(a) Any person(s), owner or operator responsible for any release of hazardous material that may leach, flow, enter or otherwise be introduced into the MS4 or to surface waters directly shall comply with all state, federal, and any other local law requiring reporting, clean-up, containment, and any other appropriate remedial action in response to the release.

(b) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the MS4, or surface waters directly said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(c) In the event of such a release of hazardous material said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous material, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Sec. 64. Industrial or construction activity discharges.

(a) Any person, owner or operator subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director prior to the allowing of discharges to the MS4.

(b) The owner or operator of commercial or industrial establishments or construction activities shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or to surface waters directly through the use of best management practices. Further, any person responsible for a property or premise, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional BMPs to prevent the further discharge of pollutants.

(c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

Secs. 65 to 69. Reserved.

**ARTICLE V. STORM WATER RUNOFF MANAGEMENT
FOR CONSTRUCTION ACTIVITIES**

Sec. 70. General prohibition.

Adequate erosion prevention and sediment control BMPs shall be employed for all land disturbing activities of any size. Land disturbing or construction activities of any size that the discharge of sediment or sediment-laden storm water runoff to the MS4, to surface waters directly discharges or onto adjacent properties are a violation of this Code.

Sec. 71. Applicability.

(a) All owners or operators of construction activities as described below that discharge storm water runoff to the MS4 or to surface waters directly shall comply with this Code:

- (1) Construction activities for which an NPDES permit from KDHE is required.
- (2) Construction activities for new developments or redevelopments which disturb less than one (<1.0) acre and which are not part of a larger common plan of development or sale if, in the opinion of the Director, the potential for water quality impact warrants consideration.

(b) Article V of this Code is not applicable to construction activities that are located on a farm property unless such activities require a Sedgwick County building permit and disturb less than one (<1.0) acre.

Sec. 72. Requirement for SWPPP.

(a) Submittal of a SWPPP to the Director is required for all applicable construction activities, as defined in Section 71.

- (b) No construction activities shall commence until:
- (1) the SWPPP for the construction site has been approved by the Director; and,
 - (2) the Director has received a copy of the NOI for the construction activity that indicates approval by KDHE; and,
 - (3) a Floodplain Development Permit is obtained, if applicable.

Sec. 73. General criteria.

The following general criteria are minimum requirements for the control of pollutants from applicable construction activities, as defined in Section 71. All erosion prevention and sediment control BMPs shall conform to the requirements of this section. The erosion prevention and sediment control BMPs shall apply to all features of the development site including street, utility installations, drainage facilities and other temporary and permanent improvements.

(a) Owners or operators of construction activities shall implement appropriate erosion prevention and sediment control BMPs as required by and in accordance with the KS-CGP, the Storm Water Manual and this Code. BMPs shall be installed, maintained and repaired by the owner or operator, at his/her expense, as required by the KS-CGP and/or as often as necessary to ensure continual compliance with the approved SWPPP and this Code. BMPs shall be installed and maintained in proper working condition during all stages of any land-disturbing activity.

(b) Owners or operators of construction activities shall control construction related waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste in a manner that eliminates the potential for litter or discharge of the construction related waste via storm water runoff, wind, improper handling and/or disposal or other means to the MS4 or to surface waters directly.

(c) The planning, phasing, and stabilization of all construction activities, related to erosion prevention and sediment control, shall be performed in accordance with the requirements of the KS-CGP and the approved SWPPP.

(d) The design, installation and maintenance of BMPs for construction related waste and for erosion prevention and sediment control shall be performed in accordance with criteria and requirements stated in the KS-CGP, except where more stringent criteria are set forth in this Code or are required by the Director. All BMPs must be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and good engineering practices. Measures selected for erosion prevention and sediment control must be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of stormwater runoff may be required, and must be fully described on the SWPPP if required.

(e) If periodic inspections or other information indicate that a BMP has been used inappropriately, or incorrectly, the owner or operator must replace or modify said BMP for relevant site situations at his/her expense.

(f) The Director may require more stringent standards or BMPs than those required by the KS-CGP or shown in the approved SWPPP where and when deemed necessary to reduce the potential for pollution impacts to streams, public property or adjacent property from sediment-laden stormwater runoff or discharges of other construction related waste. Such BMPs, if required, shall be installed by the owner or operator at his/her expense.

(g) Stripping of vegetation, re-grading, and other development activities shall be conducted so as to minimize erosion. Clearing and grubbing must be held to the minimum necessary. Construction must be sequenced to minimize the exposure time of cleared surface areas.

(h) If ownership of a construction activity is transferred, the owner or operator shall provide the Director with a signed copy of the NOTO that is submitted to KDHE.

(i) If ownership of a lot or portion of a construction activity is transferred, the owner or operator shall provide the Director with a signed copy of the ILC upon request.

Sec. 74. Required SWPPP components.

(a) SWPPPs submitted to the Director shall be prepared in accordance with the requirements of the KS-CGP and the plan preparation guidance provided by Volume 3 of the Storm Water Manual. The Director may request that additional information be submitted as necessary to allow a thorough review of the site conditions and BMPs proposed in the SWPPP. Omission of any required items shall render the SWPPP incomplete and the SWPPP will be returned to the owner or operator prior to review by the Director.

(b) SWPPPs shall be developed and prepared under the supervision of an engineer, geologist, architect, landscape architect or a Certified Professional in Erosion and Sediment Control.

(c) Amendments to SWPPP plans shall be prepared under the supervision of an engineer, geologist, architect, landscape architect or a Certified Professional in Erosion and Sediment Control and shall be made in accordance with the KS-CGP.

Sec. 75. Inspection and documentation requirements.

(a) Qualified personnel provided by the owner of the construction site shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, BMPs, and locations where vehicles enter or exit the site (construction entrances), at least once every seven (7) calendar days and within twenty-four (24) hours of the end of the storm that is one-half inch or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water drainage system. Erosion and sediment control measures identified in the SWPPP shall be inspected to ensure that they are maintained and operating correctly. Locations where the construction site discharges storm water to the MS4 or to surface waters directly shall be inspected to ascertain whether erosion control measures are effective in preventing sediment from discharging off-site. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

(b) The owner or operator shall prepare and maintain records and documentation for all inspections performed and for any changes to the approved SWPPP during construction and after final stabilization has been achieved. Records and documentation shall be kept in accordance with requirements of the KS-CGP and shall be provided to the Director upon request.

Sec. 76. Requirements at the time of project completion.

(a) Upon final stabilization of the construction activity, as defined in this Code, the owner shall submit written certification to the Director that the construction activity has been finally stabilized. The Director may coordinate with other County departments to withhold the final occupancy or use permit for any premises constructed as a result of the construction activity until such certification of final stabilization has been filed and the Director has determined, following any appropriate inspection, that the final stabilization has occurred and that any required permanent structural controls have been completed.

(b) The owner or operator shall remove and dispose of all temporary erosion prevention and sediment control BMPs within 30 days after final stabilization of the entire construction site is achieved, unless otherwise authorized by the Director. Trapped sediment and other disturbed areas resulting from the disposition of temporary measures shall be properly disposed of and/or permanently stabilized to prevent further erosion and sedimentation. BMP removal and disposal shall be performed at the expense of the owner or operator. BMPs located

in the public right-of-way and not disposed by the owner or operator within 30 days after final stabilization are a violation of this Code.

Secs. 77 to 99. Reserved.

ARTICLE VI. STORM WATER RUNOFF MANAGEMENT FOR NEW DEVELOPMENTS AND REDEVELOPMENTS

Sec. 100. Storm Water Quality Management Standards

(a) Applicability.

- (1) Water quality treatment and downstream channel protection shall be required of owners of new developments and redevelopments that causes a land disturbance greater than or equal to one (1) acre, including projects that cause a land disturbance less than one (1) acre that are part of a larger common plan of development or sale.
- (2) The requirements of Article VI of this chapter shall not apply to:
 - i. new developments or redevelopments that have a construction plan approved by January 1, 2011 and will have completed construction of all storm water management facilities within 90 days of January 1, 2011. This does not exempt such new developments from water quality management regulations that may be required in the future by EPA or KDHE; or,
 - ii. redevelopment projects that consist solely of ordinary maintenance activities, remodeling of buildings on the existing foundation, resurfacing (milling and overlay) of existing paved areas, and exterior changes or improvements.

(b) Water Quality Treatment Standard for New Developments. Storm water runoff from applicable new developments must be treated for water quality prior to discharge from the development site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.

(c) Water Quality Treatment Standard for Redevelopments. Owners of applicable redevelopments must adhere to one of the following requirements.

- (1) The total impervious cover of the property after redevelopment shall be reduced by at least twenty-percent (20%) from the total impervious cover of the property prior to the proposed redevelopment.
- (2) Storm water runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance

with the storm water treatment standards and criteria provided in the Storm Water Manual.

- (3) The owner shall provide storm water controls at an alternative location in the same watershed as the proposed redevelopment. The level of storm water control provided shall be equivalent to what would have been provided at the proposed redevelopment for either requirement 1 or 2 above, at a minimum.
- (4) In agreement and partnership with Sedgwick County, the owner shall provide engineering design and/or construction activities to address one or more known downstream water quality or channel erosion issues located within the same watershed as the proposed redevelopment, through stream restoration and/or other off-site remedies approved by the Director.
- (5) The owner shall pay a fee in-lieu-of water quality control and channel protection control, in an amount to be determined by the County in accordance with the in-lieu-of fee schedule as adopted by the County Commission of Sedgwick County Kansas per the watershed plan which covers the redevelopment.
- (6) Any combination of (1) through (5) above may be acceptable to the Sedgwick or other solution(s) approved by the Director that meets the intent of this chapter.

(d) Downstream Stabilization Standard. Downstream long-term channel protection shall be provided for applicable new developments and redevelopments prior to discharge from the new/redevelopment site in accordance with the downstream stabilization standards and criteria provided in the Storm Water Manual.

Sec. 101. Storm Water Quantity Management Standards

(a) Applicability. Storm water runoff peak discharge analysis and control shall be required for new developments and redevelopments that will create or add one (1) acre or greater of impervious cover, including projects that have less than one (1) acre in impervious cover that are part of a larger common plan of development or sale that will result in one (1) acre or greater of impervious cover.

(b) Water Quantity Management Standard. Storm water runoff peak discharge analysis and control shall be required for applicable new developments or redevelopments in accordance with the storm water quantity standards and criteria provided in the Storm Water Manual.

Sec. 102. Other Storm Water Management Requirements

(a) Applicability. Section 102 is applicable to new developments and redevelopments that are required to comply with Section 100 and/or Section 101 of this chapter.

(b) Alternative Standards for Individual Watersheds. Alternative storm water management standards, either lesser or greater than those specified in this chapter, may be required by the Director in those areas or watersheds where water quality, flooding or erosion

problems are known to exist, or in individual watersheds where a watershed plan or storm water master plan, approved by the County Commission of Sedgwick County, specifies such alternative standards.

- (c) Other Requirements for Storm Water Discharges.
 - (1) Storm water discharges shall be managed in consideration of the erosion control measures detailed in the Storm Water Manual.
 - (2) Any discharge of storm water runoff to groundwater must meet all applicable local, State and Federal requirements, permits, plans and programs. The owner is responsible for complying with all local State and Federal permits that are applicable to the site.

(d) Requirement to Stabilize Banks. Banks of all streams, channels, ditches and other earthen storm water conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.

(e) Requirement to Use the Storm Water Manual. All storm water facilities and systems, including those designed and constructed for water quality treatment, downstream channel stabilization, and peak discharge control shall be designed, constructed and maintained in accordance with the criteria, standards, and specifications presented in this chapter and in the Storm Water Manual. The standards for water quality treatment, downstream channel stabilization and peak discharge analysis and control shall be achieved through the use of one or more storm water quality management facilities that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the Storm Water Manual. Methods, designs or technologies for storm water quality management facilities that are not provided in the Storm Water Manual may be submitted for approval by the County if it is proven that such methods, designs or technologies will meet or exceed the storm water treatment standards set forth in the Storm Water Manual and this resolution. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the Storm Water Manual.

(f) Storm Water Facilities on Public Property. Storm water management facilities shall not be installed within public rights-of-way or on public property unless a permit has been issued by the County Engineer.

(g) Access Easement Required. In order to provide access to storm water and/or water quality volume reduction areas by inspection and maintenance personnel, vehicles and equipment, the property owner(s) shall provide an access and maintenance easement in accordance with the requirements and policies presented in the Storm Water Manual.

Sec. 103. Waivers and Exemptions from Storm Water Management Standards for New Developments

(a) Exemptions. Owners of properties where the following activities are undertaken are exempt from the requirements of Article IV of this chapter.

- (1) Minor land disturbing activities at individual locations, such as gardening, building or grounds maintenance and landscaping, provided that the activity does not result in equal to or greater than one (1) acre of land disturbance;
- (2) Individual utility service connections, unless such activity is carried-out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by regulation;
- (3) Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by the regulation;
- (4) Installation of posts or poles;
- (5) Farming activities;
- (6) Unplanned emergency work and emergency repairs necessary to protect life or property.

(b) Waivers. All or some of the storm water management standards required in Section 100 and/or Section 101 of this chapter may be waived by the Director under the following circumstances.

- (1) Existing Downstream Facilities. A waiver may be provided for one or more storm water management standards if the waived standard(s) are met by discharging the storm water runoff to an existing storm water management facility, whether public or private, that is:
 - i. provided in accordance with an existing watershed plan that is approved by the County; and,
 - ii. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,
 - iii. designed, constructed and maintained to provide a level of storm water control that is equal or greater than that which would be afforded by on-site storm water management facilities.
 - iv. If a waiver is provided for this reason, the owner of the new development or redevelopment will be required to pay a fee in-lieu-of water quality control, downstream channel stabilization control and peak discharge control, in an amount to be determined by the County in accordance with an adopted in-lieu-of fee schedule as adopted by the Board of County Commissioners of Sedgwick County per the watershed plan which covers the new development or redevelopment.
- (2) Adverse Impact. A waiver may be provided if engineering studies determine that installing a storm water management facility in order to meet the storm water management standard being considered for waiver will cause adverse

impact to water quality, or cause increased channel erosion, or downstream flooding.

- (3) **Technical Criterion.** A waiver may be provided if the technical criterion required to waive the storm water management standard, as presented in the Storm Water Manual, is met. In any case, a waiver is subject to satisfaction of the following requirements, which shall be shown in drainage plans submitted for the new development or redevelopment:
- i. the waiver applicant shall provide an engineering study, as defined in Section 103.c that proves the adequacy of downstream or shared off-site storm water management facilities to offer equivalent or greater protection than the standard(s) for which a waiver is requested; and,
 - ii. the waiver applicant obtains any necessary CLOMR prior to construction, and a LOMR upon completion of construction; and,
 - iii. the waiver applicant obtains all State and Federal permits that may be applicable to the site.

(c) **Engineering Study Required.** In the event that a waiver from storm water management control requirements is requested, the adequacy of downstream or shared off-site storm water management facilities to control storm water runoff shall be determined, reviewed and approved by an engineering study that is performed in accordance with the calculation methods presented in the Storm Water Manual. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the County as part of a watershed plan or other land use plan.

Sec. 104. General Requirements for Storm Water Design Plans

(a) Storm water design information shall be submitted as part of the preliminary plat, final plat and construction plans, in accordance with the site development process established by the County.

(b) A building permit shall not be issued for the land development activity until the required storm water design information and corresponding plans are approved by the County.

(c) At a minimum, the storm water design information submitted at each stage of the county development process shall include the specific required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies, guidance and calculation methods (unless equivalent methods are pre-approved by the County) presented in the Storm Water Manual. Additional storm water design information may be required as necessary to allow an adequate review of the existing or proposed site conditions.

(d) The submittal of storm water design information shall be subject to the requirements set forth in the minimum subdivision regulations, zoning ordinance, or other County regulations.

(e) Storm water design information shall be prepared under the supervision of and stamped by a professional engineer licensed to practice in the State of Kansas.

(f) The portions of the new development or redevelopment on which storm water management facilities and systems are located shall be shown on the preliminary and final plats for all residential subdivisions and recorded with the plat as permanent reserves or easements consistent with the policies stated in the Storm Water Manual. Non-residential plats and/or subdivisions having a total area less than or equal to fifteen (15) acres shall be required to demonstrate the viability of proposed storm water management facilities and systems. In such cases, the Director is authorized to allow contingent dedications for storm water facilities providing that the owner/developer enters into an agreement with the County guaranteeing the construction of the said facilities in accordance with a schedule approved in the said agreement.

(g) Conformity to the Approved Plans.

- (1) Grading designs shown on approved master grading plans and the design of storm water facilities and controls shown on approved design plans shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved plans without prior approval of a plan amendment by the County.
- (2) Grading and storm water design plans shall be amended to meet all local laws and standards if the proposed site conditions change after plan approval is obtained, or if it is determined by the County during the course of grading or construction that the approved plan is inadequate.

(h) Duty to Provide an Operations and Maintenance Plan.

- (1) An Operations and Maintenance Plan shall be included with the storm water design information submitted with the construction plan. The Operations and Maintenance Plan shall include the required operation and maintenance provisions for each storm water management facility and water quality volume reduction area that is serving, or will serve, the development or redevelopment. The Operations and Maintenance Plan shall include all of the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.
- (2) The Operations and Maintenance Plan shall include an executed legal document entitled "Restrictive Covenants for Storm Water Facilities" (Covenants). The property owner shall record the Covenants with the deed for the property. The location of the storm water management facility(s) and water quality volume reduction areas, the recorded location of the Covenants document, and inspection and maintenance guidance outlining the property

owner's responsibility shall be shown on a plat that is recorded for the property.

- (i) **Duty to Provide Storm Water Construction Information on As-Built Drawings.**
 - (1) Complete As-Built Drawings shall be provided to the Director upon completion of construction, and shall include sufficient design information to show that the storm water facilities will operate as designed under the approved drainage plan.
 - (2) The As-Built Drawings shall include the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.
 - (3) The As-Built Drawings shall be prepared and stamped by a professional engineer licensed to practice in the State of Kansas.

Sec. 105. Maintenance and Inspection of Storm Water Drainage Paths and Controls.

(a) **Duty to Inspect and Maintain Storm Water Systems and Controls.** Property owners shall at all times properly maintain and shall at intervals in accordance with the Operations and Maintenance Plan inspect all storm water facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) so that they operate at their full function. Maintenance and inspection of privately-owned storm water management facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) shall be performed at the expense of the owner(s) of such facilities.

(b) **Duty to provide inspection reports.** After construction of each storm water management facility on the property is complete, property owners shall provide to the Director on a bi-annual basis a completed and signed copy of the inspection report for each storm water management facility that is included with the Operations and Maintenance Plan for the property. The inspection report is due every two years no later than the date (month and day) of approval of the as-built plan for the property.

(c) **Duty to Preserve Approved Grading Designs.** Re-grading an individual lot or lots, or portions of a lot or lots, in a manner that is not in accordance with the approved master grading plan, such that the direction(s) of storm water runoff is altered from the direction that would occur under the approved master grading plan, shall be considered a violation of this chapter.

(d) **Duty to Preserve Existing Drainage Paths.** Blockage of a channel, ditch, stream or any other drainage path or storm water system appurtenance that is located in a storm water easement or drainage easement shall be considered a violation of this chapter.

(e) Pollutant Removal for Maintenance. The removal of pollutants, sediment and/or other debris for the purpose of maintenance of storm water management facilities shall be performed in accordance with all County, State, and Federal laws.

(f) Inspection of Storm Water Management Facilities During Grading or Construction.

(1) During grading or construction, the property owner or his/her appointed designee shall conduct site inspections in accordance with the requirements stated in the KS-CGP and this chapter. The property owner will also ensure construction conformance with the approved drainage and construction plans. More stringent inspection requirements may be imposed as necessary for purposes of water quality protection and public safety and to pursue total conformance of the site with the approved plans.

(2) The following areas and items must be inspected throughout grading and construction to ensure that land disturbance activities do not cause adverse impacts to the performance of storm water management facilities and/or water quality volume reduction areas:

- i. all unstabilized areas that drain to a permanent storm water facility or water quality volume reduction area;
- ii. temporary and permanent storm water management facilities; and,
- iii. all erosion prevention and sediment control measures.

(g) Inspection After Construction. Once the site has been stabilized and construction has ceased, the property owner or his/her appointed designee shall conduct routine inspections for the storm water management facilities and water quality reduction areas, based on the guidance provided in the Operations and Maintenance Plan and the requirements of the "Restrictive Covenants for Storm Water Facilities" for the property, as set forth in Section 104 of this chapter.

(h) Inspection Records. Property owners shall make available upon request any self-inspection reports, monitoring/maintenance records, compliance evaluations, notices of intent, and any other records, reports, receipts, and other documents related to compliance with this chapter and with any related local, State or Federal permit.

(i) Right-of-Entry. The Director or his/her designee shall have the right to enter the premises of any person discharging storm water to the MS4 or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any State or Federal discharge permit, limitation, or requirement. Dischargers shall allow the Director or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Failure of a property owner to allow entry onto a property for the purposes set forth in this section shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with the enforcement provisions of this chapter.

(j) **Inspection and Notice by County.** The County may periodically inspect these privately owned storm water controls. If the facility is not operating as shown in the approved As-Built Drawing, or should conditions be found that cause or may cause the pollution of downstream receiving waters or the erosion of downstream channels or the flooding of adjacent or downstream properties, the Director may issue a notice of violation in accordance with the enforcement provisions stated in this chapter and shall notify the property owner(s) of the potential violation(s). The Director may order the property owner(s) to perform corrective actions as are necessary to facilitate the proper operation of these facilities for the purposes of flood prevention, downstream channel stabilization, water quality treatment and/or public safety, and/or to ensure compliance with jurisdictional regulatory conditions.

(k) **Failure to Perform Corrective Actions.** If property owner(s) fail to make the necessary corrective actions in the timeframe specified in the enforcement provisions of this chapter, the County is authorized to perform the corrective actions at the expense of the owner(s). If the owner(s) fail to reimburse the County for the corrective actions upon demand, the County may assess the cost of the corrective actions to the owner and initiate any collection proceedings authorized by law.

(l) **Access to Adjacent Properties.** This resolution does not authorize access by a property owner or site operator to private property adjacent to or downstream of the owner's property. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

Sec. 106. Special Provisions for Open Channels.

(a) No structure or land shall hereafter be developed, redeveloped, located, extended, converted, or structurally altered without full compliance with the terms of this code, the Sedgwick County Floodplain Management Resolution (Chapter 13) and other applicable local, state or federal regulations.

(b) Requirements for vegetative buffer zones or maintenance access areas that have been established in approved and adopted watershed plans have priority over the provisions of this section.

(c) Closure of open channels. Existing or proposed open channels may be enclosed if a maintenance plan approved by the County is provided; if the closed conduit conforms to the design criteria set in the Storm Water Manual.

(d) Access Easement Required. All open channels must have a minimum twenty (20) foot wide maintenance access on each side of the stream as measured from the top-of-bank on each side of the stream, except as required by KSA 24-126 as amended, and KAR 5-45-12 as amended for "streams" defined in KAR 5-45-1 as amended.

Secs. 107 to 130. Reserved

SECTION II. EFFECTIVE DATE.

This resolution shall be effective on and after January 1, 2011, and after adoption and publication of this resolution in the official county newspaper.

Commissioners present and voting were:

DAVID M. UNRUH	<u>Aye</u>
TIM R. NORTON	<u>Aye</u>
KARL PETERJOHN	<u>Aye</u>
KELLY PARKS	<u>No</u>
GWEN WELSHIMER	<u>Absent</u>

Dated this 23rd day of November, 2010.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

/s/ Karl Peterjohn
KARL PETERJOHN, Chairman
Commissioner, Third District



ATTEST:

/s/ Kelly B. Arnold
KELLY B. ARNOLD, County Clerk

APPROVED AS TO FORM:

/s/ Robert W. Parnacott
ROBERT W. PARNACOTT
Assistant County Counselor