

ORDINANCE NO. 894B

AN ORDINANCE OF THE CITY OF LINCOLN
ADDING CHAPTER 13.34 TO THE LINCOLN MUNICIPAL CODE
PERTAINING TO
ILLCIT DISCHARGE AND ILLEGAL CONNECTION CONTROL

Recitals

WHEREAS, pursuant to the federal Clean Water Act ("CWA"), and its implementing regulations for the National Pollutant Discharge Elimination System ("NPDES"), dischargers of municipal storm water runoff are required to have coverage under a General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems ("MS4s") (the "Phase II Small NPDES Permit") for the City of Lincoln's (the "City") storm drainage system; and

WHEREAS, pursuant to the NPDES Permit, the City has developed an Illicit Discharge and Illegal Connection Identification and Elimination Program to minimize the discharge of pollutants and prohibited nonstorm water to the City's storm drainage system and to eliminate detect and remove illegal connections to the storm drainage system; and

WHEREAS, the enactment of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), CEQA Guidelines Sections 15307 and 15308; and

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Lincoln does hereby ordain as follows:

Section 1. Chapter 13.34 is hereby added to the Lincoln Municipal Code to read as follows:

Chapter 13.34

ILLICIT DISCHARGE, AND ILLEGAL CONNECTION CONTROL

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ARTICLE I. GENERAL PROVISIONS

13.34.010 Findings of Fact. The City Council adopts this Chapter based upon the following findings:

A. The federal Clean Water Act ("CWA") provides for the regulation and reduction of pollutants discharged into waters of the United States by extending National Pollutant Discharge

Elimination System ("NPDES") requirements to storm water and urban runoff discharges into the City of Lincoln's ("City's") storm water conveyance system.

B. Storm water flows from individual properties to the municipal storm drain system and then ultimately discharges to waters of the United States.

C. The City has obtained permit coverage under the Phase II Small NPDES Permit. Under the provisions of the General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems ("MS4s") ("Phase II Small NPDES Permit"), the City is required to possess the necessary legal authority and implement appropriate procedures to regulate the discharge of pollutants and nonstorm water discharges into the City's storm water drainage system.

D. The Phase II Small NPDES Permit requires the City to regulate the contribution of pollutants to the MS4 by storm water discharges by any user, to prohibit illicit discharges and illegal connections to the MS4, and to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

13.34.020 Purpose and Intent. The purpose and intent of this chapter is to ensure the health, safety, and general welfare of citizens, and to protect and enhance water quality of watercourses and water bodies in a manner pursuant to and consistent with the federal CWA by reducing pollutants in storm water discharges associated with the municipal storm drainage system to the maximum extent practicable and by controlling the introduction of pollutants to the municipal storm drainage system.

13.34.030 Definitions. Any term(s) defined in the CWA, and as amended, and/or defined in the regulations for the storm water discharge NPDES permitting program issued by the State Water Resources Control Board, and as amended, and which are not specifically defined in this Chapter, shall have the same meaning as those terms which are set forth in said act or regulation.

A. Applicant shall mean a property owner or agent of a property owner who is completing construction activity.

B. Channel shall mean a natural or artificial watercourse with a definite bed and banks that conveys continuously or periodically flowing water.

C. City shall mean the City of Lincoln.

D. Construction activity shall mean any activity resulting in grubbing, clearing, grading, grubbing, excavation or any other activity that result in land disturbance.

E. Drainage System shall mean all facilities operated by the City for collecting, transporting, treating and disposing of storm water. For the purpose of this ordinance, the drainage system also includes facilities owned and operated by other public entities or private citizens that direct storm water to the City's drainage system and are subject to the jurisdiction of the City as defined by law, contract, or inter-jurisdictional agreement.

F. Hazardous material shall mean 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 (California Health and Safety Code §25117).

G. Illegal Connection shall be defined any drain or conveyance connected from any residential, commercial, or industrial land use, to the storm drain system which has not been documented in permit applications, plans, maps, or equivalent records and approved by the City.

H. Illicit Discharge shall mean any direct or indirect discharge of prohibited nonstorm water or polluted storm water to the storm drain system, except as exempted in Article II, Section 13.34.070 of this chapter.

I. Incidental Runoff shall mean unintended amounts (volume) of runoff, such as minimal over-spray from sprinklers. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overall or application, or if it is due to negligence.

J. Municipal Separate Storm Sewer System ("MS4") shall mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned by a State, County, City, town, or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not a part of a publicly owned treatment works.

K. Nonstorm water Discharge shall mean any discharge to the storm drain system that is not composed entirely of storm water.

L. Pollutant shall mean anything which causes or contributes to pollution. Pollutants may include, but are not limited to: sediment; paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid waste and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles, and accumulations, so that they may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete waste); and noxious or offensive matter of any kind.

M. Prohibited Nonstorm Water Runoff shall mean any nonstorm water that contains any pollutant(s); and is not generated from the following activities:

1. Water line flushing;
2. Landscape irrigation and watering;
3. Diverted stream flows;
4. Rising groundwater;
5. Uncontaminated groundwater infiltration (as defined at 40 CFR Section 35.2005 (20));
6. Uncontaminated pumped groundwater;
7. Discharges from potable water sources;
8. Foundation drains;
9. Air conditioning condensation;
10. Springs;
11. Water from crawl space pumps;
12. Footing drains;
13. Individual residential car washing;
14. Flows from riparian habitats and wetlands;
15. Dechlorinated swimming pool discharges; and
16. Discharges or flows from firefighting activities.

N. Receiving Water shall mean any body of water or surface water system to which surface runoff is discharged via point source of storm water or via sheet flow.

O. Storm Water shall mean any surface flow, runoff, or drainage consisting entirely of water from any for of natural precipitation and resulting from such precipitation.

P. Water shall mean water that originates from atmospheric moisture (rainfall or snowfall) that falls onto land, water, or other surfaces.

Q. Water Body or Watercourse shall mean a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

R. Waters of the United States shall mean surface watercourses and water bodies as defined at 40 CFR section 122.2, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

S. Waters of the State shall mean all surface watercourses and water bodies, including lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, marshes, inlets, canals, and all other bodies of surface waters (Porter Cologne Section 13050 (e)). This definition includes, but is broader than, Waters of the United States.

13.34.040 Applicability. Nonstorm Water Discharge, Illicit Discharge and Illegal Connection Control ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands, unless explicitly exempted by the City.

13.34.050 Compatibility with Other Permit and Ordinance Requirements. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered the minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose a higher protective standard for human health or the environment shall be considered to take precedence.

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

ARTICLE II DISCHARGE PROHIBITIONS

13.34.070 Prohibition of Illicit Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system, water body or watercourse any pollutants, materials, or storm waters containing any pollutants, any prohibited nonstorm water, or any water that otherwise causes or contributes to a violation of applicable water quality standards. Pollutant storm water discharges and all prohibited nonstorm water runoff discharges to the City's storm drainage system, a Water of the United States or a Water of the State are prohibited.

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

- A. The following nonstorm water discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pool water (if dechlorinated), firefighting activities, and any other water source not containing Pollutants.

- B. Discharges specified in writing by the City as being necessary to protect public health and safety.
- C. Dye testing is an allowable discharge, but requires a written notification to the City prior to the time of the test.
- D. The prohibition shall not apply to any nonstorm water discharge permitted under a NPDES permit issued to the discharger and administered under the authority of the Federal EPA or the State Water Quality Control Board, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

13.34.080 Prohibition of Illegal Connections. The construction, use, or continued existence of illegal connections to the City's storm drainage system is prohibited.

- A. This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection
- B. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the storm drainage system, or allows such a connection to continue.
- C. All connections of piping or any other type of conveyance system to the City's storm drainage system that is not permitted or otherwise approved by the City is prohibited.

13.34.090 Waste Disposal Prohibitions. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

13.34.100 Runoff in Excess of Incidental Runoff. No person shall intentionally allow runoff in excess of incidental runoff to escape the area of intended use. Parties responsible for controlling runoff in excess of incidental runoff shall:

- A. Detect leaks and correct leaks within 72 hours of learning of the leak.
- B. Properly design and aim sprinkler heads.
- C. Not irrigate during precipitation events.
- D. Manage ponds containing recycled water such that no discharge occurs unless the discharge is a result of a 25-year, 24-hour storm event or greater, and the City is notified in writing no later than 24 hours after the discharge. The written notification shall include identifying information, including discharger's name, address, and telephone number.

ARTICLE III SUSPENSION OF MS4 ACCESS

13.34.110 Suspension Due to Illicit Discharge 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.

13.34.120 Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

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

13.34.130 Suspension of Illegal Connection. The City may require, by written notice, that a person responsible for an illegal connection to the storm drain system comply with the requirements of this ordinance to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this ordinance.

If, subsequent to eliminating a connection found to be in violation of this ordinance, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

ARTICLE IV NOTIFICATION OF SPILL

13.34.140 Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City in person or by phone, email, or electronic submission via the City's website no later than the next business day.

ARTICLE V ENFORCEMENT

13.34.150 Enforcement Official. The City Manager or designee shall enforce the provisions of this chapter.

13.34.160 Violations. Any discharge or illegal connection that is commenced or is conducted contrary to this Ordinance shall be deemed to be a public nuisance and may be restrained by injunction or otherwise abated in a manner provided by Chapters 1.20 or 8.08 of the Municipal Code.

13.34.170 Notice of Violation. When the City determines that an activity is not being carried out in accordance with the requirements of this Ordinance, it shall issue a written administrative notice of violation to the person committing the violation. The notice of violation shall contain:

- A. The name and address of the person committing the violation;

- B. The address of the project site or a description of the project site location if an address is not available;
- C. A statement specifying the nature of the violation;
- D. A description of the remedial measures necessary to bring the discharge or illegal connection into compliance with this Ordinance and a time schedule for the completion of such remedial action;
- E. The violation may require the performance of monitoring, analysis, and reporting.
- F. A statement of the penalty or penalties that shall or may be assessed against the person to whom the violation is directed;
- G. A statement that the determination of the violation may be appealed to the municipality by filing written notice of appeal within fifteen (15) days of services of notice of violation.

13.34.180 Illegal Connection Termination Order. Persons responsible for an illegal connection receiving a notice of violation will be required to remove the illegal connection within 3 business days of receipt of the written violation. If the illegal connection is not removed, the City will remove the illegal connection. The violation and illegal connection termination order will be in effect until the City confirms that the illegal connection has been removed or the City has otherwise approved the connection in writing. Failure to address the notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Ordinance.

13.34.190 Requirement to Remediate. Whenever the City finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water or the discharge of prohibited nonstorm water, to the storm drain system or water of the U.S., the City may require, by written notice to the owner of the property and/or the responsible person, that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of sections 13.34.190 through 13.34.230 below.

13.34.200 Requirement to Monitor and Analyze. The City may require by written notice that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges, and/or prohibited nonstorm water discharges to the storm drain system or waters of the U.S., to undertake at said person's expense such monitoring and analyses and furnish such reports to the City of Lincoln as deemed necessary to determine compliance with this Ordinance.

13.34.210 Administrative Citation and Civil and Criminal Penalties. In addition to, or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Chapter shall be punished by a civil fine in accordance with Chapter 1.20 of the City's Municipal Code.

13.34.220 Abatement by City. If correction has not occurred within the time period required by the notice of violation, the continuing violation shall be deemed a public nuisance, and the City or contracting agent hired by the City may abate the nuisance as provided by the City's Municipal Code Section 8.08.

13.34.230 Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time notice, the City may take necessary corrective action as provided by the City's Municipal Code Section 8.08.

13.34.240 Appeal and Hearing. If a property owner chooses to show why any specific enforcement action does not apply to the conditions on his property he may appeal the enforcement action in accordance with the Municipal Code by writing to the City within 10 business days of receiving the enforcement action. The City will respond to the appeal within 10 business days. If the property owner is still not satisfied with the outcome of the appeal he may request a formal hearing regarding the matter being appealed. All abatements may be appealed per the hearing requirements per Section 8.08 of the Municipal Code.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance for any reason shall be held to be invalid or unconstitutional; the decision shall not affect the remaining portions of the Ordinance. The City Council of the City of Lincoln hereby declares that it would have passed this Ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 3. Repeal of Municipal Code Section 13.08.330. Section 13.08.330 Discharge of Polluted Waters to Natural Outlet is hereby repealed.


Section 4. Publication and Effective Date. This Ordinance shall become effective thirty (30) days after its adoption and within fifteen (15) days of the passage of this Ordinance, a copy shall be published once in the newspaper for general circulation in the City.

PASSED AND ADOPTED this 9th day of December 2014.

AYES: Councilmembers: Joiner, Gilbert, Nader, Hydrick, Short

NOES: Councilmembers: None

ABSENT: Councilmembers: None


Paul Joiner, Mayor

ATTEST:


Patricia Avila
City Clerk