

CHAPTER 34. STORMWATER CONTROL

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ARTICLE I. GENERAL PROVISIONS

§ 34.001 TITLE

This chapter shall be known and may be officially cited as the "City of Berea Stormwater Control Ordinance". It is referred to herein as "this chapter".

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.002 AUTHORITY AND OTHER LAWS

(A) This chapter is adopted by the Berea City Council, under authority of KRS Chapter 100, and KRS 82.082, and shall be administered by the Berea Planning Commission, Codes and Planning Department, GIS Department, Street Department, and any other City Department deemed appropriate. These departments, acting as the "Approving Agency", "Issuing Authority" and "Enforcement Agency" shall be identified as the "City of Berea" in the ordinance.

(B) This chapter shall be construed to ensure consistency with requirements of the Clean Water Act, the KPDES and acts amendatory thereof or any other applicable regulations.

(C) The provisions of this chapter are minimum requirements. Whenever the provisions of this chapter are at variance with the requirements of the Berea Land Management and Development Ordinance or other city, state and federal lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive, or that imposing the higher standard, shall govern.

(D) This chapter does not intend to imply that compliance by any person, company, developer, or any other entity will ensure that there will be no contamination, pollution, or discharge of pollutants into the MS4, community water or waters of the Commonwealth.

(E) It shall be the permittee's responsibility to determine and comply with all other applicable city, county, state, or federal ordinances or regulations governing land development and land disturbing activities, some of which may be conditions of approval under this chapter (e.g., KPDES general permit).

(F) The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Berea to seek cumulative remedies.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.003 PURPOSE

The requirements set forth in this chapter are intended to protect the general health, safety and welfare of the citizens of the City of Berea, and more specifically:

(A) Conserve, preserve, and enhance the natural resources of the City of Berea, Kentucky, including its soils, waters, vegetation, fish and wildlife.

(B) To protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act by addressing stormwater runoff from new development projects and existing developments that discharge into the municipal separate storm sewer system (MS4), community waters and waters of the Commonwealth.

(C) To comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth by the Kentucky Pollutant Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge elimination System's stormwater general permit for Phase II communities.

(D) To carry out the requirements for implementation of regulations with respect to the Phase II Stormwater Program, specifically MCM 3: Illicit Discharge Detection and Elimination; MCM 4: Construction Site Runoff Control; and MCM 5: Post-Construction Runoff Control.

(E) To establish legal enforcement authority to carry out all inspection, surveillance and monitoring, and enforcement procedures necessary to ensure compliance with this section.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.004 GENERAL APPROACH TO DEVELOPMENT

The City of Berea promotes an approach to management of stormwater quality and quantity issues that considers the following parameters:

(A) Develops comprehensive master plans that address stormwater quantity, quality, design, operation and maintenance, and funding priorities.

(B) Encourages the use of natural and aesthetically pleasing designs that maximize the preservation of natural areas.

(C) Encourages the preservation of floodplains, floodways and open spaces to protect and benefit the community's quality of life and natural resources.

(D) Encourages the planning for and use of regional BMPs

(E) Encourages the use of Low-Impact Development design principles.

(F) Implements waterway buffers.

(G) Encourages use of low-maintenance on-site BMPs.

(H) Encourages a series of multiple BMP treatment systems.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.005 DEFINITIONS

For the purpose of this chapter, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

"APPLICANT." The landowner or developer who submits an application to the Berea Planning Commission for a Land Disturbance permit pursuant to this section.

"AS-BUILTS." Construction drawings or plans that have been updated to show actual constructed locations of roadways, storm and sanitary sewers, culverts, catch basins, manholes, headwalls, swales and other infrastructure improvements. As-built information may include but not be limited to pipe size and material, horizontal and vertical locations of pipelines, rim and invert elevations of manhole and catch basin structures, angles and offsets, and roadway and pipe slopes.

"BEDROCK." In place solid rock.

"BENCH." A relatively level step excavated into earth material for either subsequent placement of fill or as a means to provide steep slope control or conveyance capacity.

"BEST MANAGEMENT PRACTICES (BMP)." A technique or series of techniques, structural or nonstructural, which are proven to be effective in reducing pollutants in stormwater, controlling runoff, erosion and sedimentation and flood mitigation.

"BORROW." Earth material acquired from an off-site location for use in grading on a site.

"CITY." The City of Berea, Kentucky.

"CLEARING AND GRUBBING." The cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.

"CODES AND PLANNING ADMINISTRATOR." The Codes and Planning Administrator and/or their authorized designee(s).

"COMMUNITY WATERS." Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetland, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of Berea.

"CONTRACTOR." A person who contracts with a permittee, landowner, developer, or another contractor (i.e. subcontractor) to undertake any or all the land disturbance activities covered by this section.

"CO-PERMITTEE." Any person, other than the permittee, including but not limited to a developer or contractor who has or represents financial or operational control over the land disturbing activity.

"DETENTION FACILITY." A temporary or permanent natural or man-made structure that provides for the temporary storage of stormwater runoff which is designed so as not to create a permanent pool of water.

"DEVELOPER." Any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity and/or in the development or redevelopment of property.

"DRAINAGE AREA." That area-contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridgeline.

"ENFORCEMENT AGENCY." The City of Berea Codes and Planning Department its their duly authorized designees designated to implement and enforce this chapter.

"ENGINEER." A professional engineer licensed in the Commonwealth of Kentucky to practice in the field of civil works.

"EPSC (EROSION PREVENTION AND SEDIMENT CONTROL)." The prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

"EROSION." The process by which soil and rock are removed from the Earth's surface by exogenic processes such as wind or water flow, and then transported and deposited in other locations.

"EROSION CONTROL INSPECTOR." A person designated by the Issuing Authority who has successfully completed a City of Berea-sponsored or approved training course in EPSC.

"EXISTING GRADE." The contour of the existing ground prior to grading operations.

"EXTENDED DETENTION." A stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events.

"FEMA." Federal Emergency Management Agency.

"FINAL STABILIZATION." Final stabilization shall mean that: (1) all soil disturbing activities at the site have been completed; (2) there are no areas of active erosion evident; and (3) a uniform perennial vegetative cover with a density of eighty five percent (85%) of the cover for the area has been established or equivalent measures, i.e. mulches or geotextile fabrics, have been employed.

"FINISH GRADE." The final grade of the site, which conforms to the approved plan.

"FLOODPLAIN." The one hundred (100) year floodplain which is that area adjoining a watercourse which could be inundated by a flood that has a one percent (1%) chance of being equaled or exceeded in any given year and is delineated on the Federal Emergency Management Agency Flood Insurance Rate Maps (FIRM).

"FLOW ATTENUATION." Prolonging the flow time of runoff to reduce the peak discharge.

"GENERAL PERMIT." A KPDES stormwater general permit for stormwater discharges related to construction activities that disturb one (1) acre or more. Coverage under this general stormwater permit is obtained by filing a notice of intent (NOI) with the Kentucky Division of Water.

"GRADE." The vertical location of the ground surface.

"GRADING." Any stripping, cutting, filling or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

"HAZARDOUS MATERIALS." Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, biological 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.

"HIGH QUALITY WATERS." Means those "waters of the Commonwealth" that have been categorized by the Kentucky Division of Water as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).

"ILLICIT CONNECTION." Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4. Included are conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had previously been allowed, permitted, or approved.

"ILLICIT DISCHARGE." Any direct or indirect non-stormwater substance, including silt or sediment, or hazardous material disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means, intentionally or unintentionally into the MS4 community waters, waters of the Commonwealth, or any area draining directly or indirectly into the MS4, except as exempted in this chapter.

"INDUSTRIAL ACTIVITIES." Activities subject to KPDES Industrial Permits as defined in 40 CFR, § 122.26(b)(14).

"INFILTRATION." The passage or movement of water into the soil surface.

"ISSUING AUTHORITY." The City of Berea Planning and its duly authorized designees to implement and enforce the Illicit Discharge Detection and Elimination (IDDE) Program, Erosion Prevention Sediment Control and Post-Construction Stormwater Management sections of this chapter.

"KDOW." The Kentucky Division of Water.

"KENTUCKY POLLUTION DISCHARGE ELIMINATION SYSTEM (KPDES) STORMWATER DISCHARGE PERMIT." A permit that is issued by the Kentucky Division of Water (KDOW) under designated authority by the United States Environmental Protection Agency (USEPA) whether the permit is applicable on an individual, group or general area-wide basis.

"LAND DISTURBANCE ACTIVITY." Any land change that may result in soil erosion from wind, water and/or ice, or from vegetative or non-vegetative disturbance, and the movement of sediments into or upon waters, lands, or rights-of-way within the City of Berea. Land disturbing activities include, but not limited to, development, redevelopment, building demolition, clearing and grubbing, grading, excavating, borrow pits, and transporting and filling of land. Land Disturbance Activity does not include normal agricultural practices such as tilling the earth.

"LAND DISTURBANCE PERMIT." A permit allowing or authorizing the initiation of grading, excavation, or related earthwork according to policies, procedures, ordinances or adopted codes in conformity to the approved plan(s).

"MS4, MUNICIPAL SEPARATE STORM SEWER SYSTEM OF THE CITY OF BEREA." A conveyance, or system of conveyances (including roads with drainage systems, municipal, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) designed or used for collecting or conveying stormwater. Sanitary and combined sewers are not included in the definition of the municipal separate storm sewer system.

"NOI." Notice of Intent.

"NON-STORMWATER DISCHARGE." Any discharge to the MS4, community waters or waters of the Commonwealth that is not composed solely of stormwater except as permitted by this chapter.

"NOT." Notice of Termination.

"OUTFALL." The point of discharge from an MS4 to Waters of the United States.

"PERIMETER CONTROL PLAN." A plan that describes required erosion control practices that must be in place before general site construction begins. It is a part of the Stormwater Pollution Prevention Plan (SWPPP) and the Erosion Protection and Sediment Control (EPSC) plan and is required to obtain a Land Disturbance Permit.

"PERMITTEE." The applicant in whose name a valid Land Disturbance Permit is duly issued pursuant to this chapter and his or her agents, employees, and others, acting under his or her direction.

"PLANNING AND ZONING COMMISSION." The Berea Planning and Zoning Commission.

"POLLUTANT." Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; silt and sediments; floatables, pesticides, herbicides, and fertilizers; hazardous substances; sewage, animal wastes, fecal Coliform and pathogens; dissolved and particulate metals; non-hazardous liquids; and yard wastes, refuse, construction debris, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations.

"POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN (P-SWPPP)." A detailed plan for controlling permanent post-construction water quality controls that are part of the stormwater plan for a development.

"PREMISES." The area of land, site, grounds, property on which the illicit discharge emanates.

"REDEVELOPMENT." Any construction, alteration, or improvement involving land disturbance performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential.

"RETENTION FACILITY." A temporary or permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.

"RETROFITTING." The construction of a structural BMP in a previously developed area or preexisting structure, to improve water quality and reduce flow rate and/or volume.

"ROUGH GRADE." The stage at which the grade approximately conforms to the approved plan.

"RUNOFF." Rainfall, snowmelt, or irrigation water flowing over the ground surface.

"SEDIMENT." Soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.

"SEDIMENTATION." The process or action of depositing sediment that is determined to have been caused by erosion.

"SITE." The entire area of land on which the land disturbance activity is proposed in the Land Disturbance Permit application.

"SITE PLAN." A plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.

"SITE WASTE." Waste from the construction site such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes.

"SLOPE." The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

"SOIL." The loose top layer of the Earth's surface, consisting of rock and mineral particles mixed with decayed organic matter (humus) overlying bedrock.

"STORMWATER MANUAL". A compilation of rules, design criteria, guidelines and standards adopted by the City of Berea for the purpose of managing stormwater development activities, including water quality and quantity for all development activities in the city.

(1) Quantitative control, a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; and

(2) Qualitative control, a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

"STORMWATER POLLUTION PREVENTION PLAN (SWPPP)." A detailed plan which includes a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a specific development site or parcel of land during the period in which pre-construction and construction related land disturbances, fills, and soil storage occur, and before final improvements are completed, all in accordance with this chapter.

"STRIPPING." Any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.

"TOPSOIL." The upper layer of soil.

"UTILITY." The owner/operator of any underground facility including an underground line, facility, system and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.

"WATERCOURSE." A channel which gathers or carries surface water.

"WATERSHED." A region draining to a specific river, river system, or body of water. See also **DRAINAGE AREA**.

"WATERS OF THE COMMONWEALTH." Includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated whole or partly within or bordering upon the Commonwealth or its jurisdiction.

"WATERS OF THE UNITED STATES." Includes any and all waters as defined in 40 CFR § 122.2.

"WETLANDS." A lowland area such as a marsh, which is saturated with moisture, as defined in § 404, Federal Water Pollution Control Act Amendments of 1987.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.006 TRANSITIONAL PROVISIONS

(A) The new procedural and substantive standards enacted by this chapter to activities, actions, and other matters shall not apply to current development activities except as noted below.

(B) Completion of land disturbing activity or development commenced or approved prior to the effective date of this chapter.

(1) Any building, structure, development, or land disturbing activity for which valid building permits were granted, or for which construction plans were approved prior to the effective date of this

chapter shall be permitted to proceed to construction even if such activity does not conform to the technical provisions of this chapter.

(2) Any building, structure, development, or land disturbing activity for which a complete application for construction plan approval has been submitted to the city prior to the effective date of this chapter shall be permitted to finish the approval process, and if approved, proceed according to the approved plans even if such construction or activity does not conform to the technical provisions of this chapter.

(3) Any development or land disturbing activity that has submitted an application for preliminary subdivision, development plan, conditional use, or any other type of land use or grading/clearing approval other than for construction plan approval, but for which no final action has been taken by the appropriate reviewing body on such application prior to the effective date of this chapter, shall be approved only if the development or land disturbing activity complies with all the provision of this chapter.

(4) If construction is not completed within the time allowed under the building permit or the construction plan approval or any extension granted, then the activities permitted in divisions (A) and (B) above shall be constructed or completed only in compliance with all requirements of this chapter. (Ord. No. 24-14, § 1, 12-16-14)

§ 34.007 RULES OF CONSTRUCTION AND INTERPRETATION

(A) All provisions, terms, phrases, and expressions contained in this chapter shall be construed according to this chapter's stated purpose and intent.

(B) In case of any difference of meaning or implication between the text of this chapter and any heading, drawing, table, or figure, the text shall control.

(C) Whenever a provision of this chapter requires the head of a department to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate the authority to subordinates, unless the terms of the provision specify otherwise.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.008 AUTHORITY AND RIGHT OF ENTRY

(A) Designated Berea staff shall have right-of-entry on or upon the property of any person subject to this chapter and any permit/document issued hereunder. The staff shall be provided access, as described in this chapter, to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this chapter.

(B) If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

(C) The city has the right to determine and impose inspection schedules necessary to enforce the provisions of this section. Inspections may include, but are not limited to the following inspections.

(1) An initial inspection prior to stormwater management plan approval;

(2) An inspection prior to burial of any underground drainage structure;

(3) Erosion control inspections as necessary to ensure effective control of sediment prior to discharge to the municipal separate storm sewer system;

(4) A final inspection when all work, including installation of storm management facilities, has been completed; and

(5) An inspection to determine the effectiveness or operational viability of a permanent or long-term stormwater quality management practice.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.009 LIABILITY DISCLAIMER

Nothing contained in this chapter, and no action or failure to act under this chapter shall be construed to:

(A) Impose any liability on the City of Berea, or other administering or enforcement agency or entity for the recovery of damages caused by such action or failure to act; or

(B) Relieve the permittee of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

(Ord. No. 24-14, § 1, 12-16-14)

ARTICLE II. ILLICIT DISCHARGE CONTROL

§ 34.100 PURPOSE

The requirements set forth in this section are intended to:

(A) Prohibit illicit discharges and connections to the MS4;

(B) Regulate the contribution of pollutants to stormwater discharges to the MS4 by any user; and

(C) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this section.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.101 PROHIBITION OF DISCHARGES

(A) No person, company, developer or any other entity shall discharge or cause to be discharged into the MS4, community waters or waters of the Commonwealth any non-storm water materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illicit discharge is prohibited.

(B) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition includes without limitation, illicit connections made in the past, including lines conveying sewage to the MS4, regardless of whether the connection was permissible under law or practice applicable at the time of connection.

(C) Improper connections in violation to the section must be disconnected and redirected, if necessary, to the sanitary sewer system upon approval of the City of Berea and Berea Utilities.

(D) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon a sidewalk, parking lot or street, any component of the MS4, community waters or waters of the Commonwealth, unpermitted (KDPES) industrial and commercial wastes, commercial car wash wastes, sanitary sewage, garbage, yard waste, petroleum products, including used motor vehicle fluids, leaf litter, grass clippings, brush, animal wastes, any other 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 proper waste receptacles for the purposes of collection are exempted from this prohibition.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.102 PERMITTED DISCHARGES

(A) Unless the City of Berea has identified them as a source of pollutants to the water of the Commonwealth of Kentucky, the following non-storm water discharges into the MS4 of the City of Berea are permitted:

(1) A discharge or flow from water line flushing, de-chlorinated through city accepted BMPs;

(2) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code requires to be contained and treated prior to discharge;

(3) A discharge or flow from lawn watering, or landscape irrigation;

(4) A discharge or flow from a diverted stream flow or natural spring;

(5) A discharge or flow from rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35 2005(20) to separate storm sewers), or uncontaminated pumped groundwater;

(6) Uncontaminated discharge or flow from a foundation drain, crawl space pump or footing drain;

(7) A discharge or flow from air conditioning condensation;

(8) A discharge or flow from individual residential car washing;

- (9) A discharge or flow from a riparian habitat or wetland;
- (10) De-chlorinated drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals;
- (11) A discharge or flow from street wash water resulting from normal street cleaning operations;
- (12) A discharge or flow from emergency firefighting activities;
- (13) A discharge or flow from any other water source not containing pollutants;
- (14) Upon verbal notification of the City of Berea and prior to time of the test, a discharge or flow from dye testing.

(B) No discharge or flow will be permitted if it has been determined by the Enforcement Agency of the City of Berea to be a source of a pollutant or pollutants to the MS4, community waters or waters of the commonwealth. Written notice of such determination shall be provided by the Enforcement Agency of the City of Berea to the discharger.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.103 SUSPENSION OF MS4 ACCESS

(A) Suspension due to illicit discharges in emergency situations. The Enforcement Agent of the City of Berea may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

(B) Suspension due to the detection of illicit discharge.

(1) Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Enforcement Agent of the City of Berea will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

(2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.104 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person 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 Enforcement Agency of the City of Berea prior to allowing discharges to the MS4.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.105 OTHER DISCHARGES

The prohibition of discharges or flows shall not apply to any non-stormwater discharges permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the Kentucky Division of Water under the authority of the Environmental Protection Agency, 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.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.106 STORM DISCHARGE PERMIT

Discharges pursuant to a valid and effective NPDES permit issued by the Commonwealth of Kentucky are not prohibited by this section. Any person, company, developer or any other entity subject to a construction activity NPDES stormwater discharge permit or Land Disturbance Permit shall comply with all provisions of such permits. Proof of compliance with such permits may be required in a form acceptable to the City of Berea.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.107 RULES AND REGULATIONS

(A) Elimination of illicit discharges. Notwithstanding the requirements of this section herein, the Enforcement Agency of the City of Berea may require by written notice that a person responsible for an illicit discharge immediately, or by a specified date, discontinues the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges.

(B) Monitoring of discharges. Upon written request to the person, the city shall have safe and easy access to the areas to be inspected and/or monitored. Temporary or permanent obstructions to safe and easy access to the site to be inspected and/or sampled shall be promptly removed by the owner at the written or oral request of the Enforcement Agency of the City of Berea. The city shall be provided access to all parts of the premises subject to this section for the purposes of inspection, monitoring, sampling and for the performance of other duties necessary to determine compliance with this section. The person responsible for any violation of this chapter with regard to illicit discharges shall be liable for expenses incurred by monitoring and analyses.

(1) The Enforcement Agency of the City of Berea has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(2) Unreasonable delays in allowing the city access to a permitted facility is a violation of a storm water discharge permit and of this chapter. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

(C) Remediation. Any person responsible for illicit discharges and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the city, shall be liable to the city for expenses incurred in abating pollution. This may include expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

(D) Accidental discharges.

(1) If an emergency response by governmental agencies is needed, the owner or operator should call 911 immediately to report the discharge. A written report must be provided to the city within five (5) days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by the city for good cause shown as determined by the city or its designee on a case-by-case basis, containing the following information:

- (a) A description of the discharge including volumes and concentrations;
- (b) The exact dates and times of discharge; and
- (c) Steps being taken to eliminate and prevent recurrence of the discharge.

(2) The discharger shall take all reasonable steps to minimize any adverse impact to the MS4 or the Waters of the Commonwealth, including accelerated or additional monitoring necessary to determine the nature and impact of the discharge. It shall not be a defense, for the discharger in an enforcement action, to claim that it would have been necessary to halt or reduce the business or activity of the facility in order to maintain storm water quality and minimize any adverse impact that the discharge may cause.

(E) Notification of spills, non-hazardous. In the event of a release of non-hazardous materials, said person shall notify the Enforcement Agency for the City of Berea in person, by phone, email, City of Berea's website, or facsimile no later than 5:00 p.m. of the next business day. Notifications shall be confirmed by written notice addressed and mailed to the City of Berea within three (3) business days of the notice.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.108 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The Enforcement Agency of the City of Berea will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.
(Ord. No. 24-14, § 1, 12-16-14)

§ 34.109 WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, yard waste, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. The city will assist property owners with the maintenance of city adopted watercourses. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.
(Ord. No. 24-14, § 1, 12-16-14)

§ 34.110 INSPECTION AND MONITORING

(A) Inspection. Whenever the Enforcement Agency of the City of Berea has cause to believe that there exists, or potentially exists, any condition which constitutes a violation of this section, the Enforcement Agency of the City of Berea may enter the suspect property, MS4, community waters and waters of the Commonwealth at all reasonable times to inspect the same. If it is determined an illicit discharge emanates from private premises, the owner or operator of the premises will be notified in accordance with the provisions of this section. Copies of records of stormwater compliance shall be provided to the Enforcement Agency of the City of Berea.

(B) Sampling devices and testing. During any inspection as provided herein, the Enforcement Agency of the City of Berea may take any samples and perform any testing deemed necessary, including long-term monitoring, to aid in the pursuit of the inquiry or to record site activities. The cost of all testing may be passed on to the owner or operator of the premises where the illicit discharge emanates.

(Ord. No. 24-14, § 1, 12-16-14)

ARTICLE III. EROSION PREVENTION AND SEDIMENT CONTROL

§ 34.200 PURPOSE

The requirements set forth in this section are intended to protect the general health, safety, and welfare of the citizens of Berea, and more specifically are intended to:

(A) Conserve, preserve, and enhance the natural resources of Berea, including its soils, waters, vegetation, fish and wildlife;

(B) Control soil erosion and sedimentation arising from development and other land disturbing activities (e.g., clearing and grading), to prevent adverse impacts and offsite degradation, including short-term and long-term damage to public and private property within the city limits of Berea; and

(C) Control waste from construction site operators that may cause adverse impacts to water quality.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.201 LAND DISTURBANCE PERMIT

Land Disturbance Permits (LDP) are required for all site construction projects and/or land disturbance activities, depending on the amount of disturbed areas.

(A) The Land Disturbance Permit alone does not authorize or grant permission to begin development or redevelopment on the property. It does not supersede other permits required by the city, state or federal government.

(B) Project site owners shall submit an application for an LDP on forms provided by the city.

(C) Applications for a Land Disturbance Permit shall be submitted to the city and must include a:

- (1) Completed application request;
- (2) Notice of Intent (NOI), with proof of public notice;
- (3) A perimeter control plan (PCP) and Erosion Protection and Sediment Control Plan (EPSC);
- (4) Storm Water Pollution Prevention Plan (SWPPP);
- (5) Post-Construction Stormwater Pollution Prevention Plan;
- (6) Any required maintenance agreement; and
- (7) Any other necessary information or documentation requested by the city.

(D) The PCP is a component of the Erosion Protection and Sediment Control Plan (EPSC). While both plans may be approved simultaneously, the provisions of a PCP shall be implemented, inspected and accepted by the city before any other construction proceeds.

(E) The landowner must notify the city and the Kentucky Division of Water (KDOW) within seven (7) days prior to the commencement of construction activities through the submittal of an updated NOI.

(F) Upon completion of construction activities, stabilization of the project site and removal of all temporary erosion protection and sediment control measures, the applicant shall submit a Notice of Termination (NOT) as required by the KDOW. The city, or its designated representative, shall inspect the project site to verify that the requirements of the NOT have been met.

(G) The city reserves the right to require a checklist of necessary items to be completed and included with the Land Disturbance Permit application submittal. Upon submittal, the LDP application shall be rejected in its entirety should any item on the checklist be incomplete.

(H) The city reserves the right to collect fees associated with LDP application, plan review, and inspections from the applicant.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.202 EXEMPTIONS

The following activities are exempt from the provisions of this chapter:

(A) Clearing or grading activities that are subject exclusively to state approval and enforcement under state law and regulations.

(B) Emergencies posing an immediate danger to life or property, substantial flood or fire hazards, or natural resources.

(C) Underground utility repairs in paved areas, home gardens, minor repairs, maintenance work, sign, telephone, and electric poles and other kinds of posts or poles.

(D) Agricultural operations required to adopt and implement an individual agricultural water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS Ch. 224).

(E) Usual operations required to adopt and implement an individual agricultural water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS Ch. 224).

(F) Building improvements on existing residential dwellings (garages, additions, porches, and the like).

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.203 LAND DISTURBANCE ACTIVITY

(A) Any activity disturbing one (1) or more acres of soil is subject to the provisions of this section and shall not take place without an authorized land disturbance permit.

(B) Land disturbance activity less than one (1) acre on individual lot(s) or parcel(s) that are part of a larger common plan of development that disturbs one (1) acre or more of soil, and currently covered by KPDES NOI, is not exempt from this section or Land Disturbance Permit. In this situation, the

landowner and/or developer of the larger development, and the individual lot owner(s) or homebuilder(s), will be issued a separate Land Disturbance Permit and will be responsible for complying with the provisions of this section. The landowner and/or developer of the larger development will remain jointly responsible for said lot(s) until such time that the larger common plan of development reaches 80% build-out.

(C) Land Disturbance activity less than one (1) acre on individual lot(s) or parcel(s) that are not part of a larger common plan of development is not exempt from this section or land disturbance permit. The following information is required for submittal of the land disturbance permit:

- (1) Land disturbance permit application.
- (2) Completed EPSC land disturbance form.
- (3) All fees for said permit shall be paid according to the established Permitting Fee Schedule.

(D) The City of Berea may on a project-by-project basis exempt other minor land disturbance activities not specifically identified in the exemptions above.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.204 FISCAL SURETY

(A) The permittee shall be responsible for the installation, good repair and maintenance of all temporary and permanent EPSC BMPs, and ultimate removal of all temporary EPSC measures.

(B) Permittees for land disturbance permits issued for house or other structure construction, and do not reside on the property at the time of permit issuance, shall post a letter of credit, a certified check or other performance guarantee for all EPSC facilities, acceptable to the City of Berea.

(C) Permittees who reside on the property and are obtaining the permit for land disturbance purposes on their own residential property shall not be required to post a fiscal surety, but are bound by all other requirements of this chapter.

(D) When a fiscal surety is required, the surety shall be posted prior to the issuance of the land disturbance permit.

(E) The fiscal surety shall be in the amount equal to two times the estimated cost of the EPSC measures, as approved by the City of Berea, but in no case shall be less than fifteen hundred dollars (\$1,500.00).

(F) Following the period granted to the permittee to complete the installation of the EPSC measures, if the City of Berea finds the required temporary or permanent improvements or control measures have not been installed or maintained properly or are not in good repair or functioning properly, then the city may declare the permittee to be in default if it does not appear that the improvements or controls will be completed or repaired within a reasonable time. Upon declaration of default, the City of Berea shall demand such amounts from the surety as required to remedy the default.

(G) Request for release of surety may be made after the City of Berea makes an inspection of the property and determines that final stabilization has been established, and issues a Certificate of Stabilization.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.205 EPSC REQUIREMENTS

(A) The City of Berea shall review all EPSC plans for compliance with the following general standards and review criteria.

(B) A design removal efficiency goal of eighty percent (80%) for total suspended solids from land disturbing activities shall be applied to the design, review, and approval of EPSC plans. The following structural and non-structural standards are to be utilized to achieve this goal.

(C) Compliance with the Stormwater Manual, as it may be revised from time to time, for the City of Berea.

(D) Non-structural site management practices to prevent erosion and minimize sediment discharge shall be considered. Such practices include the following standards:

- (1) Minimize site disturbance to preserve and maintain existing vegetative cover;
- (2) Limit the number of temporary access points to the site for land disturbing activities;
- (3) Phase and sequence construction activities;

(4) Locate temporary and permanent soil disposal areas, haul roads and construction staging areas to minimize erosion, sediment transport and disturbance to existing vegetation.

(E) Where attainment of this design removal efficiency goal through the use of structural and nonstructural measures is not practicable, the permittee shall submit written justification to the City of Berea for review and approval.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.206 PLAN REQUIREMENTS

(A) Erosion protection and sediment control for construction projects requires continual planning, observation and action for all components of the overall plan. The process will be documented through requirements established by the Kentucky Division of Water, and implemented in their KYR10 permit. While stormwater management plans typically contain permanent treatment practices (PTPs) instead of temporary practices, the initial plan submittal must address permanent stormwater management including water quality. A general description of each type of plan follows.

(B) Stormwater Pollution Prevention Plan. A Stormwater Pollution Prevention Plan (SWPPP) is a living document that is first submitted for approval to the city and to the KDOW. It will be updated, as necessary, as development continues. It includes site map(s), an identification of construction/contractor activities that could cause pollutant discharges into stormwater and a description of measures or practices to control these pollutants. The SWPPP is required by KYR10. It includes the EPSC Plan and Stormwater Management Plan. Once the development plan has been approved, a copy of the SWPPP must be maintained onsite and should include copies of all permits issued for the site. Inspection documentation and plan revisions must also be documented in the SWPPP once site development has begun.

(C) Construction EPSC Plan. Once the erosion prevention and sediment control (EPSC) plan has been approved, it becomes a component of the SWPPP. The EPSC Plan is a set of plans prepared by or under the direction of a licensed professional engineer detailing the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction. It includes supporting calculations, a construction schedule, and schematics and cross-sections for clarification, as well as any other material in support of the EPSC Plan. As the project progresses, revisions and modifications should be tracked in the SWPPP, with major modifications requiring prior approval by the city before implementation.

(D) Post-construction Stormwater Quality Management Plan. The post-construction stormwater quality management plan (P-SWQMP) contains permanent water quality treatment devices, such as detention structures, outlet protection, stormwater conveyance devices, and bioretention areas. Once approved, the P-SWQMP becomes a component of the SWPPP. Some of these components will not be installed during initial construction activities. However, knowing the proposed locations during early construction activities can be beneficial so areas can be appropriately staged. For example, permanent detention structures can first function as sediment basins. Once permanent controls have been installed, they should be protected from sediment laden runoff, as many permanent water quality treatment devices rely on infiltration for treatment and can easily be overwhelmed.

(E) Sites where land disturbance activities are proposed will require a complete Stormwater Pollution Prevention Plan (SWPPP) approved by the Issuing Authority of the City of Berea.

(1) The SWPP plan shall be prepared by a licensed engineer. The engineer shall be required to visit the site, in person, to evaluate the existing conditions before preparation of the SWPPP. The engineer shall notify the City of Berea at least five (5) days prior to the visit. The city may choose to visit the site with the engineer. The engineer shall prepare the report, including all of the maps and sketches required.

(2) The report shall be bound, on 8-1/2" x 11" paper. All plan drawings shall be folded and inserted (the size and scale of the plans may vary depending on the nature of the project; some critical areas might require an enlargement, or "blow-up sheet"). The report may be placed in a folder, binder or 3-ring binder, depending on the scope and size of the report. If the report is in a folder or binder, the outside of the folder/binder shall include as a minimum: Stormwater Pollution Prevention Plan, the name and address of the project, any additional documentation to identify the project per City of Berea

requirements, the owner of the project, the consultant's name and contact information and date of submission.

(3) The SWPPP and EPSC plans shall be readily available at the construction site from the date of project initiation (NOI) to the date of Notice of Termination (NOT).

(4) Format and contents of the SWPPP will follow the outline as referenced in the Stormwater Manual.

(Ord. No. 24-14, § 1, 12-16-14; Am. Ord. No. 06-20, § 1, 3-3-20)

ARTICLE IV. POST-CONSTRUCTION STORMWATER MANAGEMENT

§ 34.300 PURPOSE

The requirements set forth in this section are intended to establish policies, procedures, standards and criteria relating to stormwater runoff quality and quantity, and establish maintenance agreements for long term operation and maintenance of BMPs.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.301 GENERAL REQUIREMENTS

Post-construction stormwater management in areas undergoing new development or redevelopment is necessary because runoff from these areas has been shown to significantly affect receiving water bodies. Post-construction pollutant loadings will be controlled through the six (6) minimum control measures under the KPDES stormwater permit.

(A) Redevelopment projects are required to meet twenty percent (20%) of the local water quality standard.

(B) The design of structural BMPs shall be by a professional engineer licensed to practice in the field civil engineering.

(C) The property owner shall be responsible for all maintenance and record keeping and reporting as detailed in the Maintenance Agreement.

(D) The City of Berea and its agents shall have right of entry to inspect, observe, test or perform any other activity related to the operation, maintenance and function of the stormwater infrastructure.

(E) General requirements for post-construction stormwater control requirements for design, maintenance and a menu of BMPs are located in the post-construction section of the City of Berea's Stormwater Manual. These regulations in the manual shall be the standard practice for post-construction compliance in the City of Berea.

(F) Stream corridor protection BMPs shall be utilized to protect designated streams and waterways through conservation methods. These methods may include buffer strips, greenways, vegetated channels, stream bank stabilization and restoration.

(G) Impervious area runoff controls shall be utilized to address high levels of runoff quantity and reduced quality associated with high-density developments. These controls may include preservation of open space, minimizing impervious surfaces, porous pavement, utilization of grass swales instead of curb and gutter, reduced pavement widths and similar measures.

(H) Discharge control BMPs shall be utilized to provide flow attenuation for post-development runoff. These BMPs may include detention facilities, extended detention basins, retention facilities and artificial wetlands.

(I) If a new development or redevelopment project contributes runoff to downstream receiving waters that are impaired or infrastructure that does not have sufficient capacity, the city may, at its discretion, require stormwater management controls greater than the minimum required by this section. Drainage calculations shall be provided by the developer's engineer to demonstrate the integration with the downstream hydraulic system.

(J) All facilities must be designed to require minimal maintenance to ensure that the facilities do not become nuisances or health hazards. Maintenance expectations shall be clearly stated in the maintenance agreement.

(K) The Approving Agency of the City of Berea, at its discretion, may require the developer of a new development or redevelopment project to provide off-site mitigation of stormwater BMP

improvements in priority areas within the development watershed, when water quality treatment standards cannot be met.

(L) The requirements set forth in this section are intended to:

(1) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) that prevent or minimize water quality impacts from developments in the City of Berea.

(2) Ensure adequate long-term operation and maintenance of BMPs.

(3) Minimize damage to public facilities and utilities.

(4) Encourage the preservation of floodplains, floodways and open spaces to protect and benefit the community's quality of life and natural resources.

(Ord. No. 24-14, § 1, 12-16-14; Am. Ord. No. 06-20, § 1, 3-3-20)

§ 34.302 APPLICATION

(A) This section shall apply to any of the following:

(1) All land disturbance activity for development or redevelopment of land for residential, commercial, industrial, or institutional use, disturbing more than one (1) acre of land or less than one (1) acre but part of a larger common plan of development.

(2) Hotspot land uses as defined below:

(a) Automotive fueling facilities;

(b) Automotive maintenance and repair facilities;

(c) Restaurants with grease collection and disposal;

(d) Vehicle washing/steam cleaning facilities;

(e) Auto recycling facilities;

(f) Outdoor material storage areas;

(g) Loading and transfer areas;

(h) Landfills;

(i) Industrial sites;

(j) Industrial rooftops; and

(k) Other land uses as determined to have a high potential of pollutant discharge into the MS4 as determined by the city of Berea.

(3) The city reserves the right to develop or adopt other guidance documents to serve as design and implementation standards.

(B) This section does not apply to agricultural land management practices; however, exemption of agricultural land management practices does not apply to illicit discharges.

(Ord. No. 24-14, § 1, 12-16-14; Am. Ord. No. 06-20, § 1, 3-3-20)

§ 34.303 REVIEW AND ISSUANCE OF PERMIT

For projects requiring post construction water quality conditions, a post-construction stormwater pollution prevention plan shall be submitted as part of the application process (i.e. building permit, detailed development plan or subdivision). The plan must include the following information:

(A) (1) A description of potential pollutant sources from the proposed land use that may reasonably be expected to add a significant amount of pollutants to storm water discharges. What Stormwater quality measures will be used to remove or minimize pollutants from stormwater run-off? What stormwater quality measures will be implemented to prevent or minimize adverse impacts to stream and riparian habitat?

(2) Designs and supporting performance analyses must be submitted to the city along with the construction plans for review.

(B) A description of measures identified in division (A)(1), that will be installed to control pollutants in stormwater discharges that will occur after construction activities have been completed. Such practices may include:

(1) Infiltration of run-off;

(2) Flow reduction by use of open vegetated swales and natural depressions;

(3) Buffer strip and riparian zone preservation;

(4) Filter strip creation;

- (5) Minimization of land disturbance and surface imperviousness;
- (6) Maximization of open space;
- (7) Retention ponds;
- (8) Detention facilities;
- (9) Extended detention basins;
- (10) Hydrodynamic separators;
- (11) Fore-bays;
- (12) First flush basins;
- (13) Infiltration trenches;
- (14) Grass swales;
- (15) Wetlands;
- (16) Natural filtration areas;
- (17) Sand filters;
- (18) Pervious pavements;
- (19) Rain-gardens.

(C) A sequence describing when each post-construction stormwater quality measure will be installed.

(D) Location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality measures.

(E) A narrative description of the maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long term function. This narrative BMP description shall be made available to future parties who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.

(F) A completed Stormwater Management/BMP Facilities Agreement.
(Ord. No. 24-14, § 1, 12-16-14)

§ 34.304 MAINTENANCE AGREEMENT

The city shall require all new development and redevelopment to develop a maintenance plan and enter into a long-term operation and maintenance agreement with approved best management practices for all stormwater quality BMPs.

(A) Maintenance agreements. Any stormwater management facility or BMP that is not owned by the City of Berea will be required to have a maintenance agreement.

(1) Any storm water management facility or BMP which services individual property owners shall be privately owned. General routine maintenance (controlling vegetative growth and removing debris) shall be provided by the owner(s). The owner shall maintain a perpetual, non-exclusive easement that allows for access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(2) Any storm water management facility or BMP which services an individual residential subdivision in which the facility or BMP is within designated open areas or serves as an amenity with an established homeowners association shall be privately owned and maintained consistent with provisions of this chapter. The owner shall maintain a perpetual, nonexclusive easement which allows access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(3) Any storm water management facility or BMP which services commercial and industrial development shall be privately owned and maintained. The owner shall maintain a perpetual, nonexclusive easement which allows access for inspection and emergency maintenance by the city. The city has the right, but not the duty, to enter premises for emergency repairs.

(4) All regional storm water management control facilities proposed by the owners, if approved and accepted by the city for dedication as a public regional facility, shall be publicly owned and/or maintained. All other storm water management control facilities and BMPs shall be privately owned and/or maintained unless accepted for maintenance by the city.

(5) The city may require dedication of privately owned storm water facilities, which discharge to the city storm water system. This shall be at the approval of the City Council.

(6) The maintenance and proper operation of all privately owned stormwater management facilities, including nonstructural practices, shall be ensured through the creation of a formal and enforceable maintenance agreement that must be approved by the city and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. This agreement will include any and all maintenance easements required to access and inspect the stormwater management practices, and will outline the procedures and schedule to be followed to perform routine maintenance as necessary to ensure proper functioning of the stormwater management practice. Maintenance may include vegetation clearing, mowing, and removing accumulated trash, debris, sediment pollutants and other forms of pollution. In addition, the legally binding agreement shall identify the parties responsible for the proper maintenance of all stormwater treatment practices and include plans for periodic inspections by the owners, or their designated agent, to ensure proper performance of the facility. The maintenance agreement shall be consistent with the terms and conditions of the "Stormwater Control Facility Maintenance Agreement".

(7) The city may accept, at its discretion, dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. The city will not accept any facility that serves as an amenity feature for any property or development. A maintenance agreement will not be required in this instance.

(B) Maintenance easement. The applicant or owner of the site must execute a maintenance easement agreement that shall be binding on the owner, its administrators, executors, assigns, heirs, and any other successors in interest of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City of Berea, or their contractor or agent, to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter and to, if necessary, implement emergency repairs to protect the health, safety and welfare of the public. The easement dimensions shall be as directed by the city and the easement agreement shall be recorded in the office of the County Clerk, with a copy provided to the city. All stormwater management facilities within subdivision plats shall also be protected by a permanent easement for the same purposes as above and also to prohibit any construction on the easement that would be detrimental to the performance of those facilities.

(C) Requirements of maintenance agreements.

(1) The post-construction maintenance plan shall ensure that BMPs are operated and maintained to achieve the goals of this chapter, and not permit the required facilities from becoming nuisances or health hazards.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) An annual inspection to document maintenance and repair needs to ensure compliance with the requirements of this chapter and accomplishment of its purposes. These needs may include; removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation.

(4) Any maintenance needs found must be identified in writing, along with the schedule and methods to be employed to complete the maintenance. The maintenance repairs and restoration schedules are to be approved by the city prior to commencing the work and the city shall inspect the facility upon completion of the work. The inspection and maintenance requirement may be increased by the city as deemed necessary to ensure proper functioning of the stormwater management facility.

(D) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the city during inspection of the facility and at other reasonable times upon request.

(E) Maintenance guarantees for privately owned stormwater facilities. Single entity ownership - Where the permanent storm water runoff control facilities are designed to manage runoff from property in a single entity ownership, the maintenance responsibility for the storm water control facilities shall be with the single entity owner.

(1) A single entity shall be defined as an association, public or private corporation, partnership firm, trust, estate or any other legal entity allowed to own real estate exclusive of an individual lot owner.

(2) Upon approval of the storm water quality BMPs by the city, the facility owner(s) shall demonstrate the ability to guarantee and apply the financial resources necessary for long-term maintenance requirements. The funding mechanism shall be in a form approved by the city. The city will only approve funding mechanism(s) for long-term maintenance responsibilities that can be demonstrated to be permanent or transferable to another entity with equivalent longevity.

(3) In the event that proposed funding is through an owners association, then it must be demonstrated that the association may not dissolve unless long-term operation and maintenance activities are accepted by another entity with equivalent longevity and adequate funding. Furthermore, the owners association's responsibility must be stated in the association's declaration, covenants, or by-laws, as appropriate.

(4) Unless made specifically clear in the preliminary stages of the site design and construction plan review procedure, it will be assumed that all storm water detention, retention, treatment or storage facilities and/or devices shall be owned, operated and maintained by a single entity as defined above.

(5) Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the applicant or by a corporation that owns or manages a commercial or industrial facility, the applicant, prior to construction, may be required to provide the city with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the city acknowledges compliance with all details of approved site plan. If the applicant or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the city may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs, until the city acknowledges compliance with all details of approved site plan.

(F) A fee for BMP inspection may be assessed to an owner for a structural BMP which is not owner inspected, owner maintained, or where the owner has not maintained written records of inspection of the BMPs on the property.

(G) Unlawful acts. It shall be unlawful for any person to:

- (1) Not maintain the structural BMPs per the maintenance agreement;
- (2) Not correct violations noted by the city;
- (3) Prevent or obstruct the city from entering the property with a structural BMP per this chapter;
- (4) Not construct BMPs per the direction of this chapter;
- (5) Discharge pollutants or effluents not permitted by the NPDES permit;
- (6) Falsify records; or
- (7) Violate any provision of this section.

(Ord. No. 24-14, § 1, 12-16-14)

ARTICLE V. ENFORCEMENT

§ 34.400 ENFORCEMENT

(A) This chapter shall be enforced by the Enforcement Agency as set out herein. The Enforcement Agency, to insure compliance with this chapter, may take the following enforcement steps against persons, companies, developers, or any other entities in noncompliance with the chapter. The remedies available include verbal warning, written warning, Notice of Violation (NOV), Stop Work Order, injunctive relief, and civil and criminal penalties. The Enforcement Agency will utilize tiered enforcement when practical and when the violation is not a public nuisance or an immediate danger.

(B) The remedies provided for in this chapter are not exclusive. The Enforcement Agency may take any, all, or combination of these actions against a violator.

(C) Right of entry. The City may perform inspections on property to verify compliance with this chapter and is authorized to enter the property at reasonable times to inspect. If the city deems structural BMPs are ineffective or maintained improperly, the city may take enforcement action as

described below. Whenever the city has cause to believe there exists, or potentially exists in or upon the property, any condition which constitutes a violation of this chapter the city is authorized to enter the property at reasonable times to perform the duties imposed by the chapter. If entry is refused, the city shall have recourse to the remedies provided by law to secure entry.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.401 ENFORCEMENT ACTIONS

(A) Verbal warning. Whenever the city determines that a person, company, developer or any other entity has violated the Erosion Protection and Sediment Control plan, the SWPPP, a Post Construction BMP, or any other land disturbance permit, or failed to meet any other requirement of this section, the city may order compliance by a verbal warning to the responsible entity as the first level of enforcement. The warning shall specify the particular violation believed to have occurred and request the contractor to immediately investigate and resolve the matter before any additional damage occurs. This warning may be based on the severity of the violation, site and weather conditions. This warning will be documented by a written notice or other electronic recordation of the violation to the contractor.

(B) Written warning. Whenever the city finds that a person, company, developer or any other entity has violated the Erosion Protection and Sediment Control plan, the SWPPP, a Post Construction BMP, or any other land disturbance permit, or failed to meet any other requirement of this section, and has not complied with a verbal warning, the city may order compliance by a written warning to the responsible entity. The warning shall specify the particular violation believed to have occurred and request the contractor to immediately investigate and resolve the matter before any additional damage occurs. This warning will be documented by a written notice to the contractor. The warning notice will contain:

- (1) The name and address of the alleged violator;
- (2) The address (when available) or a description of the building, structure or land upon which the violation is occurring or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A statement specifying the established time schedule to restore compliance.

(C) Notice of violation.

(1) Whenever the city finds that a person, company, developer or any other entity has violated the Erosion Protection and Sediment Control plan, the SWPPP, a Post Construction BMP, or any other land disturbance permit, or failed to meet any other requirement of this section, and has not complied with a verbal and/or written warning, the city may issue a Notice of Violation (NOV) to the responsible entity. The NOV shall specify the particular violation believed to have occurred, the required remediation, and a penalty for the violation. Offenses enforced through a NOV must be corrected within five (5) calendar days of the date of issuance or a Stop Work Order (SWO) will be issued.

(2) This warning will be documented by posting a written notice at the construction site and also a copy shall be mailed by first class mail, postage pre-paid, to the address listed by the contractor on the permit. In the case of work for which there is no permit, a copy of the violation and/or order shall be mailed to the person listed as the landowner of the property.

(D) Stop Work Order.

(1) Whenever the city finds that a person, company, developer or any other entity has violated the Erosion Protection and Sediment Control plan, the SWPPP, a Post Construction BMP, or any other land disturbance permit, or failed to meet any other requirement of this section, and has not complied with a Notice of Violation (NOV), a Stop Work Order (SWO) will be issued to the contractor. Failure to follow a Stop Work Order issued by the City of Berea will result in suspension of permits that have been issued for the site. The NOV shall specify the particular violation believed to have occurred, the required remediation, and a penalty for the violation.

(2) The contractor shall immediately stop work on all other activities at the site and work directly on sediment control compliance issues. Only permit violation correction work is permitted until the Stop Work order is lifted. When the site is found acceptable, the City of Berea will reinstate the permit upon receipt of all accrued penalties imposed on the project site. The contractor is subject to daily civil fines if found working under a suspended permit. The SWO will be documented by posting a written notice at the construction site and also a copy shall be mailed by first class mail, postage pre-paid, to

the address listed by the contractor on the permit. In the case of work for which there is no permit, a copy of the violation and/or order shall be mailed to the person listed as the landowner of the property.

(E) An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a second offense and may be enforced through a SWO.

(F) For violations where no Land Disturbance Permit has been issued, the City of Berea will notify the responsible party and cooperate for resolution prior to enforcement. Should the responsible party not cease the land disturbance activity the City of Berea may request the City Attorney to seek injunctive relief.

(G) Six (6) calendar days after posting a Stop-Work Order, the City of Berea may issue a notice of intent to the contractor, landowner, or land user stating the City of Berea's intent to perform work necessary to eliminate the violation. The City of Berea may enter onto the land and commence work after fourteen (14) days from issuing the notice of intent. The costs incurred by the City of Berea to perform this work shall be paid by the landowner or contractor out of the fiscal surety referred to in this section, to the extent that the amount is covered thereby, with the remainder being directly due and owed by the landowner or contractor. In the event no Land Disturbance Permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the City of Berea, plus a reasonable administrative and attorneys fee shall be billed to the contractor or owner. Failure to reimburse the city within thirty (30) days will result in a lien being placed on the property.

(H) Compliance with the provisions of this section may also be enforced by injunction.

(I) The city may require immediate abatement of any violation of this section that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the city is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Berea shall be fully reimbursed by the property owner and/or responsible party. The cost, plus interest at the rate authorized by the City of Berea, plus a reasonable administrative and attorneys fee shall be billed to the owner. Failure to reimburse the city within thirty (30) days of notice will result in a lien being placed on the property.

(J) For the purpose of this section, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.

(K) Abatement by the city. If the violation has not been corrected pursuant to the requirements set forth in the NOV, or, in the event of an appeal, within ten (10) days of the decision to uphold the NOV, then the City or designated contractor shall enter upon the subject private premises 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 Enforcement Agency of the City of Berea or designated contractor to enter upon the premises for the purposes set forth above.

(L) Charging cost of abatement/liens.

(1) Within thirty (30) days after abatement of the nuisance by the city, the city shall notify the property owner of the premise of the cost of abatement, including administrative costs.

(2) If the amount due is not paid within ten (10) days, the City Clerk shall enter the amount due on the tax roll and collect as a special assessment against the property and such amount shall constitute a lien on the property.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.402 APPEALS

(A) Any person affected by a decision, notice, or order, of the Enforcement Agency, shall have the right to appeal to the Code Enforcement Board by filing a written notice of appeal with the City Clerk within seven (7) days after the decision, notice, or order was served or made effective. The filing fees for a Notice of Appeal shall be twenty-five dollars (\$25.00) and shall be paid upon filing the Notice of Appeal.

(B) Upon receipt of a Notice of Appeal, the Code Enforcement Board shall convene a hearing to consider the appeal within fourteen (14) days of receipt. All parties to the appeal shall be notified of the time and place of the hearing by letter sent by first class mail, by personal service, or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen

(18) years of age or older and who is informed of the contents of the notice, no later than five (5) days prior to the date of the hearing. The Code Enforcement Board shall issue its decision on the appeal within ten (10) working days after the hearing.

(C) All appellate decisions of the Code Enforcement Board constitute final action by the City on the matter.

(D) Filing of a Notice of Appeal does not stay any enforcement action of the city other than civil monetary penalties.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.403 PENALTIES

(A) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Each day there is a violation of any part of this chapter shall constitute a separate offense.

(B) Any person who violates any part of this chapter shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorney's fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this chapter.

(C) The city may enforce the provisions hereof through a civil proceeding in the Code Enforcement Board, pursuant to KRS 65.8821 and Chapter 22 of the Code of Ordinances of the City of Berea. The Code Enforcement Board may impose civil penalties of no more than One Thousand Dollars (\$1,000.00) per day for each separate violation, and hold the violator liable for the city's attorney's fees and costs. Each day that such violation continues shall constitute a separate violation.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.404 INJUNCTIVE RELIEF

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

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.405 REMEDIAL ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the authorized enforcement agency may impose upon a violator alternative remedial action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and the like.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.406 EMERGENCY ABATEMENT

The Enforcement Agency of the city is authorized to require immediate abatement of any violation of this section that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Enforcement Agency of the city, the is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party.

(Ord. No. 24-14, § 1, 12-16-14)

§ 34.407 ACTS POTENTIALLY RESULTING IN A VIOLATION OF THE FEDERAL CLEAN WATER ACT

Any person who violates any provisions of this section or any provision of any permit issued by the city may also be in violation of the Clean Water Act and may be subject to the sanctions of those acts

including civil and criminal penalties in force at the time of the violation. Any enforcement action authorized under this section shall also include written notice to the violator of such potential liability. (Ord. No. 24-14, § 1, 12-16-14)