

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 28 of the Lincoln Municipal Code relating to
2 Stormwater Quality and Erosion and Sediment Control by creating a new Chapter 28.02,
3 Regulations for Illicit Discharges, by adding Section 28.02.010 setting forth the purpose and
4 intentions of the chapter; adding Section 28.02.020 to provide that the regulations shall apply to all
5 lands within the corporate limits of the City and within three miles thereof unless the stormwater
6 from such lands will not discharge into the storm drainage system; adding Section 28.02.030 to
7 provide definitions; adding Section 28.02.040 to prohibit the discharge of a pollutant into the storm
8 drainage system except as specifically authorized; adding Section 28.02.050 to list specific
9 discharges which are prohibited from being discharged into the storm drainage system; adding
10 Section 28.02.060 to prohibit illicit connections to the storm drainage system; adding Section
11 28.02.070 to authorize the Health Director to enter upon property to inspect, detect, and eliminate
12 illicit discharges and to assess an inspection fee against the responsible person; adding Section
13 28.02.080 to require notification to the Health Director in the event of an illicit discharge and to
14 require containment and cleanup of the illicit discharge by the responsible person; and adding
15 Section 28.02.090 to provide a penalty for a violation of Chapter 28.02.

16 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

17 Section 1. That Title 28 of the Lincoln Municipal Code be amended by adding a new
18 section numbered 28.02.010 to read as follows:

1 **28.02.010** **Purpose and Findings.**

2 The purpose of this chapter is to prevent illicit discharges into the storm drainage system.

3 This chapter is intended to:

4 (a) Promote public health and welfare;

5 (b) Prevent nuisances;

6 (c) Eliminate hazards to the environment;

7 (d) Minimize economic impact to the City and the public resulting from illicit discharges;

8 and

9 (e) Assure compliance with the City of Lincoln's National Pollutant Discharge
10 Elimination System (NPDES) MS4 permit.

11 Section 2. That Title 28 of the Lincoln Municipal Code be amended by adding a new
12 section numbered 28.02.020 to read as follows:

13 **28.02.020** **Authority and Applicability.**

14 (a) The provisions of this chapter are deemed not to limit any other lawful regulatory
15 powers of the City.

16 (b) The regulations set forth herein, or set forth elsewhere in the Lincoln Municipal Code
17 when referred to in this chapter shall be known as the Regulations for Illicit Discharges.

18 (c) The regulations shall apply to all lands within the corporate limits of the City, and
19 all lands within three miles thereof, unless it is demonstrated by a preponderance of the evidence
20 that stormwater from such lands will not discharge into the storm drainage system.

21 Section 3. That Title 28 of the Lincoln Municipal Code be amended by adding a new
22 section numbered 28.02.030 to read as follows:

1 **28.02.030** **Definitions.**

2 For purposes of this chapter, the following definitions shall apply:

3 **Best Management Practices (BMPs)** shall mean schedules of activities, prohibitions of
4 practices, maintenance procedures, and other management practices aimed to prevent illicit
5 discharges to the storm drainage system or pollution to waters of the State or United States. BMPs
6 also include treatment requirements, operating and maintenance procedures, schedules of activities,
7 prohibitions of activities, and other management practices aimed to control plant site discharges
8 from raw material storage.

9 **City** shall mean the City of Lincoln, Nebraska.

10 **Discharge** shall mean accidental or intentional spilling, leaking, pumping, pouring, placing,
11 emitting, emptying, or dumping of a material or substance into the storm drainage system.

12 **Domestic wastewater** shall mean wastewater derived from sanitary or domestic wastes,
13 including, but not limited to, human body waste, household wastes, bath and toilet wastes, laundry
14 wastes, kitchen wastes, and other wastes contributed by reason of human occupancy.

15 **Hazardous substance** shall mean any substance listed in Table 30.4 of the Code of Federal
16 Regulations (CFR), 40 CFR Part 302.

17 **Hazardous waste** shall mean all waste defined in the Code of Federal Regulations (CFR),
18 40 CFR Part 261.3 and Nebraska Administrative Code, Title 128, Chapter 2.

19 **Health Director** shall mean the Health Director of the Lincoln-Lancaster County Health
20 Department or authorized deputy, agent, or representative.

1 Household hazardous waste shall mean solid waste generated in a household (including
2 single and multiple residences) by a consumer which would be classified as a hazardous waste under
3 40 CFR Part 261, but for the exclusion provided in 40 CFR Section 261.4(b)(1).

4 Illicit connection shall mean: (a) a connection or conveyance which may cause an illicit
5 discharge to the storm drainage system regardless of whether it was previously allowed, permitted,
6 or approved; or (b) a connection or conveyance from a commercial or industrial land use to the
7 storm drainage system which has not been documented in plans, maps, or equivalent records and
8 approved by the City.

9 Illicit discharge shall mean a discharge to the storm drainage system that is not composed
10 entirely of stormwater, except discharges pursuant to a NPDES permit or otherwise exempted by
11 this chapter.

12 Industrial waste (or process waste) shall mean any solid, liquid, or gaseous substance
13 discharged, permitted to flow, or escaping from any industrial, manufacturing, commercial, or
14 business establishment or process, or from the development, recovery, or processing of any natural
15 resource, as distinct from sanitary (or domestic) wastes.

16 Industrial wastewater shall mean wastewater derived from industrial waste or process
17 waste, as distinct from domestic wastewater.

18 Municipal Separate Storm Sewer System (MS4) shall mean the storm drainage system
19 owned or operated by the City.

20 National Pollutant Discharge Elimination System (NPDES) shall mean the program for
21 issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the
22 Federal Clean Water Act (Sections 301, 318, 402, and 405); 33 CFR Sections 1317, 1328, 1342, and

1 1345; the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq.; and Nebraska
2 Administrative Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under
3 the National Pollutant Discharge Elimination System.

4 **NPDES Permit** shall mean a permit issued by the United States Environmental Protection
5 Agency (EPA) or the State of Nebraska Department of Environmental Quality that authorizes the
6 discharge of pollutants to waters of the State or United States.

7 **Person** shall mean any individual, partnership, co-partnership, firm, company, corporation,
8 association, joint stock company, trust, estate, governmental entity, or any other legal entity,
9 including their legal representatives, agents, or assigns.

10 **Pollutant** shall mean a substance or material which contaminates or impedes the flow of
11 water including, but not limited to, dredged spoil, spoil waste, incinerator residue, filter backwash,
12 domestic or industrial wastewater, septic waste, sewage, garbage, refuse, junk, sewage sludge,
13 munitions, chemical waste, biological materials, radioactive materials, wrecked or discarded
14 equipment, rock, sand, soil, sediment, yard waste, household hazardous waste, hazardous waste,
15 hazardous substance, pesticide, fertilizer, concrete truck washout, used motor oil, antifreeze, litter,
16 and sanitary, industrial, municipal, or agricultural waste.

17 **Property owner** shall mean the named property owner as indicated by the records of the
18 Register of Deeds of Lancaster County, Nebraska.

19 **Sanitary wastes (or domestic wastes)** shall mean any solid, liquid, or gaseous substance
20 discharged from residences, business buildings, institutions, commercial and industrial
21 establishments contributed by reason of human occupancy.

1 **Sanitary sewer** shall mean the system of pipes, conduits, connections or other conveyances
2 which carry industrial wastewater and domestic wastewater from residential dwellings, commercial
3 buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to
4 a sewage treatment plant and which is not intended to collect or convey stormwater, surface water,
5 or groundwater.

6 **Septic waste** shall mean any domestic wastewater from holding tanks such as vessels,
7 chemical toilets, campers, trailers, and septic tanks.

8 **State** shall mean the State of Nebraska.

9 **Storm drainage system** shall mean any conveyance, system of conveyances, or other
10 structure including, but not limited to, any roads with drainage systems, public streets, private
11 roadways, sidewalks, catch basins, curbs, gutters, ditches, inlets, piped storm drains, pumping
12 facilities, natural and manmade or altered drainage channels, reservoirs, or other stormwater storage
13 facilities designed or used for collecting or conveying stormwater, and which is not intended to
14 collect or convey industrial or sanitary wastes or wastewater.

15 **Stormwater** shall mean stormwater runoff, snow melt runoff, and surface water runoff and
16 drainage.

17 **Surface water** shall mean any body of water designated as “surface waters” by the state of
18 Nebraska, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps,
19 cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs,
20 oxbow lakes, ponds, and wetlands, as well as any other body of water designated by the federal
21 government as a “water of the United States.”

1 Wastewater shall mean the combination of the liquid or water carried wastes removed from
2 residences, institutions, and commercial and industrial establishments, together with such ground
3 water, surface water, and stormwater as may be present.

4 Section 4. That Title 28 of the Lincoln Municipal Code be amended by adding a new
5 section numbered 28.02.04 to read as follows:

6 **28.02.040 General Prohibition.**

7 (a) No person shall discharge, cause the discharge, or allow the discharge of a pollutant
8 into the storm drainage system, except as allowed in subsection (b) of this section.

9 (b) The following discharges are not a violation of this chapter:

10 (1) Discharges authorized by, and not in violation of, an NPDES permit;

11 (2) Discharges or flows resulting from fire fighting activities;

12 (3) Water line flushing;

13 (4) Lawn watering, landscape irrigation, or other irrigation water

14 (5) Diverted stream flow;

15 (6) Uncontaminated pumped groundwater or rising groundwater;

16 (7) Uncontaminated groundwater infiltration;

17 (8) Uncontaminated discharge or flow from a foundation drain, crawl space
18 pump, footing drain, or sump pump;

19 (9) A discharge or flow from a potable water source;

20 (10) Air conditioning condensate;

21 (11) Individual residential motor vehicle washing;

22 (12) A discharge or flow from a riparian habitat, wetland, or natural spring;

1 (13) Street wash waters (excluding street sweepings which have been removed
2 from the street):

3 (14) Water from a swimming pool, or other aquatic facility, such as water
4 playgrounds or water fountains, which does not contain pollutants and which contains a free chlorine
5 residual of less than 4.0 ppm;

6 (15) Uncontaminated heat pump discharge waters; and

7 (16) Discharges resulting from treatment of streets and roads to prevent icing or
8 to deice.

9 (c) Notwithstanding the provisions of subsection (b) of this section, a discharge shall be
10 prohibited if determined by the Health Director to be a significant source of pollution to the storm
11 drainage system.

12 Section 5 That Title 28 of the Lincoln Municipal Code be amended by adding a new
13 section numbered 28.02.050 to read as follows:

14 **28.02.050 Specific Prohibitions.**

15 The specific prohibitions listed in this section are not inclusive of all the discharges
16 prohibited in Section 28.02.040, but are provided to address discharges that are frequently found or
17 are known to occur.

18 No person shall discharge, cause the discharge, or allow the discharge of the following into
19 the storm drainage system:

20 (a) Used motor oil, antifreeze or other petroleum product or waste;

21 (b) Industrial waste or wastewater;

22 (c) Hazardous waste, including household hazardous waste;

- 1 (d) Domestic wastewater or septic waste, grease trap waste, or grit trap waste;
- 2 (e) Garbage or rubbish, refuse or solid waste;
- 3 (f) Yard wastes which have been moved or gathered by a person;
- 4 (g) Wastewater that contains soap, detergent, degreaser, solvent, or surfactant based
5 cleaner from a commercial motor vehicle wash facility; from vehicle washing, cleaning, or
6 maintenance at a new or used motor vehicle dealership, rental agency, body shop, repair shop, or
7 maintenance facility; or from washing, cleaning or maintenance of any business, commercial or
8 public service vehicle, including a truck, bus, or heavy equipment.
- 9 (h) Wastewater from a commercial mobile power washer or from the washing or other
10 cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or surfactant based
11 cleaner;
- 12 (i) Wastewater from commercial floor, rug, or carpet cleaning;
- 13 (j) Wastewater from the washdown or other cleaning of pavement that contains soap,
14 detergent, solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or wastewater from
15 the wash-down or other cleaning of pavement where a discharge of oil, motor fuel, or other
16 petroleum or hazardous substance has occurred, unless all such materials have been previously
17 removed;
- 18 (k) Effluent containing pollutants from a cooling tower, condenser, compressor,
19 emissions scrubber, emissions stripper, emission filter, or the blowdown from a boiler;
- 20 (l) Ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge
21 resulting from the cleaning of vehicles or equipment containing or used in transporting or applying
22 such material;

1 (m) Runoff, washdown water or waste from an animal pen, kennel, fowl or livestock
2 containment area or any pet wastes generally;

3 (n) Filter backwash from a swimming pool, spray park, wading pool, hot tub, spa,
4 fountain;

5 (o) Swimming pool water containing a disinfectant residual no greater than that approved
6 for potable water or any other chemical used in the treatment of the swimming pool water or in
7 swimming pool cleaning.

8 (p) Discharge from water line disinfection if it contains a disinfectant residual greater
9 than that approved for potable water;

10 (q) Contaminated runoff from a recycling or commercial composting operation;

11 (r) Substance or material that will damage, block, or clog the storm drainage system;

12 (s) Discharge from a petroleum storage tank (PST), leachate or runoff from soil
13 contaminated by leaking PST or discharge of pumped, confined or treated wastewater from the
14 remediation of a PST discharge, unless the discharge is authorized by an NPDES permit; or

15 (t) Any other discharge that causes or potentially contributes to a violation of a water
16 quality standard, the City’s NPDES MS4 permit, or any other permit or authorizations to discharge
17 from the MS4.

18 Section 6 That Title 28 of the Lincoln Municipal Code be amended by adding a new
19 section numbered 28.02.06 to read as follows:

20 **28.02.060 Prohibition of Illicit Connections; Removal.**

21 (a) No person shall install, maintain, or use any illicit connection to the storm drainage
22 system.

1 (b) This prohibition expressly includes, without limitation, illicit connections made in
2 the past, regardless of whether the connection was permissible under law or practices applicable or
3 prevailing at the time of connection. For illicit connections made in the past, a plan to remedy the
4 illicit connection shall be submitted to the Health Director from the present property owner,
5 occupant, or person responsible.

6 (c) If any person fails to disconnect an illicit connection, the Health Director may cause
7 the removal of such connection from the storm drainage system. The City may pursue the recovery
8 of costs by appropriate means including filing a suit at law against the present property owner,
9 occupant, or person responsible.

10 Section 7 That Title 28 of the Lincoln Municipal Code be amended by adding a new
11 section numbered 28.02.070 to read as follows:

12 **28.02.070 Right of Entry; Inspection and Detection; Inspection Fees.**

13 Upon presentation of proper credentials, the Health Director may enter at reasonable times
14 any premise, building, facility, structure, or property to determine compliance with this chapter. If
15 entry is refused, the Health Director shall have recourse to the remedies provided by law to secure
16 entry.

17 The Health Director is authorized to inspect, detect, and eliminate illicit discharges and
18 connections to the storm drainage system and to verify compliance with this chapter. Such authority
19 includes, but is not limited to, conducting inspections of facilities and businesses, visual surveys of
20 exterior practices, sampling and analyses of discharges, inspections of manholes and pipes, and
21 investigations of complaints and information from the public regarding known or suspected illicit
22 discharges or connections.

1 An inspection fee, as adopted by resolution of the City Council, shall be assessed against the
2 present property owner, occupant, or person responsible. Fees shall be due annually on March 1 of
3 each year and made payable to the Lincoln-Lancaster County Health Department for deposit into
4 the Health Fund. Any person who fails to pay such fee shall be subject to a late fee, in addition to
5 an enforcement action for violation of this chapter.

6 Section 8. That Title 28 of the Lincoln Municipal Code be amended by adding a new
7 section numbered 28.02.080 to read as follows:

8 **28.02.080 Notification, Containment and Cleanup of Prohibited Discharges.**

9 (a) **Notification.** It shall be the duty of the present property owner, occupant, or person
10 responsible to notify the Health Director of an illicit discharge in the following manner:

11 (1) Hazardous substances. In the event such illicit discharge contains hazardous
12 substances, emergency response agencies shall immediately be notified of the discharge by calling
13 911.

14 (2) Nonhazardous substances. In the event such illicit discharge is composed
15 entirely of nonhazardous substances, the Health Director shall be notified in person, by phone, or
16 by facsimile no later than the next business day. Notifications in person or by phone shall be
17 confirmed in writing, addressed and mailed to the Health Director within three business days of such
18 notice.

19 (b) **Containment.** It shall be the duty of the present property owner, occupant, or person
20 responsible to take or cause to be taken all necessary steps to stop and contain the illicit discharge.
21 As soon as such discharge has been contained, action shall be taken to prevent continued or future
22 illicit discharges. The Health Director may initiate containment in the event the property owner,

1 occupant, or person responsible is unwilling or unable to carry out such containment. All expenses
2 paid by the Health Director to contain the illicit discharge may be recovered in a civil action against
3 the property owner, occupant, or person responsible.

4 (c) **Cleanup.** It shall be the duty of the present property owner, occupant, or person
5 responsible for the illicit discharge to take all necessary steps to cleanup such discharge. The Health
6 Director may initiate remedial actions in the event the present property owner, occupant, or person
7 responsible is unwilling or unable to carry out such cleanup. All expenses paid by the Health
8 Director to cleanup the illicit discharge may be recovered in a civil action against the property
9 owner, occupant or person responsible.

10 Section 9. That Title 28 of the Lincoln Municipal Code be amended by adding a new
11 section numbered 28.02.090 to read as follows:

12 **28.02.090 Enforcement; Penalty.**

13 (a) The Health Director shall investigate suspected violations of this chapter. Whenever
14 the Health Director finds violations of this chapter, the Health Director may issue a notice of
15 violation specifying the corrective action to be taken and the time period within which such action
16 must be completed.

17 (b) Failure to correct the violations within the time period specified shall be cause for
18 an enforcement action by the City.

19 (c) Any person who violates this chapter shall be subject to a penalty of no more than
20 \$500.00 per day of violation, imprisonment in the county jail for a period not to exceed six months,
21 or both such penalty and imprisonment. In the case of a continuing violation, each day shall
22 constitute a separate and distinct offense.

1 In addition to any penalty sought or obtained under this chapter or other applicable
2 law, the City may seek injunctive relief or take other appropriate action necessary to obtain
3 compliance or to abate any nuisance resulting from the violation.

4 Section 10. That Sections 1 through 9 hereof shall be codified in the Lincoln
5 Municipal Code as Chapter 28.02 entitled Stormwater Quality and Erosion and Sediment Control.

6 Section 11. That this ordinance shall take effect and be in force from and after its
7 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2008: _____ Mayor
