

**ORDINANCE NO. 1923**

AN ORDINANCE REVISING THE REGULATION OF STORMWATER  
(Supersedes Ordinance No. 1897 and Amends Chapter 9.53 of the Merced County Code)

THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED ORDAINS AS FOLLOWS:

SECTION I: Chapter 9.53 of the Merced County Code is amended to read as follows:

ARTICLE/CHAPTER 9.53  
REGULATION OF STORMWATER

Section 9.53.010. Title, Purpose and General Provisions.

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- B. Purpose and Intent.
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Section 9.53.010 Title, Purpose and General Provisions

A. Title.

This chapter shall be known as the "Regulation of Stormwater" of the County of Merced and may be so cited.

B. Purpose and Intent.

The purpose and intent of this chapter is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. section 1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-stormwater discharges to the storm drain system.

In addition, this chapter has been written to enact requirements stipulated in the "National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)" adopted by the State Water Resources Control Board.

This chapter creates regulations that govern management of construction projects, the layout and design of new projects, and inspection and monitoring of existing facilities which may cause or contribute pollution or illicit discharges to storm drainage systems under the jurisdiction of the County of Merced.

C. Definitions.

The terms used in this chapter shall have the following meanings:

"Best Management Practices (BMPs)" mean activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system..

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

"Construction activity" means any construction activity subject to the most recent version of the "National Pollutant Discharge Elimination (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities and Land Disturbance Activities" issued by the State Water Resources Control Board including:

1. Any construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that

results in a land disturbance of equal to or greater than one acre.

2. Construction activity that results in land surface disturbance of less than one acre if the construction activity is part of a larger common plan of development or sale of one or more acres of disturbed land surface.
3. Construction activity related to residential, commercial, or industrial development on lands currently used for agriculture including, but not limited to, the construction of buildings related to agriculture that are considered industrial pursuant to USEPA regulations, such as dairy barns or food processing facilities.
4. Construction activity associated with Linear Underground/Overhead Projects (LUPs) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull stations, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.
5. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Construction Activities do not include:

1. Routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.
2. Disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation.
3. Construction activity that disturbs less than one acre of land surface, and that is not part of a larger common plan of development or the sale of one or more acres of disturbed land surface.
4. Landfill construction activity that is subject to the Industrial General Permit.
5. Discharges occurring in basins that are not tributary or hydraulically connected to waters of the United States.

"Contamination" means the impairment of the quality of the waters by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease including any equivalent effect resulting from the disposal of waste, whether or not the waters are affected. (California Water Code section 13050((1)(2).)

"County" means the County of Merced.

“Discharger” means any person who discharges, or causes to discharge, either directly or indirectly, stormwater or any other material into the storm drain system.

“Hazardous materials” mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (California Health and Safety Code section 25117.)

“Illicit discharge” means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 9.53.02.A.1. of this chapter. Illicit discharges include all non-stormwater discharges not otherwise authorized in this Chapter, including discharges from organized car washes, mobile cleaning and pressure wash operations.

“Illicit connection” means pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the storm drain system.

“Incidental runoff” means unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application (over watering), if it is due to intentional overflow or application, or if it due to negligence.

“Industrial activity” means any activity subject to NPDES Industrial Permits including stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas, including tank farms, for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. (40 CFR Section 122.26 (b)(14).)

“National Pollutant Discharge Elimination System (NPDES) stormwater discharge permits” means general, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The California Regional Water Quality Control Board, Central Valley Region 5 (hereinafter, “Regional Board”) and the State Water Resources Control Board have adopted general storm water discharge permits, including but not limited to, the general construction activity and general industrial activity permits.

“Nonstormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Person” means any natural person as well as any corporation, partnership,

public agency, trust, estate, cooperative association, joint venture, business entity or other similar entity, or the agent, employee or representative of any of the above.

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

"Pollution" means the human-made or human-induced alteration of the quality of the waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses. (California Water Code section 13050(l)(1)). Pollution may include contamination.

"Porter-Cologne Act" means the Porter-Cologne Water Quality Control Act and as amended (California Water Code section 13000 et seq.), and any subsequent amendments thereto.

"Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

"Regulated projects" means all projects that create and/or replace 5,000 square feet or more of impervious surface. Regulated projects include new development and redevelopment projects on public or private land that fall under the planning and permitting authority of the County. Redevelopment is any land-disturbing activity that results in the creation, addition, or replacement of existing impervious surface area on a site on which some past development has occurred. Redevelopment does not include trenching, excavation and resurfacing associated with Linear Underground Projects (LUPs), pavement grinding and resurfacing of existing roadways, construction of new sidewalks, pedestrian ramps, or bike lanes on existing roadways, or routine replacement of damaged pavement such as pothole repair or replacement of short, non-contiguous sections of roadway.

Regulated projects do not include:

- Detached single family home projects that are not part of a larger plan of development;
- Interior remodels;
- Routine maintenance or repair such as: exterior wall surface replacement, pavement resurfacing within the existing footprint;
- Linear Underground Projects (LUPs), unless the LUP has a discrete location that has 5,000 square feet or more of newly constructed contiguous impervious surface; in that case, only the specific discrete location will be considered to be a regulated project.

"Sediment Control Plan (SCP)" means an erosion and sediment control plan prepared for a construction activity designating the type and location of BMPs to be

incorporated into a particular construction project.

“Storm drain system” means publicly owned facilities operated by the County by which stormwater is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures which are within the County and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

“Stormwater” means any surface flow, runoff, and drainage consisting entirely of water from rain storm events.

“Waters of the United States (waters)” means surface watercourses and water bodies as defined at 40 CFR 122.2., including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons.

#### D. Applicability.

This chapter shall apply to all dischargers or potential dischargers located within the unincorporated areas of the County of Merced.

#### E. Responsibility for Administration.

The Director of Public Works of the County shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Director of Public Works may be delegated in writing by the Director of Public Works to persons or entities acting in the beneficial interest of or in the employ of the County.

#### F. Severability.

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

#### G. Regulatory Consistency.

This chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and acts amendatory thereof or supplementary thereto, or any applicable implementing regulations.

#### H. Ultimate Responsibility of Discharger.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into the storm drain system caused by said person. This chapter shall not create liability on the part of the County of Merced, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made

thereunder.

## Section 9.53.020 Discharge Prohibitions.

### A. Prohibition of Illicit Discharges.

No person shall discharge or cause to be discharged into the storm drain system any 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 storm water.

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

1. Discharges from the following activities will not be considered a source of pollutants to the storm drain system when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illicit discharges unless determined to cause a violation of the provisions of the Porter-Cologne Act, Clean Water Act, or this chapter:
  - a. Water line flushing;
  - b. Individual residential car washing;
  - c. Diverted stream flows;
  - d. Rising groundwaters;
  - e. Uncontaminated groundwater infiltration to the storm drain system;
  - f. Uncontaminated pumped groundwater;
  - g. Discharges from potable water sources;
  - h. Foundation drains;
  - i. Air conditioning condensation;
  - j. Springs;
  - k. Water from crawl space pumps;
  - l. Footing drains;
  - m. Flows from riparian habitats and wetlands;
  - n. Dechlorinated swimming pool discharges;
  - o. Incidental runoff from landscaped areas;
  - p. Discharges or flows from fire fighting.
  
2. With prior written concurrence of the Regional Board, the County of Merced may

exempt in writing other non-stormwater discharges which are not a source of pollutants to the storm drain system.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. Waste Disposal Prohibitions.

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

D. Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit.

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 Director of Public Works prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

E. Excess Irrigation Runoff Prohibition.

Non-stormwater runoff discharge that is not incidental is prohibited. No person shall allow irrigation runoff in excess of incidental runoff to occur. Any person responsible for controlling runoff in excess of incidental runoff shall:

1. Detect leaks (for example, from broken sprinkler heads) and correct leaks within 72 hours of learning of the leak;
2. Properly design and aim sprinkler heads;
3. Not irrigate during precipitation events; and
4. Manage pond containing recycled water such that no discharge occurs unless the discharge is a result of a 25-year, 24-hour storm event or greater, and the appropriate Regional Water Board is notified by email no later than 24 hours after the discharge. The notification is to include identifying information, including the Permittee's name and permit identification number.



Section 9.53.030 Regulations and Requirements.

A. Requirements to Reduce Runoff and Pollutants Associated with Runoff.

In order to reduce the volume of stormwater runoff and minimize typical pollutants associated with stormwater runoff, the County requires the various measures described in the section be implemented:

1. Best Management Practices (BMPs), when required to be installed, shall conform to the California Storm Water Quality Association (CASQA) Best Management Practice Handbooks or equivalent.
2. Construction Site Storm Water Runoff Control.

Prior to disturbing any soil, operators of a construction activity project shall prepare and submit a Sediment Control Plan (SCP) to the Department of Public Works for review and approval. The SCP shall be incorporated as separate sheets of the Civil portion of the plans prepared for the project and shall indicate BMPs to be used during project construction and post construction. The SCP shall be prepared by a certified Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD).

The operator of a construction activity project shall submit evidence that all applicable permits (i.e. State Water Board's Construction General Permit, State Water Board 401 Water Quality Certification, U.S. Army Corps 404 permit, and the California Department of Fish & Wildlife 1600 Agreement) directly associated with the soil disturbing activities have been obtained.

If a SWPPP is required to be developed for the construction activity project pursuant to the State Water Board's Construction General Permit, the SWPPP may substitute for the required SCP. In this case, the operator of the construction activity project shall submit a copy of the SWPPP to the County for review and approval.

3. Post Construction Storm Water Management.

a. Small Development Projects. Small development projects that create and/or replace (including projects with no net increase in impervious surface) between 2,500 square feet and 5,000 square feet of impervious surface, including detached single family homes that create and/or replace 2,500 square feet or more of impervious surface and are not part of a larger plan of development shall implement one or more of the following site design measures to reduce project site runoff:

- i. Stream Setbacks and Buffers. A vegetated area including trees, shrubs, and herbaceous vegetation shall be retained (if existing) or established to protect a stream system or lake reservoir.
- ii. Soil Quality Improvement and Maintenance. Improve and/or maintain the soil through the incorporation of soil amendments and creation of a microbial community.
- iii. Tree Planting and Preservation. Plant and/or preserve healthy established trees including both evergreen and deciduous varieties, as applicable.

- iv. Rooftop and Impervious Area Disconnection. Reroute rooftop drainage pipes to drain rainwater to rain barrels, cisterns, or on-site permeable areas instead of the storm drain system.
- v. Porous Pavement/Concrete. Incorporate use of porous pavement, porous concrete and/or other permeable materials for on-site flat work (driveways, walkways, patios, parking areas, etc.) instead of traditional pavement or concrete.
- vi. Green Roofs. Incorporate use of a vegetative layer grown on a roof (rooftop garden).
- vii. Vegetated Swales. Construct an on-site vegetated, open-channel swale designed specifically to treat and attenuate storm water runoff.

Project proponents shall quantify the runoff reduction resulting from implementation of one or more of the above site design measures using the State Water Board SMARTS Post-Construction Calculator or another methodology determined to be acceptable by the County.

b. Regulated Projects.

- i. Regulated projects shall be designed and constructed to implement the source control measures and Low-Impact Development (LID) design standards described in this Chapter in order to effectively reduce runoff and pollutants associated with runoff.
- ii. Redevelopment projects, road projects, and linear underground/overhead projects (LUPs) are a special class of regulated project; these projects shall implement the following special requirements:
  - (a) Where a redevelopment project results in an increase of more than 50 percent of the impervious surface of a previously existing development, runoff from the entire project (including the existing, new, and replaced impervious surfaces) is regulated; in this case, the entire redevelopment project is considered to be part of the regulated project.
  - (b) Where a redevelopment project results in an increase of less than 50 percent of the impervious surface of a previously existing development, only runoff from the new and/or replaced impervious surface of the project considered to be part of the regulated project.
  - (c) New Road Projects and LUPs. Any of the following types of new road projects and LUPs that create 5,000 square feet or more of newly constructed contiguous impervious surface (either a newly constructed public road project or new private development projects that fall under the authority of Merced County) shall be considered a regulated project; however, treatment of runoff of the 85<sup>th</sup> percentile that cannot feasibly be infiltrated onsite shall follow U.S. EPA guidance regarding green infrastructure to the extent possible. Types of projects include:
    - 1) Construction of new streets or roads, including sidewalks and

bicycle lanes built as part of the new streets or roads.

2) Widening of existing streets or roads with additional traffic lanes.

- i. Where the addition of traffic lanes results in an alteration of more than 50 percent of the impervious surface of an existing street or road, runoff from the entire project (including the existing, new and/or replaced impervious surfaces) is considered to be part of the regulated project.
- ii. Where the addition of traffic lanes results in an alteration of less than 50 percent of the impervious surface of an existing street or road, only runoff from the new and/or replaced impervious surface of the project is considered to be part of the regulated project.

(d) Construction of linear underground/overhead projects (LUPs)

(e) Specific exclusions are:

- i. Sidewalks built as part of new streets or roads and built to direct storm water runoff to adjacent vegetated areas.
- ii. Bicycle lanes that are built as part of new streets or roads that direct storm water runoff to adjacent vegetated areas.
- iii. Impervious trails built to direct storm water runoff to adjacent vegetated areas, or other non-erodible permeable areas, preferably away from creeks or towards the outboard side of levees.
- iv. Sidewalks, bicycle lanes, or trails constructed with permeable surfaces.
- v. Trenching, excavation and resurfacing associated with LUPs; pavement grinding and resurfacing of existing roadways and parking lots, construction of new sidewalks, pedestrian ramps, or bike lanes on existing roadways; or routine replacement of damaged pavement such as pothole repair or replacement of short, non-contiguous sections of roadway.

4. Source Control Measures. Operators of regulated projects with pollutant generating activities and sources shall implement permanent and/or operation source control measures, as applicable. Measures, including appropriate BMPs, shall be implemented for the following pollutant generating activities and sources:

- a. Accidental spills or leaks
- b. Interior floor drains
- c. Parking/storage areas and maintenance
- d. Indoor and structural pest control
- e. Landscape/outdoor pesticide use
- f. Pools, spas, ponds, decorative fountains, and other water features
- g. Restaurants, grocery stores, and other food service operations

- h. Refuse areas
- i. Industrial processes
- j. Outdoor storage of equipment and materials
- k. Vehicle and equipment cleaning
- l. Vehicle and equipment cleaning
- m. Fuel dispensing areas
- n. Loading docks
- o. Fire sprinkler test water
- p. Drain or wash water from boiler drain lines, condensate drain lines, rooftop equipment, drainage sumps, and other sources
- q. Unauthorized non-storm water discharges
- r. Building and grounds maintenance

5. Low Impact Development (LID) Design Standards.

All regulated projects shall implement low impact development (LID) standards designed to reduce runoff, treat storm water, and provide baseline hydromodification management conforming to the following criteria:

- a. Site Assessment. Developers of regulated project shall assess and evaluate how site conditions (i.e. soils, vegetation, and flow paths) will influence the placement of buildings and paved surfaces; this evaluation shall be used to satisfy the goals of capturing and treating runoff and assuring the goals of LID are incorporated into the project design. The following methods shall be used to optimize the site layout:
  - i. Define the development envelope and protected areas; Identify areas most suitable for development and areas to be left undisturbed.
  - ii. Concentrate development on portions of the site with less permeable soils and preserve areas that can promote infiltration.
  - iii. Limit overall impervious coverage of the site with paving and roads.
  - iv. Set back development from creeks, wetlands, and riparian habitats.
  - v. Preserve significant trees.
  - vi. Conform the site layout along natural landforms.
  - vii. Avoid excessive grading and disturbance of vegetation and soils.
  - viii. Replicate the site's natural drainage patterns.
  - ix. Detain and retain runoff throughout the site.
- b. Drainage Management Areas. As part of the design, the project site shall be divided into discrete Drainage Management Areas (DMAs). Each DMA shall manage runoff using Site Design Measures, Source Controls, and/or Storm Water Treatment and Baseline Hydromodification Measures.
- c. Numeric Sizing Criteria for Storm Water Retention and Treatment. Regulated projects shall be designed to evapotranspire, infiltrate, harvest/use, and/or

biotreat storm water to satisfy at least one of the following hydraulic sizing design criteria:

i. Volumetric Criteria:

- (a) The storm water runoff volume determined using the formula and volume capture coefficients in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1988); or,
- (b) The volume of annual runoff required to achieve 80 percent or more capture determined in accordance with the methodology in Section 5 of CASQA's Stormwater Best Management Practice Handbook, New Development and Redevelopment, using local rainfall data; or,
- (c) The storm water runoff volume resulting from an 85<sup>th</sup> percentile 24-hour storm event calculated pursuant to procedures developed by the County using precipitation frequency data published by the National Oceanic and Atmospheric Administration (NOAA).

ii. Flow-based Criteria:

- (a) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or,
- (b) The flow of runoff produced from a rain event equal to at least 2 times the 85<sup>th</sup> percentile hourly rainfall intensity as determined from local rainfall records.

- d. **Site Design Measures:** Site design measures shall be used to reduce the amount of runoff, to the extent technically feasible, to achieve the infiltration, evapotranspiration, and/or harvesting/reuse of the 85<sup>th</sup> percentile 24-hour storm runoff event; any remaining runoff from impervious DMAs may then be directed to one or more bioretention facilities.
- e. **Source Controls:** Permanent and/or operation source control measures as described in 9.53.030.A.4 shall be incorporated into the project design.
- f. **Storm Water Treatment Measures and Baseline Hydromodification Management Measures:** After implementation of Site Design Measures, remaining runoff from impervious DMAs shall be directed to one or more facilities designed to infiltrate, evapotranspire, and/or bioretain the amount of runoff determined through the procedures in 9.53.030.A.5.c. The facilities must be demonstrated to be at least as effective as a bioretention system with the following design parameters:
  - i. Maximum surface loading rate of 5 inches per hour, based on the flow rates calculated. A sizing factor of 4% of tributary impervious area may be used.
  - ii. Minimum surface reservoir volume equal to surface area times a depth of 6 inches.
  - iii. Minimum planting medium depth of 18 inches. The planting medium must sustain a minimum infiltration rate of 5 inches per hour throughout the life of the project and must maximize runoff retention and pollutant removal. A

mixture of sand (60% - 70%) meeting the specifications of American Society for Testing and Materials (ASTM) C33 and compost (30% - 40%) may be used.

- iv. Subsurface drainage/storage (gravel) layer with an area equal to the surface area and having a minimum depth of 12 inches.
  - v. Underdrain with discharge elevation at top of gravel layer.
  - vi. No compaction of soils beneath the facility, or ripping/loosening of soils if compacted.
  - vii. No liners or other barriers interfering with infiltration.
  - viii. Appropriate plant palette for the specified soil mix and maximum available water use.
- g. Alternative Designs: Facilities, or a combination of facilities, of a different design than described in Section 9.53.030.5.f may be permitted if all of the following measures of equivalent effectiveness are demonstrated.
- i. Equal or greater amount of runoff infiltrated or evapotranspired;
  - ii. Equal or lower pollutant concentrations in runoff that is discharged after biotreatment;
  - iii. Equal or greater protection against shock loadings and spills;
  - iv. Equal or greater accessibility and ease of inspection and maintenance.
- h. Allowed Variations for Special Site Conditions: The bioretention system design parameters in Section 9.53.030.5.f may be adjusted for the following special site conditions:
- i. Facilities located within 10 feet of structures or other potential geotechnical hazards established by the geotechnical expert for the project may incorporate an impervious cutoff wall between the bioretention facility and the structure or other geotechnical hazard.
  - ii. Facilities with documented high concentrations of pollutants in underlying soil or groundwater, facilities located where infiltration could contribute to a geotechnical hazard, and facilities located on elevated plazas or other structures may incorporate an impervious liner and may locate the underdrain discharge at the bottom of the subsurface drainage/storage layer (this configuration is commonly known as a "flow-through planter").
  - iii. Facilities located in areas of high groundwater, highly infiltrative soils or where connection of underdrain to a surface drain or to a subsurface storm drain are infeasible, may omit the underdrain.
  - iv. Facilities serving high-risk areas such as fueling stations, truck stops, auto repairs, and heavy industrial sites may be required to provide additional treatment to address pollutants of concern unless these high-risk areas are isolated from storm water runoff or bioretention areas with little chance of spill

migration.

- i. Exceptions to Requirements for Bioretention Facilities: If the use of bioretention or a facility of equivalent effectiveness is infeasible (due to construction constraints, not financial constraints), other types of bioretention or media filters (such as tree-box-type biofilters or in-vault media filters) may be used for the following category of Regulated Projects:
  - i. Projects creating or replacing an acre or less of impervious area, and located in a designated pedestrian-oriented commercial district (i.e., smart growth projects), and having at least 85% of the entire project site covered by permanent structures:
  - ii. Facilities receiving runoff solely from existing (pre-project) impervious areas: and
  - iii. Historic sites, structures or landscapes that cannot alter their original configuration in order to maintain their historic integrity.

#### 6. Hydromodification Management.

Projects that create and/or replace one acre or more of impervious surface are considered to be hydromodification management projects. A project that does not increase impervious surface area over the pre-project condition is not a hydromodification management project.

The post-project runoff from a hydromodification management project shall not exceed the estimated pre-project flow rate for the 2-year, 24-hour storm.

#### 7. Operation and Maintenance of Post-Construction Storm Water Management Measures.

a. Maintenance Responsibility. Owners of property on which a regulated project has been developed shall agree to accept responsibility for the operation and maintenance of the on-site installed source control measures, treatment systems, and hydromodification controls. This agreement shall be in the form of a signed and notarized operation and maintenance agreement to be recorded in the Merced County Recorder's Office; responsibility shall transfer to any successors in interest of the property.

Multi-parcel or multi-owner projects (gated communities, condominiums, etc.) shall operate and maintain any commonly owned source control measures, treatment systems, and hydromodification controls either through a homeowners association, through a condominium agreement, or other legally enforceable agreement or mechanism.

b. Inspection authorization. The recorded operation and maintenance agreement shall include a provision authorizing the County to access the project site for the sole purpose of performing inspections of the installed treatment systems and hydromodification controls.

#### B. Requirement to Eliminate Illicit Discharge.

The Director of Public works is authorized to require dischargers of illicit discharges to promptly cease and desist discharging and/or clean-up and abate the illicit discharge. This may include any of the following requirements:

1. The discharger may be required to abate and clean up their discharge, spill, or pollutant release within 72 hours of notification; high risk spills may be required to be cleaned-up as soon as possible.
2. The discharger may be required to abate the discharge within 30 days of notification, for uncontrolled sources of pollutants that could pose an environmental threat.
3. The Department of Public Works may perform the clean-up and abatement work and bill the responsible party, if necessary.
4. If a situation persists where pollutant-causing sources or activities are not abated, all activities on the site may be ordered to cease until the problems associated with the illicit discharge are adequately addressed.
5. If the Director of Public Works determines that clean-up activities cannot be completed within the original timeframe, a new timeframe will be established and the County will notify the Regional Water Board in writing within five business days of the revised timeframe.

C. Requirement to Eliminate or Secure Approval for Illicit Connections.

1. The Director of Public Works may require by written notice that any person responsible for an illicit connection to the storm drain system comply with the requirements of this chapter to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Chapter.
2. If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, said person may request County approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

D. Requirement to Monitor and Analyze.

The Director of Public Works may require by written notice that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illicit discharges, and/or non-storm water discharges to the storm drain system, to undertake at said person's expense such monitoring and analyses and furnish such reports to the County of Merced as deemed necessary to determine compliance with this chapter.

E. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water or the storm drain system from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch



services (911) as well as the Department of Public Works. In the event of a release of non-hazardous materials, said person shall notify the Department of Public Works in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department of Public Works within three business days. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Section 9.53.040. Inspection and Monitoring.

A. Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this chapter, or whenever the Director of Public Works has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter, the Director or their designee may enter such premises at reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the County is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

B. Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Director of Public Works or their designee may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Section 9.53.050. Enforcement Measures and Tracking.

A. Notice of Violation – Enforcement Response Plan.

The Department of Public Works will develop and implement an Enforcement Response Plan. The Director of Public Works will respond to violations of this chapter using progressively stricter enforcement measures, as stipulated in the Enforcement Response Plan, to achieve compliance. The Enforcement Response Plan will incorporate the following provisions:

1. Verbal Warnings. Verbal warnings may be provided, in conjunction with a written Notice of Violation, to help specify the nature of a violation and required corrective action. Verbal warnings are primarily consultative in nature and a written record of verbal warnings should be kept.
2. Written Notice of Violation (NOV). A written Notice of Violation shall be prepared for any violation of this chapter and shall include the nature of the violation, the required corrective action, and the timeframe for taking such action.
3. Escalated Enforcement Measures. The Director of Public Works is authorized to employ any combination of the enforcement actions listed below and to escalate enforcement response where necessary to correct persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm:
  - a. Citations. If the violation has not been resolved within the timeframe stipulated in

the written notice, the Director of Public Works will request the Sheriff issue a Citation pursuant to Chapter 1.20 of the Merced County Code. Pursuant to Chapter 1.28 of the Merced County Code, each person is guilty of a separate offense each and every day during any portion of which any violation of any provision of the ordinances of the County is committed, continued or permitted by any such person, and any such person shall be punished accordingly.

- b. Stop Work Orders. If the violation has not been resolved within the timeframe stipulated in the written notice, the Director of Public Works may issue a Stop Work Order for any work being done on the property subject to inspection by the Department of Public Works. Activities directed at clean-up, abating illicit discharge, and installing appropriate BMPs will be required to continue and will not be impacted by Stop Work Order.
  - c. Withholding of Plan Approvals or Other Authorizations. If the violation has not been resolved within the timeframe stipulated in the written notice, the Director of Public Works may withhold the approval of occupancy of a structure and/or withhold approval of encroachment permits for the property.
  - d. Additional Measures. The Director of Public Works may request any existing land-use permits for the property be rescinded by the Planning Commission in the case of persistent non-compliance.
4. NPDES Permit Referrals. For those construction projects or industrial facilities subject to the State's General Construction Permit or Industrial General Permit, the County shall:
- a. Refer non-filers (i.e., those facilities that cannot demonstrate they obtained permit coverage) to the appropriate Regional Water Board as outlined in the Phase II Small MS4 General Permit.
  - b. Refer ongoing violations to the appropriate Regional Water Board provided the County has made a good faith effort of progressive enforcement to achieve compliance as outlined in the Phase II Small MS4 General Permit.

#### B. Appeal.

Per Merced County Code section 2.32.080.F, notwithstanding Sections 9.53.05.E, H. and I, below, any person receiving a Notice of Violation under Section 9.53.05.A above, may appeal the determination of the Director of Public Works to the Planning Commission. The notice of appeal must be received by the Planning Commission Secretary within five (5) days from the date of the Notice of Violation. The hearing on the appeal before the Planning Commission shall be final.

#### C. Abatement by County.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal under Section 9.53.B, within ten (10) days of the decision of the Planning Commission upholding the decision of the Director of Public Works, then the County or a contractor designated by the Director of Public Works shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the County or designated contractor to enter

upon the premises for the purposes set forth above.

D. Charging Cost of Abatement/Liens.

Within thirty (30) days after abatement of the nuisance by County, the Director of Public Works shall notify the property owner of the property of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the Planning Commission Secretary within fifteen (15) days. The Planning Commission Secretary shall set the matter for public hearing by the Planning Commission. The decision of the Planning Commission shall be set forth by resolution and shall be final.

If the amount due is not paid within ten (10) days of the decision of the Planning Commission or the expiration of the time in which to file an appeal under this Section, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Assessor so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Tax Collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

E. Urgency Abatement.

The Director of Public Works is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or welfare of the public. If any such violation is not abated immediately as directed by the Director of Public Works, the County of Merced 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 County of Merced shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent County from seeking other and further relief authorized under this chapter.

F. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. A violation of or failure to comply with any of the requirements of this chapter shall constitute a misdemeanor and shall be punished as set forth in County Code Chapter 1.28.

G. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Director of Public Works may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

H. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the County at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the County.

I. Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act.

Any person who violates any provision of this chapter or any provision of any requirement issued pursuant to this chapter, may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability.

SECTION II: EFFECTIVE DATE. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Merced State of California.

SECTION III: SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end the provisions of this Ordinance are severable.

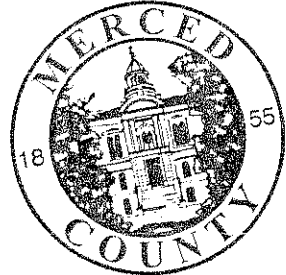
The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California, at a regular meeting thereof held on the 12<sup>th</sup> day of August, 2014, by the following vote:

SUPERVISORS

AYES: Jerry O'Banion, John Pedrozo, Hub Walsh, Linn Davis, Deidre F. Kelsey

NOES: None

ABSENT: None



*Jerald R. O'Banion*  
Jerald R. O'Banion, Chairman  
Merced County Board of Supervisors

ATTEST:

James L. Brown  
Clerk of the Board of Supervisors  
County of Merced

By: *Connie Pittel*  
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:  
MERCED COUNTY COUNSEL

By: *[Signature]*