

**ORDINANCE NO. \_\_\_\_:2019**

AN ORDINANCE OF THE CITY OF MOREHEAD, KENTUCKY PROVIDING REGULATIONS AND MEASURES THAT WILL ADDRESS STORMWATER QUALITY; ESTABLISHING PROCEDURES BY WHICH THESE REQUIREMENTS ARE TO BE ADMINISTERED AND ENFORCED; ESTABLISHING A STORMWATER MANAGEMENT FEE, BILLING PROCEDURES, CLASSIFICATION OF PROPERTY AND REQUEST FOR CORRECTION PROCEDURES

**WHEREAS**, the City wishes to adopt an ordinance regarding stormwater quality management;

**WHEREAS**, the City currently maintains a system of storm and surface water management facilities including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components, as well as natural waterways;

**WHEREAS**, stormwater quality is degraded due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater system;

**WHEREAS**, the public health, safety and welfare is adversely affected by poor ambient water quality and flooding;

**WHEREAS**, all real property in the City of Morehead either uses or benefits from the maintenance of the stormwater system;

**WHEREAS**, the extent of use of the stormwater system by each property is dependent on factors that influence runoff, including land use and the amount of impervious surface on the property;

**WHEREAS**, the cost of improving, maintaining, operating and monitoring the stormwater system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the stormwater management system; and

**WHEREAS**, management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance stormwater management adequately with a use fee system that is reasonable and equitable so that each user of the system pays to the extent to which they contribute to the need for it:

**NOW, THEREFORE BE IT ORDAINED** by the Board of City Council of the City of Morehead, Kentucky that a Stormwater Management Ordinance is created as follows:

**TITLE 5 – PUBLIC UTILITIES**  
**Chapter 55 Stormwater Management**

<b>Section 55.01</b>	<b>GENERAL PROVISIONS</b>
<b>Section 55.02</b>	<b>ILLCIT DISCHARGE CONTROL</b>
<b>Section 55.03</b>	<b>EROSION PROTECTION AND SEDIMENT CONTROL</b>
<b>Section 55.04</b>	<b>POST-CONSTRUCTION STORM WATER MANAGEMENT</b>
<b>Section 55.05</b>	<b>PERMITTING AND PLAN REVIEW PROCEDURES</b>
<b>Section 55.06</b>	<b>STORMWATER MANAGEMENT FEES</b>
<b>Section 55.07</b>	<b>DEFINITIONS</b>

**Section 55.01        GENERAL PROVISIONS**

**(1)     AUTHORITY AND OTHER LAWS**

A.     This Ordinance is adopted by the Morehead, Kentucky City Council under the authority of Chapter 100 and shall be administered by the Morehead Utility Plant and any other City Department deemed appropriate. These departments shall be referred to as the “Approving Agency”, “Issuing Authority” and “Enforcement Agency”.

B.     This Ordinance is adopted pursuant to the powers granted and limitations imposed by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

C.     This Ordinance shall be construed to insure consistency with requirements of the Clean Water Act, the KPDES, and acts amendatory thereof or any other applicable regulations.

D.     The standards and requirements set forth herein and promulgated pursuant to this Ordinance are minimum standards. This Ordinance does not intend nor 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 waters or waters of the Commonwealth.

E.     In their interpretation and other application, the provisions of this Ordinance shall be held to be minimum requirements. Whenever the requirements of

this Ordinance are at variance with the requirements of the City of Morehead Ordinances and Regulations, MUPB regulations or other city, state and federal lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive, or that imposing the higher standards shall govern.

## **(2) PURPOSE**

The requirements set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of the City of Morehead, and more specifically;

A. To protect and enhance the water quality of water courses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act by addressing storm water 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;

B. To establish legal authority to carry out all inspection, surveillance and monitoring, and enforcement procedures necessary ensure compliance with this Ordinance; and

C. To provide a source of revenues to carry out all inspection, surveillance, monitoring and enforcement.

## **(3) SEVERABILITY CLAUSE**

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of these regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

## **Section 55.02 ILLICIT DISCHARGE CONTROL**

### **(1) PURPOSE**

The requirements set forth in this Chapter are intended to:

A. Prohibit illicit discharges and connections to the MS4;

B. Regulate the contribution of pollutants to storm water discharges to the MS4 by any user.

### **(2) 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 hazardous 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 illegal 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, regardless of whether the connection was permissible under law or practice applicable at the time of connection.

C. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon a public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, community waters or waters of the Commonwealth, 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.

### **(3) PERMITTED DISCHARGES**

A. 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;

B. A discharge or flow from lawn watering, or landscape irrigation;

C. A discharge or flow from a diverted stream flow or natural spring;

D. Uncontaminated discharge or flow from a foundation drain, crawl space pump or footing drain;

E. A discharge or flow from air conditioning condensation;

F. A discharge or flow from individual residential car washing;

G. A discharge or flow from a riparian habitat or wetland;

H. A discharge or flow resulting from street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;

I. Dechlorinated drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals;

J. A discharge or flow from any other water source not containing pollutants; and

K. Upon verbal notification to the Enforcement Agency and prior to time of the test, a discharge or flow from dye testing.

No discharge or flow available under Article 1.2 will be permitted if it has been determined by the Enforcement Agency 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 to the discharger.

#### **(4) OTHER DISCHARGES**

The prohibition of discharges or flows shall not apply to any non-storm water 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.

#### **(5) STORM WATER DISCHARGE PERMIT**

Any person, company, developer or any other entity subject to a construction activity NPDES storm water discharge permit or Erosion Protection and Sediment Control Permit shall comply with all provisions of such permits. Proof of compliance with such permits may be required in a form acceptable to the Enforcement Agency.

#### **(6) RULES AND REGULATIONS**

A. Elimination of Illegal Discharges - Notwithstanding the requirements of this Chapter herein, the Enforcement Agency may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

B. Remediation - Whenever the Enforcement Agency finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water entering the MS4, community waters, or waters of the Commonwealth, the Enforcement Agency may require by written notice to the owner of the premises and/or the responsible person that the pollution be remediated and the affected property restored within a specified time.

C. Monitoring and Analyses - The Enforcement Agency may require by written notice of requirement that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges, and/or non-storm water discharges to the MS4, community waters, or waters of the Commonwealth system, to undertake at said person's expense such

monitoring and analyses by a state certified laboratory and furnish such reports to the Enforcement Agency as deemed necessary to determine compliance with this ordinance.

D. Notification of Spills - Notwithstanding other requirements of local, state and federal 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 pollutants or hazardous materials which are resulting or may result in illegal discharges to the MS4, community waters or waters of the Commonwealth 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). In the event of a release of non-hazardous materials, said person shall notify the Enforcement Agency in person or by phone 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 Enforcement Agency within three business days of the notice.

## **(7) INSPECTION AND MONITORING**

A. Inspection - Whenever the Enforcement Agency has cause to believe that there exists, or potentially exists, any condition which constitutes a violation of this Ordinance, the Enforcement Agency 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 illegal discharge emanates from private premises, the owner or operator of the premises will be notified in accordance with the provisions of this Ordinance. Copies of records of storm water compliance shall be provided to the Enforcement Agency.

B. Sampling Devices and Testing - During any inspection as provided herein, the Enforcement Agency may take any samples and perform any testing deemed necessary 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 illegal discharge emanates.

## **(8) ENFORCEMENT**

A. Notice of Violation - Whenever the Enforcement Agency finds that a person, company, developer or any other entity has violated a prohibition or failed to meet a requirement of this Ordinance, the Enforcement Agency may order compliance by written Notice of Violation to the responsible entity. Such notice may require without limitation:

(1) The performance of monitoring, analyses by a state certified laboratory, and reporting;

- (2) The elimination of illicit connections or discharges; that violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (4) Payment of a fine to cover administrative and remediation costs of the Enforcement Agency, if not remedied; and
- (5) The implementation of source control or treatment best management practices;

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Enforcement Agency or a contractor designated by the Enforcement Agency and the expense thereof shall be charged to the violator.

B. Abatement by the Morehead Utility Plant Board - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an Appeal, within 10 days of the decision of the Enforcement Agency upholding the decision of the Director, then the Enforcement Agency 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 or designated contractor to enter upon the premises for the purposes set forth above.

C. Charging Cost of Abatement/Liens - Within 30 days after abatement of the nuisance by the Enforcement Agency, the Enforcement Agency shall notify the property owner of the premises of the cost of abatement, including administrative costs. If the amount due is not paid within 10 days, the MUPB Clerk shall enter the amount due on the tax roll and collect as a special assessment against the property and shall constitute a lien on the property.

D. Urgency Abatement - The Enforcement Agency is authorized to require immediate abatement of any violation of this Ordinance 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, MUPB 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 MUPB shall be fully reimbursed by the property owner and/or responsible party.

E. Acts Potentially Resulting In a Violation Of The Federal Clean Water Act - Any person who violates any provision of this Ordinance or any provision of any permit issued by the Morehead Utility Plant Board or City of Morehead 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. Any enforcement action authorized under this Ordinance shall also include written notice to the violator of such potential liability.

## **Section 55.03      Erosion Protection and Sediment Control**

### **(1)      PURPOSE**

The requirements set forth in this Chapter are intended to:

A.      Control or eliminate soil erosion and sedimentation from construction site storm water runoff related to land disturbing activities within the city limits of the City of Morehead;

B.      Control or eliminate waste from construction site operators that may cause adverse impacts to water quality.

### **(2)      LAND DISTURBANCE ACTIVITY**

A.      Any activity disturbing one (1) or more acres of soil or any disturbed area of less than one (1) acre but part of larger plan of development is subject to the provisions of this Ordinance and shall not take place without an authorized EPSC Permit.

B.      Unless determined to be a problem, the following activities are exempt from obtaining an EPSC Permit and the provisions of this Ordinance:

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

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

(3)      Agricultural operations required to adopt and implement an individual agriculture water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS 224); and

(4)      Usual and customary site investigations, such as geotechnical explorations, clearing for surveying work, monitoring wells and archaeological explorations, which are undertaken prior to submittal of an application for a preliminary subdivision plat.

(5)      Building improvements on existing residential dwellings (garages, additions, porches, etc.)



C. The Issuing Authority may on a project-by-project basis exempt other minor land disturbance activities not specifically identified in the exemptions above.

D. Land disturbance activities on individual lots or parcels that are part of a larger common plan of development are also subject to the provisions of this Ordinance. In this situation, if the individual lot or parcel owner is different than the Permittee of the larger common plan of development, the individual lot or parcel owner (i.e. builder) is responsible for complying with the provisions of these Regulations and is required to obtain an EPSC Permit. The Permittee of the larger plan of development is also responsible for EPSC measures for land disturbance activity on the individual lot or parcel until 80% build-out of the development is reached.

### **(3) EPSC REQUIREMENTS**

A. Plan Requirements - Sites where land disturbance activities are proposed will require an EPSC Plan approved by the Issuing Authority. These plans shall be prepared by a licensed engineer, drawn to an appropriate scale (as determined by MUPB) and shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and measures proposed to minimize soil erosion and off-site sedimentation. The owner/developer/contractor shall perform all clearing, grading, drainage, construction, and development in strict accordance with the approved EPSC Plan and these Regulations. The EPSC Plan shall include the following:

- (1) A letter of transmittal, which includes a project narrative.
- (2) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies, sinkholes and other significant geographic features, and roads and other significant structures.
- (3) An indication of the scale used.
- (4) The name, address, and telephone number of the owner and/or developer of the property where the land disturbing activity is proposed.
- (5) Ground contours, minimum 2 feet intervals, for the existing and proposed topography.
- (6) The proposed grading or land disturbance activity including: the surface area involved, excess spoil material, use of borrow material, and specific limits of disturbance.
- (7) A clear and definite delineation of any areas of vegetation or trees to be saved.

(8) A clear and definite delineation of any wetlands, sinkholes, natural or artificial water storage detention areas, and drainage ditches on the site.

(9) A clear and definite delineation of the floodway and any one hundred (100) year floodplain on or near the site.

(10) Storm drainage system, including quantities of flow and site conditions around all points of surface water discharge from the site.

(11) EPSC provisions to minimize on-site erosion and prevent off-site sedimentation, including provisions to preserve topsoil and limit disturbance.

(12) The proposed plan to control site waste, including a delineation of contractor staging areas for equipment and fuel storage, site materials and temporary facilities.

(13) Details for both temporary and permanent erosion control structures.

(14) Details of temporary and permanent stabilization measures.

(15) A chronological construction schedule and time frame, as a minimum, for the following construction activities:

- (a) Clearing and grubbing
- (b) Construction of erosion control devices
- (c) Installation of permanent and temporary stabilization measures
- (d) Excavation and filling operations
- (e) Building, parking lot, and site construction
- (f) Final grading, landscaping or stabilization
- (g) Removal of temporary erosion control devices

## B. Design Requirements

(1) The design, testing, installation, and maintenance of erosion protection and sediment control operations and facilities and site waste management shall adhere to the criteria, standards and specifications as set forth in the most recent version of the EPSC Design Manual and Standards, as adopted by the Morehead Utility Plant Board and City of Morehead.

(2) Until such time an EPSC Design Manual and Standards are developed and adopted by the Morehead Utility Plant Board and City of Morehead, the following requirements, at minimum, shall be met:

(a) Cut and fill soil slopes shall be no greater than 2H:1V, unless approved by the Issuing Authority. Greater slopes may be permitted such as rock bluffs, etc. depending upon the terrain.

(b) Clearing and grading, except that necessary to establish sediment control devices, shall not commence until sediment control devices have been installed.

(c) Erosion control methods shall include: Phasing of clearing and grading operations for all sites greater than 30 acres; Soil stabilization by seeding/mulching within 15 days of mass grading operations for borrow (excavation) and fill areas; Stabilizing soil stockpiles at the end of each workday; and Installing diversion ditches or other techniques where upland runoff occurs past disturbed areas.

(d) Sediment control methods shall include installing retention facilities, sedimentation basins and traps, and other similar facilities at the most downstream runoff location within the site.

(e) Waterway (creeks, ditches, etc.) protection shall include the installation of a temporary stream crossing; on-site storm water drainage system and stabilized inlets and outlets at all pipes.

(f) Prevention of mud and debris onto public roadways by construction equipment and vehicles shall include the installation of crushed stone construction entrances or an on-site tire washing station at the point of ingress and egress to the public roadway.

(g) Implementing waste management practices and disposal of wastes including a designated waste collection area on site that does not drain directly to a waterway, ensuring storage containers have lids, regular scheduled waste collection (daily, weekly, etc.) to prevent overfilling, cleaning up spills immediately and disposal of construction site waste at authorized landfills or disposal areas.

(h) Disposal plan for hazardous materials that may be utilized during construction in accordance with local and state solid waste regulatory agencies.

(i) Maintaining a set of as-built drawings for all newly installed storm water facilities.

(j) Maintenance schedule during and after construction of graded surfaces, EPSC facilities, and drainage structures.

#### **(4) EPSC PERMIT**

See Section 55.05 of this Ordinance for EPSC permit requirements and review procedures.

## **(5) INSPECTIONS**

A. The MUPB Stormwater Department or its duly authorized representatives shall make inspections of land disturbing activities subject to this Ordinance. Officers and staff of these various departments shall provide periodic inspections at various stages of construction.

B. To ensure compliance with the approved EPSC Plan and to examine field practices to determine if control measures are adequate, authorized inspectors of the MUPB shall have the power to inspect any land disturbing activity and to review the records of all inspections, repairs and modifications made by the Permittee.

C. The Permittee shall be self-policing and shall provide inspections, at a minimum, at the following stages:

- (1) Completion of perimeter erosion and sediment controls
- (2) Completion of clearing and grading
- (3) Installation of temporary erosion controls
- (4) Completion of final grading and ground stabilization
- (5) At least every seven days after areas have been temporarily or permanently stabilized
- (6) Within 24 hours of a rain event 0.5 inches or greater

D. MUPB may increase or decrease the number of required inspections as deemed necessary to ensure an effective EPSC Plan and shall have the right to enter the property of the Permittee without notice.

E. The Permittee shall prepare an inspection report after each inspection and shall keep copies at the job site at all times. At a minimum the inspection report shall include the date, time of day, name of the person conducting the inspection, company represented, scope of the inspection, major observations relating to the EPSC Plan and BMPs installed, and subsequent changes. A copy of each inspection report shall be filed with the Issuing Authority. The Issuing Authority has the right to make regular inspections to ensure the validity of the inspection reports.

F. The Permittee shall be self-policing and shall correct or remedy any EPSC measures that are not effective or functioning properly at all times during the various phases of construction.

## **(6) ENFORCEMENT**

A. A fully qualified Administrative Official designated by the MUPB shall enforce these Regulations. This official may be from the MUPB Stormwater Department or other duly authorized representative. A stop-work order may be posted for the entire project or any specified part thereof if any of the following conditions exist:

(1) Any land disturbance activity regulated under this Ordinance is being undertaken without an EPSC Permit.

(2) The EPSC Plan is not being fully implemented.

(3) Any of the conditions of the EPSC Permit are not being met.

(4) EPSC Plan is determined to be ineffective.

B. For the purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is an EPSC Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the EPSC permit. In the case of work for which there is no authorized EPSC permit, a copy of the order shall be mailed to the person listed as the landowner of the property.

C. If the Permittee does not cease the activity or comply with the Erosion Protection and Sediment Control Plan or EPSC Permit conditions within five (5) days of posting the stop-work order, the Administrative Official may revoke the EPSC Permit.

D. If the landowner or developer where no EPSC Permit has been issued does not cease the land disturbance activity, the Administrative Official may request MUPB's legal counsel to obtain injunctive relief.

E. The Administrative Official may retract the revocation of the EPSC Plan and Permit if the land disturbance activity and site is brought into compliance with these Regulations.

F. If the public health, safety and nuisance is at stake time is of the essence to perform any remedial clean-up work or other work to bring the site into compliance with these Regulations. In this situation, the Issuing Authority may begin the work immediately without notice of intent and bill the cost of such work to the Permittee.

or landowner in violation. Example of this type of work may include cleaning of mud, silt and sediment and other debris from public streets and drainage systems.

G. Any Permittee, person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred fifty dollars (\$150.00) and not more than ten thousand dollars (\$10,000.00), or by imprisonment for not more than ninety (90) days, or both, for each separate offense. Each day there is a violation of any part of this Regulation shall constitute a separate offense.

H. If the Permittee, landowner or developer fails to pay the amount due for the remedial clean-up work or any other work to bring the site into compliance with these Regulations, MUPB shall have a lien upon the property where the land disturbance activity and subsequent violation occurred for the amount due which shall accrue interest at the rate of 6% per annum and/or MUPB may include the amount due on the utility bill of the Permittee, landowner or developer.

## **Section 55.04 POST-CONSTRUCTION STORM WATER MANAGEMENT**

### **(1) PURPOSE**

The requirements set forth in this Chapter are intended to:

A. 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 Morehead or MUPB Stormwater Service Area;; and

B. To ensure adequate long-term operation and maintenance of BMPs.

The primary objective of this Ordinance and the MUPB Storm Water Program is to maintain after development predevelopment storm water runoff characteristics; reduce stream bank and channel erosion, reduce siltation and sedimentation in the community waters and waters of the Commonwealth and lower the discharge of pollutants from impervious areas.

### **(2) APPLICATION**

This Ordinance may apply to the development or redevelopment of land for residential, commercial, industrial, or institutional use, but do not apply to agricultural land management practices. Exemption of agricultural land management practices does not apply to illicit discharges.

### **(3) IMPLEMENTATION OF BMPs**

A. The Approving Agency is responsible for the implementation and enforcement of this Ordinance and the Storm Water Management Program for the City of Morehead.

B. The Approving Agency shall consider for implementation, but not be limited to the following:

(1) Establishing policies, procedures, standards and criteria relating to storm water runoff quality and quantity;

(2) Creating a storm water management guidance design manual and standards for development and redevelopment projects that address quantitative controls for increased volume and rate of surface runoff and qualitative controls that reduce or eliminate pollutants carried by runoff;

(3) Creating an ordinance to address illicit discharges;

(4) Creating an ordinance to address erosion protection and sediment control from construction site runoff related to land disturbing activities;

(5) Establishing design criteria and standards for construction site waste control and erosion protection and sediment control related to land disturbance activities; and

(6) Providing erosion protection and sediment control training for City staff.

#### **(4) STORM WATER MANAGEMENT REQUIREMENTS**

A. Until such time existing regulations are modified or new storm water policies, design criteria and standards are developed to address storm water management, reduce water quality impacts and maintain pre-development runoff conditions, the Approving Agency, at its discretion, may require the design and implementation of structural and non-structural BMPs for new and redevelopment projects.

B. The design of structural BMPs shall be by a professional engineer licensed to practice in the Commonwealth of Kentucky and be approved by the Approving Agency.

C. The storm water BMPs shall become a part of the development's site plan and may include the BMPs identified below.

#### **(5) STORM WATER CONTROL**

Storm water control BMPs shall be utilized to address runoff volume and rate, and remove pollutants. These BMP's may include detention facilities, extended detention basins, retention facilities, hydrodynamic separators, first flush basins, infiltration trenches and drain fields.

#### **(6) STREAM CORRIDOR PROTECTION**

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.

#### **(7) IMPERVIOUS AREA RUNOFF CONTROLS**

Impervious area runoff controls shall be utilized to address high levels of runoff quantity and 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.

#### **(8) DISCHARGE CONTROLS**

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.

#### **(9) RETROFIT IMPROVEMENTS**

If a new development or redevelopment project is upstream of a water quality impaired waterway or upstream of a MS4, community water or waters of the Commonwealth that has exceeded its hydraulic capacity, the Approving Agency, at its discretion, may require the design and implementation of a retrofit improvement involving storm water controls or discharge controls at a downstream location in a existing area.

#### **(10) STORM WATER IMPROVEMENT FEE**

The Approving Agency, at its discretion, may require the developer of a new development or redevelopment project pay a storm water improvement fee in lieu of the installation of storm water BMP improvements.



## **Section 55.05      PERMITTING AND PLAN REVIEW PROCEDURES**

### **(1)      EPSC PERMIT SUBMITTAL REQUIREMENTS**

A.      Land disturbance activities subject to the provisions of Section 55.03 of this Ordinance shall not take place without an authorized EPSC Permit.

B.      The Applicant's submittal for an EPSC Permit shall include at a minimum the Permit Application, EPSC Plan, and plan review fee. The permit review fee is in addition to any other required application or plan review fees. A written application from the landowner and/or developer of the land disturbance site, or his/her authorized representative, in the form prescribed by this Ordinance, shall be required for each EPSC Permit.

C.      Plan Review Fees for the review of stormwater related plans is hereby established as follows:

#### Residential Developments

1 to 4 lots \$350

5 to 25 lots \$500

26 to 75 lots \$1,000

76 to 150 lots \$1,500

150 or more lots \$2,500

#### Commercial Developments

Up to 5.0 acres \$500

5.1 to 10.0 acres \$1,200

10.1 to 25.0 acres \$2,000

25.1 or more acres \$2,500

The Plan Review and Construction Site Inspection Fee may be adjusted from time to time by ordinance.

### **(2)      EPSC PERMIT APPLICATION FORM**

The following information is required on the application:

- A. Name, address, and telephone number of landowner/developer.
- B. Name, address, and telephone number of applicant, if different than landowner/developer.
- C. Name(s), address(es), and telephone number(s) of any and all contractors, subcontractors or persons actually doing the land disturbing or land filling activities and their respective tasks.
- D. Name, address, and telephone number of the person responsible for the preparation of the Final Plat and Site Drawings (roadways, grading and drainage, utilities, etc.)
- E. Name, address, and telephone number of the person responsible for the preparation of the EPSC Plan
- F. Address of site
- G. Date of the application
- H. Signature(s) of the landowner(s)/developer(s) of the site or an authorized representative

The information required for this permit application form may be modified as needed by the Issuing Authority.

### **(3) GENERAL PERMIT**

Complying with the provisions of this Ordinance and issued EPSC Permit does not exempt the Permittee from obtaining coverage from the Kentucky Division of Water (KDOW) under the KPDES Storm Water General Permit for storm discharges related to construction activities that disturb one (1) acre or more. The Permittee is still required to obtain coverage under the KPDES Storm Water General Permit and shall provide a copy of the Notice of Intent filed with KDOW to the Issuing Authority.

### **(4) EPSC PERMIT REVIEW AND APPROVAL PROCESS**

The Issuing Authority will review each application for an EPSC Permit to determine its conformance with the provisions of this Ordinance. Within 30 calendar days after receiving a complete application, EPSC plan, and permit review fee, the Issuing Authority shall, in writing:

- A. Approve the application and EPSC plan and issue the EPSC Permit;

B. Approve the application and EPSC plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of these Regulations, and issue the EPSC Permit subject to these conditions; or

C. Disapprove the permit application and EPSC plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

D. The 30-day review period shall begin anew for resubmittals that were previously submitted and determined to be incomplete or disapproved.

#### **(5) STORM WATER BMP PLAN REVIEW REQUIREMENTS**

On development or redevelopment projects where the Approving Agency has determined storm water BMPs are required, the developer shall submit plans of the proposed BMPs prepared by a licensed engineer. The plans shall be drawn to an appropriate scale and shall include plan and profile views, sections, details, notes and other information necessary for the installation of the BMP.

#### **(6) STORM WATER BMP PLAN REVIEW AND APPROVAL PROCESS**

The Approving Agency will review the storm water BMP plan to determine its conformance with the provisions of this Ordinance. Within 30 calendar days after receiving the plans and plan review fee, the Approving Agency shall, in writing:

A. Approve the plans;

B. Approve the plans subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Ordinance, and approve the plans subject to these conditions; or

C. Disapprove the plans, indicating the reason(s) and procedure for submitting a revised plan.

D. The 30-day review period shall begin anew for resubmittals that were previously submitted and determined to be incomplete or disapproved.

#### **(7) AS-BUILT DRAWING REQUIREMENTS**

A. Prior to the final release of any bonds or other fiscal security that may be required for new developments or redevelopment projects or prior to the issuance of a certificate of occupancy, the project developer and/or contractor shall submit to the Approving Agency as-builts of the newly constructed site improvements and storm water facilities.

B. The as-built condition of these storm water facilities and other site improvements shall be certified by a Professional Engineer and must be reviewed and

approved by the Approving Agency. As-builts shall be provided in both paper copy and electronic format, in a version acceptable to the Approving Agency.

C. If it is determined that the information provided in the as-built drawings or certification of the site improvements and storm water facilities do not meet or exceed the Storm Water Management Program for the City of Morehead, the Approving Agency reserves the right to withhold any bond, fiscal security or certification of occupancy, until such time the deficiency is corrected.

## **Section 55.06      STORMWATER UTILITY FEE**

### **(1)      MANDATORY PARTICIPATION**

The owner(s) of all houses, buildings, or properties with structures situated within the city, is (are) hereby required to participate in the Stormwater Program as a means for MUPB to generate revenue to administrate and enforce the MS4 program.

### **(2)      PURPOSE OF FEE**

This subchapter provides for the recovery of costs from users of the MS4 program for the implementation of the program established herein and for other costs associated with the installation, monitoring and treating of stormwater and the stormwater system. The applicable charges and fees shall be as set forth herein.

### **(3) CHARGES AND FEES**

The following schedule fee schedule shall apply to each property with at least one structure in the MUPB Stormwater Program service area. This fee shall be known as the Stormwater Management Fee (SMF) and is based on the number of ISU's on the property.

<b>Customer</b>	<b>ISU (sf)</b>	<b>Monthly Fee</b>
Residential*	2500	\$2.00 flat rate
Commercial**	2500	\$2.25 per ISU
Industrial	2500	\$2.50 per ISU

\*Includes all single family residences (PVA parcels) with at least one structure regardless of parcel size

\*\*Includes all commercial businesses, shopping centers, duplexes, multi-unit apartments, storage facilities, hospitals, schools, universities, etc.

These rates shall be effective July January 1, 2020 for residential customers.

These rates shall be effective July 1, 2020 for commercial and industrial customers.

### **(4)      ENFORCEMENT OF FEES**

A. MUPB, through the General Manager or his/her designee, to ensure compliance with this chapter, and as permitted through 40 CFR Subchapter N, and 401 KAR 5:057, may take the following enforcement steps against users in non-compliance with the chapter. The remedies available include injunctive relief, civil and criminal penalties, immediate discontinuance of discharges and/or water service and the publishing of the list of users in noncompliance annually. The enforcement authority shall be vested in the General Manager or his/her designee.

B. In the event of termination of service, the user shall pay MUPB for all costs incurred to perform the disconnection and reconnection of service plus fifteen percent (15%) administrative costs prior to the service being restored. If actual costs cannot be determined, the costs shall be estimated by the General Superintendent.

C. The enforcement actions and remedies provided for in this chapter are not exclusive. The General Manager may take any, all, or combination of these actions against a noncompliant user. Further, the General Manager is empowered to take more than one enforcement action against any noncompliant user.

## **Section 55.07        DEFINITIONS**

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

(1)    **APPLICANT** is the landowner or developer who submits an application to the MUPB for an EPSC Permit pursuant to this ordinance.

(2)    **APPROVING AGENCY** is the Morehead Utility Plant Board, its General Manager and any other MUPB Stormwater Department official deemed appropriate, responsible for review and approval of storm water management plans.

(3)    **AS-BUILTS** are 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.

(4)    **BEDROCK** is in place solid rock.

(5)    **BENCH** is a relatively level step excavated into earth material on which fill is to be placed.

**(6) BEST MANAGEMENT PRACTICES (BMP)** is a technique or series of techniques, structural or nonstructural, which are proven to be effective in reducing pollutants in storm water, controlling runoff, erosion and sedimentation and mitigate flooding.

**(7) BORROW** is earth material acquired from an off-site location for use in grading on a site.

**(8) CLEARING AND GRUBBING** is the cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.

**(9) COMMUNITY WATERS** means 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 Morehead.

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

**(11) CO-PERMITTEE** is 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.

**(12) DETENTION FACILITY** is a temporary or permanent natural or manmade structure that provides for the temporary storage of stormwater runoff which is designed so as not to create a permanent pool of water.

**(13) DEVELOPER** is 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 re-development of property.

**(14) DRAINAGE AREA** means that area-contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridgeline.

**(15) ENFORCEMENT AGENCY** is the Morehead Utility Plant Board, its General manager and any other MUPB Stormwater Department official deemed appropriate and their authorized designated to enforce this Ordinance.

**(16) ENGINEER** is a professional engineer licensed in the Commonwealth of Kentucky to practice in the field of civil works.

**(17) EROSION** is the wearing away of the ground surface as a result of the movement of wind, water, ice, and/or land disturbance activities.

**(19) EPSC (EROSION PROTECTION AND SEDIMENT CONTROL)** is 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.

**(19) EPSC DESIGN MANUAL AND STANDARDS** is a compilation of rules, design criteria, guidelines and standards adopted by the City of Morehead as being proven methods of controlling construction related surface runoff, erosion and sedimentation.

**(20) EPSC PERMIT** is a permit required by this Ordinance for land disturbance activities.

**(21) EPSC PLAN** is 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 Ordinance.

**(22) EROSION CONTROL INSPECTOR** is a person designated by the Issuing Authority who has attended an MUPB sponsored or approved training course in EPSC.

**(23) EXISTING GRADE** is the grade prior to grading.

**(24) EXTENDED DETENTION** means 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.

**(25) FINISH GRADE** is the final grade of the site, which conforms to the approved plan.

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

**(27) FLOW ATTENUATION** means prolonging the flow time of runoff to reduce the peak discharge.

**(28) GENERAL PERMIT** is a KPDES Storm Water General Permit for storm water discharges related to construction activities that disturb one (1) acre or more. Coverage under this general storm water permit is obtained by filing a Notice of Intent (NOI) with the Kentucky Division of Water.

**(29) GRADE** is the vertical location of the ground surface.

**(30) HAZARDOUS MATERIALS** is 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.

**(31) ILLEGAL DISCHARGE** is any direct or indirect non-storm water 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 Ordinance.

**(32) ILLICIT CONNECTION** is defined as any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4. Included are conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had previously allowed, permitted, or approved.

**(33) INFILTRATION** means the passage or movement of water into the soil surface.

**(34) INSPECTOR** is a person designated by the Enforcement Agency who has attended an MUPB sponsored or approved training course in detection of illicit discharges.

**(35) ISSUING AUTHORITY** is the Morehead Utility Plant Board.

**(36) IMPERVIOUS SURFACE UNIT** is defined as a 2500 SF average area per residential unit in which rainwater will not easily percolate into the ground. Commercial and industrial properties may consist of multiple ISU's.



**(37) LAND DISTURBANCE ACTIVITY** is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the City of Morehead, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land.

**(38) MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)** of the City of Morehead and MUPB means a conveyance, or system of conveyances including roads with drainage systems, municipal and county streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains designed or used for collecting or conveying storm water. Sanitary and combined sewers are not included in the definition of the municipal separate storm sewer system.

**(39) NON-STORM WATER DISCHARGE** is any discharge to the MS4, community waters or waters of the Commonwealth that is not composed solely of storm water except as permitted by this Ordinance.

**(40) OUTFALL** is the point of discharge to any watercourse from a public or private storm water drainage system.

**(41) PERMITTEE** is the applicant in whose name a valid EPSC Permit is duly issued pursuant to this Ordinance and his/her agents, employees, and others acting under his/her direction.

**(42) POLLUTANT** is 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.

**(43) PREMISES** are the area of land, site, grounds, property on which the illegal discharge emanates.

**(44) REDEVELOPMENT** means any construction, alteration, or improvement involving land disturbance performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential.

**(45) RETENTION FACILITY** is 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.

**(46) RETROFITTING** means the construction of a structural BMP in a previously developed area or the modification of an existing structural BMP, to improve water quality and reduce flow rate and volume over current conditions.

**(47) ROUGH GRADE** is the stage at which the grade approximately conforms to the approved plan.

**(48) RUNOFF** is rainfall, snowmelt, or irrigation water flowing over the ground surface.

**(49) SEDIMENT** means soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.

**(50) SEDIMENTATION** is the process or action of depositing sediment that is determined to have been caused by erosion.

**(51) SITE** is the entire area of land on which the land disturbance activity is proposed in the EPSC permit application.

**(52) SITE PLAN** is 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, storm water management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.

**(53) SITE WASTE** is waste from the construction site such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes.

**(54) SLOPE** is the incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

**(55) SOIL** is naturally occurring surficial deposits overlying bedrock.

**(56) STRIPPING** is any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.

**(57) STORMWATER DESIGN STANDARDS** means the MUPB storm water design standards, latest version that serves as the official guide for storm water design principles, methods and practices.

**(58) STORMWATER MANAGEMENT** means, for:

A. 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

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

**(59) STORMWATER MANAGEMENT FEE (SMF)** or stormwater utility fee (SUF) is a MUPB utility charge developer from an ISU map to fund the stormwater program

**(60) TOPSOIL** is the upper layer of soil.

**(61) UTILITY** is 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, storm water, steam, sewage and other similar substances.

**(62) WATERCOURSE** is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.

**(63) WATERSHED** is a region draining to a specific river, river system, or body of water.

**(64) WATERS OF THE COMMONWEALTH** is defined as any surface watercourses and water bodies including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

**(65) WETLANDS** is a lowland area such as a marsh, that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.

**INTRODUCED, SECONDED AND GIVEN FIRST READING** at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**INTRODUCED, SECONDED AND GIVEN SECOND READING** at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**APPROVED:**

**ATTESTED:**

\_\_\_\_\_  
**LAURA WHITE-BROWN, MAYOR**

\_\_\_\_\_  
**CRISSY CUNNINGHAM, CITY CLERK**