

**ORDINANCE NO. \_\_\_\_\_**

***AN ORDINANCE TO AMEND AND RE-ENACT  
CHAPTER 6, ARTICLE II OF THE THIBODAUX CITY  
CODE OF ORDINANCES SO AS TO CREATE SECTION  
6-5.1 - ILLICIT DISCHARGE***

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled that:

***WHEREAS***, Chapter 6, Article II of the Thibodaux City Code of Ordinances, is hereby amended and re-enacted so as to create Section 6-5.1 to read as follows:

**Chapter 6. Building Regulations**

**Article II. General**

**Sec. 6-5.1 - ILLICIT DISCHARGE**

**1. Purpose/intent.**

The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the City of Thibodaux through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES)/Louisiana Pollutant Discharge Elimination System (LPDES) permit process. The objectives of this section are:

- (a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
- (b) To prohibit illicit connections and discharges to the municipal separate storm sewer system; and
- (c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this section.

**2. Definitions.**

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized enforcement agency means the department of planning and zoning, in conjunction with the departments of public works, permits, and coastal energy and environment which are designated to enforce this section.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act means the Federal Water Pollution Control Act (33 USC 1251 et seq.) and any subsequent amendments thereto.

Construction activity means activities subject to NPDES or LPDES construction permits. Currently these include construction projects resulting in land disturbance of one or more acres of total land area. Such activities include, but are not limited to clearing and grubbing, grading, excavating, and demolition.

EPA means the environmental protection agency.

Hazardous materials means 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.

Illegal discharge means any direct or indirect non-storm water discharge to the storm drain system.

Illicit connections means either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any 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 been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

L.A.C. means the Louisiana Administrative Code.

LDEQ means the Louisiana Department of Environmental Quality.

Louisiana pollutant discharge elimination system (LPDES) surface water discharge permit means surface water discharge permits in Louisiana administered under the Louisiana pollutant discharge elimination system (LPDES) program. The Louisiana Department of Environmental Quality (LDEQ) became a state delegated to administer the NPDES program in August of 1996.

Municipal separate storm sewer system (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, parish streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by The City of Thibodaux and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a state under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge means any discharge to the storm drain system that is not composed entirely of storm water.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes or contributes to pollution.

Pollutants may include, but are not limited to:

- (1) Paints, varnishes, and solvents;
- (2) Oil and other automotive fluids;
- (3) Nonhazardous liquid and solid wastes and yard wastes;
- (4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations that may cause or contribute to pollution;
- (5) Floatables;
- (6) Pesticides, herbicides, and fertilizers;
- (7) Hazardous substances and wastes;
- (8) Sewage, fecal coliform and pathogens;
- (9) Dissolved and particulate metals;
- (10) Animal wastes;

(11) Wastes and residues that result from constructing a building or structure; and

(12) Noxious or offensive matter of any kind.

PPM means parts per million.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm drainage system means privately- and publicly-owned facilities by which storm water 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 manmade or altered drainage channels, reservoirs, and other drainage structures.

Storm Water means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWPPP) means a document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Waters of the state means both the surface and underground waters within the State of Louisiana including all rivers, streams, lakes, estuaries, ground waters and all other watercourses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico.

Waters of the United States means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands;"
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

- b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
  - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
  - (5) Tributaries of waters identified in subsections (1) through (4) of this definition;
  - (6) The territorial sea;
  - (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act, are not waters of the United States.

### **3. Applicability.**

This section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

### **4. Discharge prohibitions.**

- (a) No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses 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.
- (b) The construction, use, maintenance or continued existence of illicit connections or nonexempt sources of non-storm water discharges to the storm drain system is prohibited. 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, and any discharge from a source not listed in the ordinance as "allowable" and therefore exempt from discharge prohibitions.
- (c) A person is considered to be in violation of this section if the person connects a line conveying untreated sewage to the MS4, or allows such a connection to continue beyond the date of enactment of the ordinance from which this article is derived. In addition, the state DHH, office of public health, must approve the plans and specifications for sanitary treatment plants.

## **5. Exemptions.**

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

The following discharges are exempt from discharge prohibitions established by this section, provided that they are not substantial sources of pollutants to the MS4:

- a. Water line (fire hydrant) flushings using potable water;
- b. Lawn watering runoff, landscape irrigation, and irrigation drainage, provided all pesticides, herbicides, and fertilizers have been applied in accordance with manufacturer's instructions;
- c. Diverted stream flows;
- d. Rising ground waters;
- e. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));
- f. Uncontaminated pumped groundwater;
- g. Incidental discharges of potable water (e.g., drinking fountain overflows);
- h. Uncontaminated air conditioning or compressor condensate;
- i. Uncontaminated spring water;
- j. Water from crawl space pumps;
- k. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- l. Uncontaminated pumped groundwater;
- m. Incidental discharges of potable water (e.g. drinking fountain overflows);
- n. Uncontaminated air conditioning or compressor condensate;
- o. Uncontaminated spring water;
- p. Water from crawl space pumps;
- q. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- r. Water from individual residential car washing;
- s. Flows from riparian habitats and wetlands;
- t. Dechlorinated (typically less than one PPM chlorine) swimming pool discharges (drainage from swimming pool filter backwash is prohibited);

- u. Residual street wash water and pavement wash water where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been properly removed);
- v. Routine external building wash down which does not use detergents.
- w. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- x. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- y. Discharges authorized by, and in full compliance with, an NPDES or LPDES permit (other than the MS4 discharge permit).

## **6. NPDES or LPDES authorized discharges.**

(a) Any person subject to an activity NPDES or LPDES discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to The City of Thibodaux prior to the allowing of discharges to the MS4. The operator of a facility, including construction sites, required to have an NPDES or LPDES permit to discharge waste water and/or storm water associated with industrial/construction activity shall submit a copy of the notice of intent (NOI) to The City of Thibodaux at the same time the operator submits the original notice of intent to the EPA or LDEQ as applicable.

(b) The copy of the notice of intent may be delivered to The City of Thibodaux either in person or by mailing it to:

City of Thibodaux  
Permits Department  
1219 Henry S. Thibodaux St.  
Thibodaux La. 70301

(c) A person commits an offense if the person operates a facility that is discharging wastewater and/or storm water associated with industrial/construction activity without having submitted a copy of the notice of intent to do so to the parish government.

## **7. Unauthorized discharges.**

(a) A person who is the operator of a facility, including a construction site, commits an offense if the person discharges, or causes to be discharged, pollutants into waters of the state without first having obtained a NPDES or LPDES permit (authorization) to do so.

(b) The LDEQ website (<http://www.deq.louisiana.gov>) LPDES permit application forms page contains all LPDES permit applications, general permit notices of intent, along with the no exposure certification from LPDES storm water permitting.

## **8. Emergency cease and desist orders.**

(a) When the authorized enforcement agency finds that any person has violated, or continues to violate, any provision of this section, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the authorized enforcement agency may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all article requirements; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(b) Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including notifying the LDEQ office of environmental compliance, enforcement division.

(c) The authorized enforcement agency may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the authorized enforcement agency that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this section.

(d) A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the authorized enforcement agency within 15 days of receipt of the emergency order.

(e) Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.



## **9. Suspension due to illicit discharges in emergency situations.**

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

## **10. Termination due to the detection of illicit discharge.**

Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would, in the judgment of the authorized enforcement agency, abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. A person commits a violation of this section/division if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

## **11. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES or LPDES 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 City of Thibodaux prior to the allowing of discharges to the MS4.

## **12. Industrial or construction activity "unpermitted" discharges.**

A person who is the operator of a facility, including a construction site, commits an offense if the person discharges, or causes to be discharged, storm water associated with industrial or construction activity without first having obtained a NPDES or LPDES permit to do so.

## **13. Inspection and monitoring of discharges.**

(a) Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(b) Access to facilities.

(1) The City of Thibodaux shall be permitted to enter and inspect facilities subject to regulation under this section as often as may be necessary to determine compliance with this section.

If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow The City of Thibodaux ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or LPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The City of Thibodaux shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

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

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of The City of Thibodaux and shall not be replaced. The costs of clearing such access shall be borne by the operator.

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

#### **14. Search warrants/injunctions.**

If The City of Thibodaux has been refused access to any part of the premises from which storm water is discharged, and the authorized enforcement agency is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the

authorized enforcement agency may seek issuance of a search warrant or injunction from any court of competent jurisdiction.

**15. Required use of best management practices.**

The owner or operator of a commercial or industrial establishment shall provide, at his own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and/or nonstructural BMPs.

**16. New development and redevelopment.**

The City of Thibodaux may adopt requirements identifying appropriate best management practices to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The City of Thibodaux shall incorporate such requirements in any land use entitlement and construction or building related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this section.

**17. Responsibility to implement best management practices.**

Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES or LPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a written storm water pollution prevention plan (SWPPP) and implemented as required for compliance with requirements of the NPDES or LPDES permit.

**18. Watercourse protection.**

- (a) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(b) The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within his property lines in order to protect against erosion and degradation of the watercourse originating or contributed from his property.

#### **19. Cleaning of paved surfaces.**

The owner of any paved parking lot, street or drive shall clean the pavement as necessary to prevent the buildup and discharge of pollutants. The visible buildup on a paved surface of mechanical fluid, waste materials, sediment or debris is a violation of this section. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this section.

#### **20. Maintenance of vehicles and/or equipment.**

Vehicles and/or equipment must be maintained to reduce leaking fluids. Any leak or spill related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants.

#### **21. Notification of spills.**

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than 24 hours. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the parish government within five calendar days of the phone notice.

(c) 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 years.

The above ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS:

NAYS:

ABSENT:

ABSTAIN:

And the above ordinance was declared adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

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Jennifer Morvant, Council Adm.

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Chad J. Mire, President