

## **Potter County Storm Water Management Program Unincorporated Urbanized Areas**

### **1. Overview**

The storm water management program is a federal program under the authority of the U.S. Environmental Protection Agency (EPA) and managed in Texas by the Texas Commission on Environmental Quality (TCEQ). Potter County (County) is subject to this program by virtue of operating a small Municipal Separate Storm Sewer System (MS4), which in the case of the County, is comprised of drainage ditches along county roads in certain unincorporated areas of the County.

Phase 1 of the EPA's municipal storm water program began in 1990 under the authority of the Federal Clean Water Act (CWA). Phase I relies on the National Pollutant Discharge Elimination System (NPDES) permit coverage to address pollutants from storm water runoff and dry weather discharges. The County has no obligations under this phase of the storm water program.

The Storm Water Phase 2 Final Rule (promulgated December 8, 1999) was the next step in the EPA's efforts to protect the nation's water resources from polluted storm water runoff and dry weather discharges into storm drain and sewer systems. The Phase 2 program requires local governments to implement programs and practices to control water pollution to the "Maximum Extent Practicable" (MEP) in urbanized areas of small MS4's (population less than 100,000).

The program requires Phase 2 local governments to obtain a permit that includes "Minimum Control Measures" (MCM's) that must be implemented for coverage. The six (6) MCM's include:

1. Public education and outreach
2. Public involvement / participation
3. Illicit discharge detection and elimination
4. Construction site storm water runoff control
5. Post-construction storm water management in new development and redevelopment
6. Pollution prevention / good housekeeping for county operations.

There are significant penalties up to \$27,500 per day for non-compliance with federal permit provisions.

The Texas Commission on Environmental Quality (TCEQ) is authorized by the EPA to issue and enforce the Texas Pollutant Discharge Elimination System (TPDES) Phase 1 and 2 Storm Water permits in lieu of the federal NPDES permits. As of August 13, 2007, TCEQ Commissioners approved the TPDES General permit to authorize the discharge of storm water from regulated Phase 2 MS4's. Potter County, as a local government operating an MS4, must obtain a permit. Permittees must submit applications for coverage to the TCEQ. The application must include:

- A Notice Of Intent (NOI) for coverage. The NOI is a document that provides the TCEQ with an official notification to seek permit coverage and identifies legally responsible parties for permit enforcement.
- A Storm Water Management Program (SWMP). The SWMP describes what actions are to be implemented by the permittee to address the required elements of a storm water program. The SWMP describes in detail which Best Management Practices (BMP's) will

be utilized through implementation of the Minimum Control Measures (MCM's) to meet permit requirements.

The permit term covers a five (5) year period from August 13, 2007 to August 12, 2012, renewable at five (5) year intervals which will likely require significant changes to the SWMP for future permit approvals.

## **2. Permit Coverage**

The TPDES Permit requirements apply only to the portions of unincorporated Potter County that are identified as urbanized areas. There are approximately five (5) urbanized areas in unincorporated Potter County. A map of those areas is attached as Exhibit "A" to this document.

The County's storm drainage system is composed of grass-lined ditches, as opposed to the typical underground drainage system (curbs, underground sewer systems and outfall discharges from pipes) of a city.

It is likely that in the future, portions of the unincorporated areas of Potter County, and in particular the urbanized areas, will be annexed to the City of Amarillo. Potter County will not be adding new areas of responsibilities and will not have to provide services to the annexed land. Potter County will only add urbanized areas when population densities increase in existing unincorporated county, as designated by the U.S. Census Bureau on a ten year cycle.

## **3. Regulatory Mechanism Restrictions for Counties**

The Texas Constitution and State statutes do not grant Texas counties the ability to create and enforce ordinances, such as home rule cities which are allowed to create ordinances to meet the TPDES permit requirements. To address this restriction, TCEQ rules contain text stating "to the extent allowable under state and local law." This statement is cited several times in Part III, SWMP development and implementation, of the general permit. Potter County will address the various elements in the General Permit SWMP requirements to the extent allowable under current state and local law.

## **4. Participants in developing/implementing Potter County's SWMP**

Potter County's SWMP was drafted by the Potter County Attorney's office, with assistance of other Potter County departments. Responsibilities for implementation of the SWMP will be handled by the Potter County Commissioners Court, Potter County Sheriff, Potter County Attorney and Potter County Road & Bridge Department.

## **5. Minimum Control Measures**

### **A. Public Education and Outreach**

1) Potter County will post storm water information on the Potter County website (<http://www.co.potter.tx.us>), including copies of this document. The Potter County Road & Bridge section of the website will also provide links to the TCEQ and EPA storm water websites. *Implementation:* To be implemented within the first year of the permit.

2) Potter County will also make storm water related materials, including the impact of storm water management on water quality, the dangers of illegal discharge and compliance with County illegal discharge regulations, and reduction of pollutants in storm water runoff

available at county offices, in particular the office of the Potter County Judge, Potter County Clerk, Potter County Attorney, and Potter County Road & Bridge Department. The Potter County Agricultural Extension Office will also be a useful venue for distributing information about storm water issues, and good stewardship of water resources in general. The use of these offices, and others to be determined, will ensure that educational materials are made available to residents, visitors, businesses, and others whose activities may impact the MS4.

3) In those urbanized areas including a residential subdivision, such as the Rolling Hills subdivision, the homeowner's association will be used to distribute information on storm water management.

4) Public education efforts will not be limited to storm water issues, but will also embrace related issues, such as litter abatement.

*Implementation:* Within the first six months after program approval.

*Measureable goal:* Materials are made available as stated above.

## **B. Public Involvement/Participation**

1) Potter County will rely upon compliance with public notice requirements regarding public meetings at Potter County Commissioners Court to receive public input into storm water program development and implementation.

*Implementation:* Public notice requirements are in place.

2) After internal review by appropriate county officers, and approval by the Potter County Commissioners Court, a copy of the draft SWMP will be posted on the County's website at least 14 days before final approval by the Commissioners Court and submittal to TCEQ.

*Implementation:* An initial draft of the SWMP was posted on Potter County's website for review and comments of the public on or about February 23, 2009. This present draft will also be posted.

3) After reviewing Potter County's NOI and SWMP, TCEQ will issue "the executive director's preliminary determination," which must be published by Potter County at least once in the largest circulated newspaper in Potter County, which is the Amarillo Globe-News. In addition, this public notice must provide an opportunity for the public to submit comments on the NOI and SWMP and request a public meeting. A public meeting will be held if the TCEQ determines there is sufficient interest.

*Implementation:* Publish TCEQ Executive Director's Preliminary Determination in the Amarillo Globe-News, including information about public comment and public meeting request within 30 days after being notified by the TCEQ Office of Chief Clerk.

## **C. Illicit Discharge Detection and Elimination**

1) Illicit Discharge Regulations. To the extent allowable under state law, Potter County will develop and implement an illicit discharge program, primarily based on the *Illicit Discharge Regulations* to be drafted and implemented by the County. A copy of the proposed regulations is attached to this document as Exhibit B.

*Implementation:*

a) The *Illicit Discharge Regulations* are adopted with this plan and will become effective as of the first day of the month following the month of adoption.

b) Once the regulation is in place, citizen reports and staff discovery of illicit discharges in unincorporated urbanized areas will be investigated within 2 weeks.

c) An annual report will be made of the number of citizen reports and staff-generated reports, and the resulting enforcement action.

2) Nuisance Abatement.

On October 13, 2004, under the authority of Chapter 343, Texas Health & Safety Code, the County adopted a procedure for abating public health nuisances, which includes both civil and criminal remedies to combat the accumulation of refuse or rubbish on private property. This order covers all unincorporated areas of Potter County, and not just the urbanized areas. A copy of that order is attached to this program as Exhibit C. Control of these public health nuisances will positively impact the quality of discharges from the targeted properties into the County's MS4.

*Implementation:*

a) The Nuisance Abatement regulation is in place.

b) An annual report shall be made of the number of actions taken pursuant to the Nuisance Abatement regulations.

3) Enforcement of Illegal Dumping Statutes.

The Potter County Sheriff's Department with the assistance of the Potter County Attorney's office, responds to and investigates illegal dumping in the County. In addition to civil and criminal options under the nuisance abatement procedure, "illegal dumping" is prohibited by Subchapter B, Chapter 365, Texas Health & Safety Code. Any enforcement action needed is then forwarded to the Potter County Attorney. The County will report the number of illegal dumping cases, cases investigated, violations identified or not, cleanups, and enforcement actions taken during the year that occurred in the County's MS4s. Like the nuisance abatement order, this enforcement extends to all unincorporated areas of Potter County and is not limited to urbanized areas.

*Implementation:*

a) Enforcement is currently in place.

b) Within six months, the County will have in place a mechanism to report the number of enforcement actions.

c) As budget issues allow, the County Commissioners have expressed a desire to create a position with the sole responsibility of environmental enforcement.

4) On-Site Sewage Regulations.

Potter County has in place regulations on-site sewage facilities, such as septic systems. These regulations are enforced by the Amarillo Potter-Randall Bi-City-County Health Department.

*Implementation:* Currently in place.

5) Potter County adopts the following list of allowable non-storm water discharges in the MS4:

a) water line flushing (excluding discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

b) runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;

c) discharges from potable water sources;

d) diverted stream flows;

e) rising ground waters and springs;

f) uncontaminated ground water infiltration;

g) uncontaminated pumped ground water;

h) foundation and footing drains;

- i) air conditioning condensation;
- j) water from crawl space pumps;
- k) individual residential vehicle washing;
- l) flows from wetlands and riparian habitats;
- m) dechlorinated swimming pool discharges;
- n) street wash water;
- o) discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- p) other allowable non-storm water discharges listed in 40 CFR § 22.26(d)(2)(iv)(B)(1);
- q) non-storm water discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) or the TPDES Construction General permit (CGP); and
- r) other similar occasional incidental non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges.

These will not be included within the prohibitions of the Illicit Discharge regulation.

*Implementation:* Included in Illicit Discharge ordinance.

6) Citizen Reports.

Potter County residents of the urbanized areas of unincorporated Potter County already have the capability to report illegal dumping and public nuisances. Citizens frequently report issues affecting county drainage ditches to the Potter County Road & Bridge Department.

*Implementation:*

- a) The County will follow up on reports derived from these calls, as set out in the *Illicit Discharge Regulation*.
- b) Materials distributed in the Public Education and Outreach MCM will insure that contact information for county enforcement authorities is available.
- c) A form will be developed to record citizen reports, and a compilation of these reports will be made annually.

7) Storm Drainage Map.

Potter County will prepare a storm sewer map of urbanized areas in unincorporated Potter County, locating outfalls contained in those areas that discharge directly into waters of the State, using available resources.

*Implementation:* Within first year of permit.

**D. Construction Site Storm Water Runoff Control**

1) Distribution of information to construction site operators and others.

The County will distribute general information about its Illicit Discharge regulations and general information about the TCEQ requirements to construction site operators, conducting voluntary reactive and proactive inspections and maintaining a file of Notices of Intent (NOI) for operators to be covered under the TCEQ General Storm Water Permit for construction sites.

*Implementation:* Within 1<sup>st</sup> year of permit.

2) The urbanized and unincorporated areas covered by the program are within the extra territorial jurisdiction (ETJ) of the City of Amarillo. By State law, Section 242.001 of the Local Government Code, Potter County and the City of Amarillo have entered an interlocal agreement for the review and imposition of plat and construction detail standards for all subdivisions in the ETJ. Any developments within the ETJ have to comply with the construction standards and

storm water plans developed and imposed by the City of Amarillo. Additionally, the County lacks the authority to require building permits and or site plans from homebuilders or commercial building contractors who are not subdividing property in accordance with the County's Subdivision Regulations.

3) Although lacking regulatory authority under State law in some aspects, the County nevertheless realizes that residents and members of the public will often seek to report environmental issues of all types to the County, generally through the Potter County Sheriff or the Potter County Road and Bridge Department. The County will establish a system to assure that all complaints of this nature are routed to the proper enforcement authority.

*Implementation:* Within first six months of permit.

4) Flood Plain regulations and Subdivision regulations.

Potter County passed Flood Plain regulations in 2003. While the urbanized areas affected by this program do not appear to be in flood plain areas, the regulations will be amended to include appropriate references to this program and the associated regulations. Subdivision plat regulations will also be amended as necessary to include those references.

*Implementation:* Within first six months of permit.

#### **E. Post-Construction Storm Water Management in New Development and Redevelopment/MS4 Management**

1) The County Road & Bridge Department will continue to maintain the existing open, unlined storm drainage ditches beside county roads in unincorporated areas, including but not limited to the MS4. This process will allow the drainage system to operate properly and produce storm water quality benefits.

Status: Ongoing

#### **F. Pollution Prevention/Good Housekeeping for County Operations**

1) All of the County's facilities, other than the MS4, within the urbanized areas affected by this program are also within the city limits of the City of Amarillo. At this time, no new County facilities are planned within the unincorporated urbanized areas. If construction takes place County will include appropriate storm water controls and erosion prevention measures in the Potter County will continue to conduct its general operations in a manner that prevents or reduces pollution in storm water runoff to the maximum extent practicable. This will primarily focus on maintenance of county roads, which include the drainage ditches that comprise the County's MS4.

*Implementation:* Ongoing.

2) Potter County occasionally performs maintenance on the MS4. This includes primarily the removal of accumulated dirt and grass that may build up in the ditches and at culverts to insure the proper operation of the MS4. Dirt and materials that are removed, or dredged, are usually removed by County vehicles/equipment and utilized in the repair of erosion damage to other bar ditches in the County's road system. Occasionally, the adjacent landowner wants the material for filling in a low area or ditch on their property. To insure that no trash or objectionable materials are improperly disposed of, equipment operators will be instructed to inspect the site they are to work in, and remove any such materials prior to excavation. Any objectionable materials will be bagged and properly disposed of.

*Implementation:* Develop program and train all County employees engaged in the maintenance of the MS4 to inspect and remove any objectionable materials prior to commencing any

excavation. Training is to be conducted annually, or as needed as determined by the supervisor of the Potter County Road & Bridge Department. Maintain a record of employee receiving the training. Within 1<sup>st</sup> year of permit.

3) Potter County's Road & Bridge facility is operated outside of the urbanized areas affected by this program. Potter County will continue to conduct its operations at that facility in accordance with applicable law in order to control litter and protect groundwater.

4) The County will identify activities that may potentially impact storm water quality or generate illicit discharges, and conduct site surveys of County facilities in urbanized areas in the unincorporated areas of the County and discuss issues as they arise with the county commissioners court.

*Implementation:* The site surveys will begin and be completed in Permit Year 2.

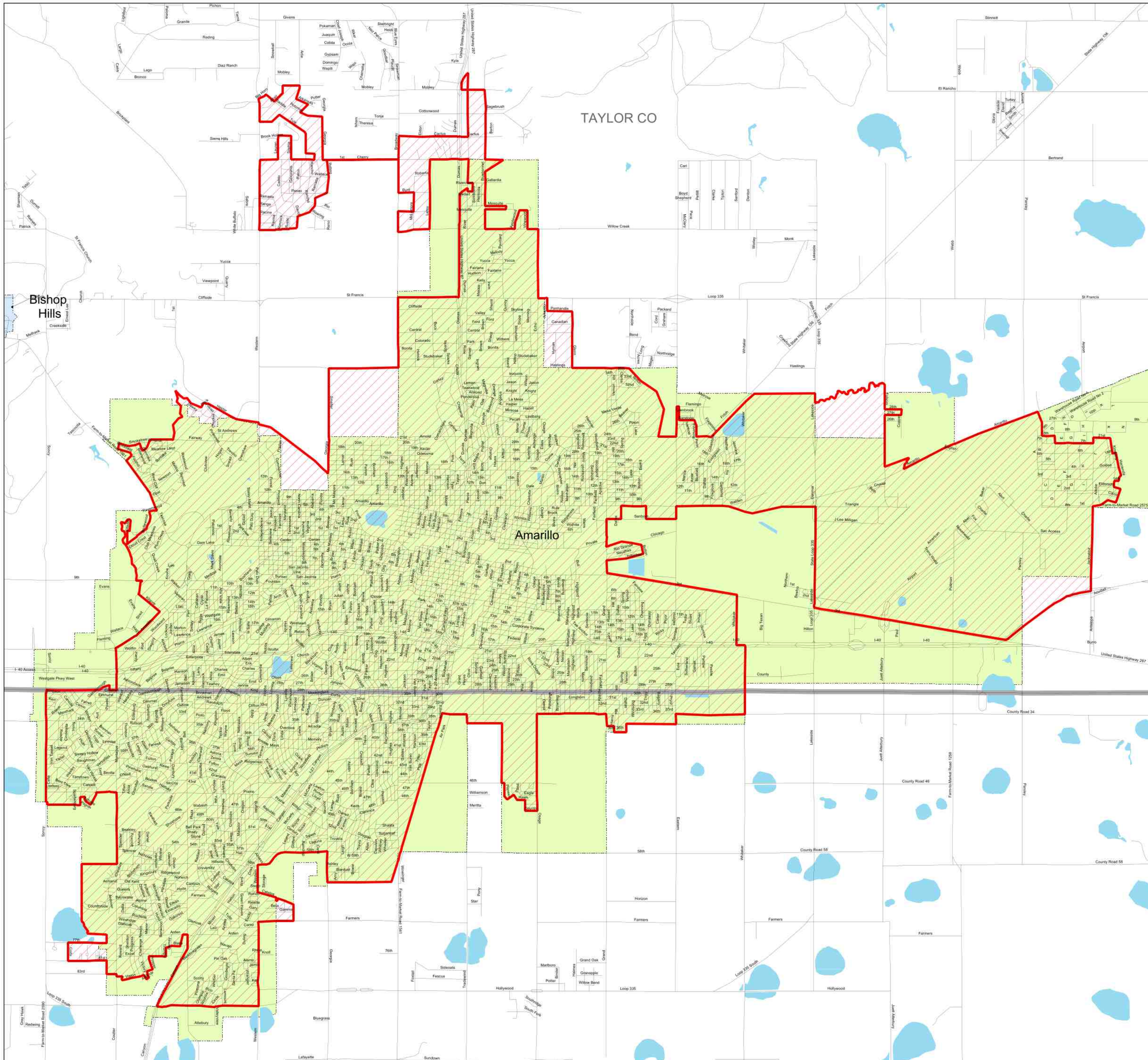
3) As a result of the survey, the commissioners court will implement appropriate BMPs to eliminate practices adversely affecting storm water quality.

Adopted the 23<sup>rd</sup> day of November, 2009.

# Exhibit A



# Amarillo, TX Urbanized Area Storm Water Entities as Defined by the 2000 Census



## 2000 Census Urbanized Areas

 Amarillo, TX

 Municipal Boundaries

 County Boundaries

 Major Waterbodies

 Roads

SOURCE:  
US Census Bureau TIGER data, 2000 Census

PROJECTION:  
State Plane Coordinate System - Texas North  
Horizontal datum - NAD83

MAP DESIGN:  
August 28, 2002

 0 1 Miles

 0 1 Kilometers



# Exhibit B

**- POTTER COUNTY ILLICIT DISCHARGE AND CONNECTION  
STORMWATER ORDINANCE**

**SECTION 1. PURPOSE AND INTENT.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of POTTER COUNTY, TEXAS (“COUNTY”) 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 ordinance 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) permit process.

The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and,
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

**SECTION 2. DEFINITIONS.**

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the Potter County Commissioners Court designated to enforce this ordinance.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping 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: the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and its subsequent amendments.

Hazardous Materials: 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: any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

Illicit Connections: an illicit connection is defined as either of the following:

- 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,

- 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: activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: 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: any discharge to the storm drain system that is not composed entirely of storm water.

Person: 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: 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, ordinances, 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; and noxious or offensive matter of any kind.

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

Storm Drainage System: 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 human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water: 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: 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: any water or other liquid, other than uncontaminated storm water, discharged from a facility.

### **SECTION 3. APPLICABILITY.**

This ordinance 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.

### **SECTION 4. RESPONSIBILITY FOR ADMINISTRATION**

The MS4 Administrator, to be designated by the Potter County Commissioners Court, shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or

duties imposed upon the MS4 Administrator by these regulations may be delegated by the MS4 Administrator to persons or entities acting in the beneficial interest of or in the employ of the agency.

**SECTION 5. SEVERABILITY.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance 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 Ordinance.

**SECTION 6. ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**SECTION 7. PROHIBITION OF ILLEGAL DISCHARGES.**

(a) Except as enumerated below, no person shall discharge or cause to be discharged into the municipal 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.

(b) The following discharges are exempt from discharge prohibitions established by this ordinance:

- water line flushing or other potable water sources
- landscape irrigation or lawn watering
- diverted stream flows
- rising ground water
- ground water infiltration to storm drains
- uncontaminated pumped ground water
- foundation or footing drains (not including active groundwater dewatering systems)
- crawl space pumps
- air conditioning condensation
- springs, non-commercial washing of vehicles
- natural riparian habitat or wet-land flows
- swimming pools (if dechlorinated - typically less than one PPM chlorine)
- fire fighting activities
- any other water source not containing Pollutants.
- Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(c) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal 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.

**SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to the allowing of discharges to the MS4.

**SECTION 9. WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, 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.

**SECTION 10. ENFORCEMENT.**

A. Notice of Violation. Whenever the MS4 Administrator finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the MS4 Administrator may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- The performance of monitoring, analyses, and reporting;
- The elimination of illicit connections or discharges;
- That violating discharges, practices, or operations shall cease and desist;
- The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- Payment of a fine to cover administrative and remediation costs; and
- The implementation of source control or treatment BMPs.

B. If abatement of a violation and/or restoration of affected property is 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 a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

**SECTION 15. APPEAL OF NOTICE OF VIOLATION.**

Any person receiving a Notice of Violation may appeal the determination to the Potter County Commissioners Court ("Commissioners Court). The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Potter County Commissioners Court shall be final.

**SECTION 16. ENFORCEMENT MEASURES AFTER APPEAL.**

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 Commissioners Court upholding the issuance of the Notice of Violation, then representatives of the authorized enforcement agency shall enter upon the subject private property and are 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

**SECTION 17. COST OF ABATEMENT OF THE VIOLATION.**

Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the County by reason of such violation. The liability shall be paid in not more than 12 equal payments

**SECTION 18. INJUNCTIVE RELIEF.**

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

**SECTION 19. VIOLATIONS DEEMED A PUBLIC NUISANCE.**

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

**SECTION 20. REMEDIES NOT EXCLUSIVE.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

ADOPTED this 23<sup>rd</sup> day of November, 2009.

# Exhibit C



IN THE POTTER COUNTY COMMISSIONERS COURT  
POTTER COUNTY TEXAS

ORDER AUTHORIZING THE ABATEMENT OF PUBLIC NUISANCES  
IN THE UNINCORPORATED AREAS OF POTTER COUNTY

**I. FINDINGS.** The Potter County Commissioners Court finds that certain public nuisances, as defined in Chapter 343, Texas Health & Safety Code, are a hazard to public health and safety, and a detriment to the value of property not only on which the nuisance occurs, but also of neighboring property. While civil and criminal remedies exist under Chapter 343, there is no mechanism for Potter County to take direct action to abate a nuisance unless these abatement procedures are adopted. Further, the public is harmed by having to bear the costs of cleaning up nuisance sites. Therefore, it is in the best interests of the citizens of Potter County to adopt these abatement procedures

**II. DEFINITIONS.**

1. "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.
2. "Agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.
3. "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
4. "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
5. "Junked vehicle" means a vehicle that is self-propelled and inoperable and:
  - a) does not have lawfully attached to it an unexpired license plate or a valid motor vehicle inspection certificate;
  - b) is wrecked, dismantled or partially dismantled, or discarded; or
  - c) has remained inoperable for more than 45 consecutive days.A junked vehicle for the purposes of this order does **not** include a vehicle stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard.
6. "Neighborhood" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located, and property contiguous to and within 300 feet of such a subdivision.
7. "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
8. "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
9. "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
10. "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
11. "Rubbish" means nondecayable waste from a public or private establishment or residence.
12. "Weeds" means all rank and uncultivated vegetable growth or matter that:
  - (A) has grown to more than 36 inches in height; or
  - (B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

### **III. PROHIBITION AGAINST PUBLIC NUISANCES.**

A person may not cause, permit, or allow a public nuisance. A public nuisance is the presence of at least one of the following conditions on land that is not agricultural land in the unincorporated areas of Potter County:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned or junked vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

### **IV. EXCEPTIONS AND VARIANCES.**

The Commissioners Court may:

(1) describe the circumstances in which a special exception to the application of section III. is available to a person and may grant the special exception in a specific case if the Commissioners Court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section III., and

(2) authorize in a specific case not covered by a special exception a variance from the terms of section III. if the Commissioners Court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of section III. would result in an unnecessary hardship.

### **V. CRIMINAL PENALTY.**

a. Pursuant to section 343.012, Texas Health & Safety Code, a person commits an offense if:  
(1) the person violates Section III. above; and,  
(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

b. An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

c. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

d. Each day a violation occurs is a separate offense.

### **VI. INJUNCTION.**

The Potter County Attorney is authorized to seek an injunction on behalf of Potter County to prevent or restrain a violation of this order.

### **VII. ENTRY ON PREMISES.**

a. A Potter County official, agent, or employee may enter any premises in the unincorporated area of the County at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

b. Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

### VIII. ABATEMENT PROCEDURES.

In addition to the remedies of sections V. and VI. above, abatement of a public nuisance may be sought under the following procedure.

a. These abatement procedures shall be administered by the Road & Bridge

Superintendent. The removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

b. Prior to abatement, written notice of the existence of a public nuisance must be given by the Potter County Sheriff, Potter County Attorney, or other designate of the Commissioners Court to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises;

and

(B) the person responsible can be identified.

c. The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;

(3) that failure to abate the nuisance may result in:

A) abatement by Potter County;

B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and

(4) that the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing.

d. The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

e. A hearing is required before the abatement of the nuisance if requested. The hearing may be conducted before the commissioners court or any official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

### IX. ASSESSMENT OF COSTS; LIEN.

a. The cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100 shall be assessed on the person receiving notice under section VIII. In the alternative, provided the owner or owner's agent receives notice of the nuisance, the Commissioners Court by resolution or order, may assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100 against the property on which the nuisance exists.

b. To obtain a lien against the property to secure an assessment, the Commissioners Court must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the Potter County Clerk.

c. Potter County's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien

attaches, if the mortgage was filed for record in the office of the Potter County Clerk before the date on which Potter County filed the notice of lien.

d. Potter County is entitled to accrue interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

**X. EFFECT OF ORDER; SEVERABILITY.**

This Order does not affect a right, remedy, or penalty under other state law. If any provision of this Order is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and will in no way be affected, impaired, or invalidated.

**ORDERED THIS THE 13<sup>th</sup> DAY OF DECEMBER, 2004.**

ATTEST:



*Mrs. Sue Daniel*  
Mrs. Sue Daniel, County Clerk

POTTER COUNTY, TEXAS

By: *Arthur Ware*  
Arthur Ware, Potter County Judge