

Commonwealth of Kentucky
OLDHAM COUNTY
ORDINANCE No. 04-830-217

AN ORDINANCE ESTABLISHING REGULATION FOR THE DETECTION AND ELIMINATION OF ILLICIT DISCHARGES TO THE STREAMS AND WATERWAYS OF OLDHAM COUNTY.

Whereas, Oldham County has been identified to comply with the requirements of the Federal Environmental Protection Agency through the Federal Water Pollution Act (33 USC § 1251 et seq.) and other regulation; and,

Whereas, Oldham County has the statutory authority to provide for the protection of its citizens and natural resources;

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF OLDHAM, COMMONWEALTH OF KENTUCKY, THAT:

Section 1 – Title, Purpose and General Provisions

Section 1.1 – Title

1.1.1 This article shall be known as the “Stormwater Illicit Discharge Detection and Elimination Ordinance” of Oldham County, Kentucky and may be so cited.

Section 1.2 – Jurisdiction

1.2.1 The Stormwater Illicit Discharge Elimination Ordinance shall govern all unincorporated properties within the jurisdictional boundaries of Oldham County, Kentucky and all incorporated area within the boundaries of Oldham County where said incorporated areas have passed a resolution supporting the enforcement of this ordinance by county officials within the incorporated areas..

Section 1.3 – Demonstration of Need

1.3.1 Whereas, the community’s municipal separate storm sewer system (MS4) receives discharges that are not composed entirely of stormwater runoff causing increased nonpoint source pollution and receiving water degradation.

1.3.2 Whereas, surface water runoff can carry pollutants into receiving waters, and uncontrolled stormwater drainage and/or discharges may have significant adverse impacts on the health, safety and welfare of the citizens of Oldham County, Kentucky, the potential impacts of these pollutants and pollution may include:

1.3.2.1 Adverse impacts to public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other land and water uses;

- 1.3.2.2 Changing natural ecosystems through the destruction of habitat, and the loss of plant and animal life;
 - 1.3.2.3 Posing significant health risks through an increase in bacteria and toxic materials;
 - 1.3.2.4 Accelerating eutrophication of receiving waters by introducing excessive nutrients;
 - 1.3.2.5 Increasing metal deposits creating toxicity for aquatic life;
 - 1.3.2.6 Reducing instream oxygen levels because of oil, grease and organic matter; and
 - 1.3.2.7 Affecting animal and plant life, adversely, due to changing temperatures of receiving waters.
- 1.3.3 Whereas, the adverse water quality consequences described above may result in substantial economic losses. Potential losses include, but are not limited to, increased drinking water and wastewater treatment costs and diminished property values, as well as state and federal fines associated with water quality violations.
- 1.3.4 Whereas, every parcel of property, both private and public, either uses or benefits from Oldham County's stormwater system.
- 1.3.5 Whereas, current and anticipated growth will contribute to and increase the need for an effective stormwater system.

Section 1.4 – Objectives

- 1.4.1 Protection of short-term and long-term public health, safety and general welfare will be achieved by:
- 1.4.1.1 Providing for regulation and management of Oldham County's stormwater system, including public and private facilities within Oldham County's service area;
 - 1.4.1.2 Protecting, and preserving water quality and fish and wildlife habitat within Oldham County and in downstream receiving waters; and
 - 1.4.1.3 Protecting those downstream from stormwater quality impairment(s).
- 1.4.2 Compliance with state and federal stormwater regulations developed pursuant to the Clean Water Act Amendments of 1987 and subsequent amendments through 2004. The objectives of these regulations include:
- 1.4.2.1 Controlling the quality of water discharged by controlling the contribution of pollutants to the stormwater system by stormwater discharges associated with residential, commercial and industrial activity;

1.4.2.2 Prohibiting illicit discharges to stormwater;

1.4.2.3 Controlling the discharge of spills and dumping or any disposal of materials other than stormwater into the stormwater system.

Section 1.5 – Definitions

Accidental Discharge means a discharge or release prohibited by this ordinance which occurs by chance and without planning or thought prior to occurrence.

Best Management Practice (BMP) or Structural Stormwater Control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

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

Construction Activity means land disturbance activities subject to state KPDES General Construction Permits or local permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Illicit discharge means any discharge to a Municipal Separate Storm Sewer System (MS4) that is not composed entirely of stormwater except discharges pursuant to a National Pollutant Discharge Elimination System permit (other than Oldham County's NPDES stormwater permit) or otherwise defined by this ordinance.

Industrial Activity means activities subject to KPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Kentucky Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by the Kentucky Division of Water (KDOW) under delegated authority by the United States Environmental Protection Agency (USEPA), whether the permit is applicable on an individual, group, or general area-wide basis.

Municipal Separate Storm Sewer System (MS4) means any facility designed or used for collecting and/or conveying stormwater, including, but not limited to, any roads with drainage systems, highways, streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- a) Owned or maintained by the (jurisdiction);
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.

Non-Stormwater Discharge means any discharge to the storm drainage system that is not composed entirely of stormwater.

Person means, except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

Pollutant means anything of a chemical component or nature which causes or contributes to pollution.

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent.

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

Stormwater Runoff or Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Undiluted Discharges means a discharge that has not been mixed with that of another source such as another septic tank.

Waters of the State means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the Commonwealth of Kentucky which are not entirely confined and retained completely upon the property of a single Person.

Section 2 – Authority and Right of Entry

- 2.1 Oldham County or its designated representative shall have right-of-entry on or upon the property of any Person subject to this ordinance and any permit/document issued hereunder. The County shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this ordinance.
- 2.2 Where a property, site or facility has security measures in force which require proper identification and clearance before entry into its premises, the Person shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, Oldham County or its designated representative will be permitted to enter without delay for the purposes of performing specific responsibilities.
- 2.3 Oldham County or its designated representative shall have the right to set up on the Person's property such devices necessary to conduct sampling and/or metering of the Person's stormwater operations or discharges.
- 2.4 Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the Person at the

written or verbal request of Oldham County. The costs of clearing such access shall be borne by the Person.

- 2.5 Oldham County or its designated representative may inspect the facilities of any user in order to ensure compliance with this ordinance. Such inspection shall be made with the consent of the owner, manager, or signatory official. If such consent is refused, denied or not promptly addressed, Oldham County may seek issuance of an administrative search warrant.
- 2.6 Oldham County has the right to determine and impose inspection schedules necessary to enforce the provisions of this article. Inspections may include, but are not limited to, the following:
 - 2.6.1 An initial inspection prior to stormwater management plan approval;
 - 2.6.2 An inspection prior to burial of any underground drainage structure;
 - 2.6.3 Erosion control inspections as necessary to ensure effective control of sediment prior to discharge to the municipal separate storm sewer system;
 - 2.6.4 A finish inspection when all work, including installation of storm management facilities, has been completed; and
 - 2.6.5 An inspection to determine the effectiveness or operational viability of a permanent or long-term stormwater quality management practice.

Section 3 – Illicit Discharges

- 3.1 Prohibition of illegal discharges
 - 3.1.1 Pursuant to the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System (MS4) Program, illicit discharges to the MS4 are defined as illegal. This is being done by identifying both allowable and illegal non-stormwater discharges in a manner that is in the best interest of Oldham County, Kentucky.
 - 3.1.2 Except as hereinafter provided, all non-stormwater discharges into the MS4 are prohibited and declared to be unlawful.
 - 3.1.3 It is unlawful for any Person to connect any pipe, open channel, or any other conveyance system that discharges anything except stormwater or unpolluted water, which is approved by Oldham County based on exemptions listed in section 3.2 below, to the stormwater system.
 - 3.1.4 It is unlawful for any Person to discharge waters from residential construction activities that are not complying with the Standard of Practice for Residential Construction Stormwater Management as approved and advertised by Oldham County.

3.1.5 In addition to illicit discharges, the discharge of spills and the dumping and/or disposal of materials other than stormwater, including, but not limited to, industrial and commercial wastes, commercial car wash wastes, sanitary sewage, garbage, yard waste, trash, petroleum products, including used motor vehicle fluids, as well as leaf litter, grass clippings, and animal wastes into the MS4, whether directly or indirectly, are prohibited, unless authorized under a NPDES permit.

3.2 Allowable Discharges

3.2.1 Unless Oldham County has identified a discharge as an unacceptable source of pollutants to the "Waters of the Commonwealth of Kentucky", the following non-stormwater discharges into the MS4 are lawful:

- 3.2.1.1 Discharges from emergency fire fighting activities;
- 3.2.1.2 Diverted stream flows;
- 3.2.1.3 Rising ground waters;
- 3.2.1.4 Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR35.2005(20));
- 3.2.1.5 Uncontaminated pumped ground water;
- 3.2.1.6 Discharges from potable water sources as required for system maintenance;
- 3.2.1.7 Drinking water line flushing;
- 3.2.1.8 Air conditioning condensate;
- 3.2.1.9 Uncontaminated landscape irrigation;
- 3.2.1.10 Uncontaminated irrigation water;
- 3.2.1.11 Lawn watering;
- 3.2.1.12 Uncontaminated springs;
- 3.2.1.13 Uncontaminated water from crawl space pumps;
- 3.2.1.14 Uncontaminated water from footing drains and pumps;
- 3.2.1.15 Individual residential car washing;
- 3.2.1.16 Flows from riparian habitats and wetlands;
- 3.2.1.17 Dechlorinated swimming pool discharges;

- 3.2.1.18 Controlled flushing stormwater conveyances (contained and treated by appropriate BMPs);
- 3.2.1.19 Discharges within the constraints of a National Pollutant Discharges Elimination System (NPDES) permit from the Kentucky Division of Water (KDOW); and
- 3.2.1.20 Discharges approved at the discretion of Oldham County.

Section 4 - Accidental discharges

- 4.1 In the event of any discharge of a hazardous substance in amounts that could cause a threat to public drinking supplies, a spill beyond that of de minimus levels, or any other discharge that could constitute a threat to human health or the environment, as may be asserted by Oldham County, the owner or operator of the facility shall give notice to Oldham County and the KDOW as soon as practicable, but in no event later than four hours after discovery of the accidental discharge or the discharger becomes aware of the circumstances.
- 4.2 If an emergency response by governmental agencies is needed, the owner or operator should call 911 immediately to report the discharge. A written report must be provided to Oldham County within five days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by Oldham County for good cause shown as determined by Oldham County or its designee on a case-by-case basis, containing the following information:
 - 4.2.1 A description of the discharge including volumes and concentrations,
 - 4.2.2 The exact dates and times of discharge, and
 - 4.2.3 Steps being taken to eliminate and prevent recurrence of the discharge.
- 4.3 The discharger shall take all reasonable steps to minimize any adverse impact to the MS4 or the Waters of State, including accelerated or additional monitoring necessary to determine the nature and impact of the discharge. It shall not be a defense for the discharger in an enforcement action to claim that it would have been necessary to halt or reduce the business or activity of the facility in order to maintain water quality and minimize any adverse impact that the discharge may cause.

Section 5 – Enforcement

- 5.1. The Person responsible for any connection in violation of this article shall immediately cause the illegal connection to be disconnected and redirected, if necessary, to the appropriate sanitary sewer system upon approval by the operating body of said sanitary sewer system and the Kentucky Division of Water.

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- 5.2. Any Person responsible for illicit discharges or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of Oldham County, shall be liable to the County for expenses incurred in abating pollution. This may include expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

 - 5.3. Oldham County shall institute appropriate actions or proceedings by law or equity for the enforcement of this ordinance within the areas of jurisdiction previously described. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent Oldham County from taking such other lawful action as necessary to prevent or remedy any violation, including application for injunctive relief. Any of the following enforcement remedies and penalties, available to be applied independently or in a sequence deemed necessary, shall be available to Oldham County in response to violations of this ordinance. If the Person, property or facility has or is required to have a stormwater discharge permit from the KDOW,, Oldham County may alert the appropriate State authorities of the violation.
 - 5.3.1. Notice of Violation (NOV) – Whenever Oldham County or its designated representative finds that any Person owning or occupying a premises has violated or is violating this ordinance or order issued hereunder, the enforcement official may serve, by personal service, or by registered or certified mail, upon said Person a written NOV. Within thirty (30) days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, must be submitted to Oldham County or its designated representative. Submission of this plan shall in no way relieve liabilities for violations occurring before or after receipt of the NOV.

 - 5.3.2. Revocation of permit – Oldham County or its designated representative may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans or specifications, refusal or failure to comply with the requirements of State or local law or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.

 - 5.3.3. Stop Work Order – Oldham County or its designated representative may issue a Stop Work Order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge. Unacceptable or untimely actions to eliminate the illicit discharge may be used as grounds to revoke permits for the construction site as described in 5.3.2.

 - 5.3.4. Compliance order – If any Person shall violate the provisions of this ordinance, Oldham County or its designated representative, or his/her designee may give notice to the owner or to any Person in possession of the subject property ordering

that all unlawful conditions existing thereupon be abated within a schedule defined from the date of such notice.

5.3.4.1. The enforcement official shall have the authority to establish elements of a stormwater pollution prevention plan and require any business to adopt and implement such a plan as may be reasonably necessary to fulfill the purposes of this chapter. The enforcement official may establish the requirements of BMPs for any premises.

5.3.4.2. The notice and order may be given, provided that if in the opinion of Oldham County or its designated representative, the unlawful condition is such that it is of imminent danger or peril to the public, then Oldham County or its designated representative may, with or without notice, proceed to abate the same, and the cost thereof shall be charged against the property. Oldham County, as described further in this subsection, may recover the cost of such actions from the property owner.

5.3.5. Civil Penalties – Any Person that has been found to have been in violation of any provision of this ordinance, may be assessed a civil penalty not to exceed the amount presented in this subsection.

5.3.5.1. The penalty shall increase by twenty-five percent (25%) of the previous penalty amount for every subsequent but separate offense made by the same Person. The penalty shall be in addition to other enforcement actions of this section.

5.3.5.2. The penalty may be assessed for each day, beyond schedules applied in compliance orders or other schedules issued to the property owner or other Person responsible, for unauthorized activity defined in this ordinance.

5.3.5.3. In determining the amount of the penalty a penalty schedule may be developed that shall consider the following:

5.3.5.3.1. The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;

5.3.5.3.2. The duration and gravity of the violation;

5.3.5.3.3. The effect on ground or surface water quality;

5.3.5.3.4. The cost of rectifying the damage;

5.3.5.3.5. The amount of money saved by noncompliance;

5.3.5.3.6. Whether the violation was committed willfully or intentionally;

5.3.5.3.7. The cumulative effect of other enforcement actions applied for the same offense;

5.3.5.3.8. The prior record of the violator in complying or failing to comply with the stormwater quality management program; and

5.3.5.3.9. The costs of enforcement to Oldham County.

5.3.5.4. The maximum civil penalties will be determined by the type of offense. This indicates the maximum that may be imposed for a first offense and does not reflect the increases described above for repeat offenses.

5.3.5.4.1. Development without or inconsistent with permit – up to \$5,000

To engage in any development, use, construction, remodeling or other activity of any nature in any way without all required permits inconsistent with any approved plan, permit, certificate or other form of authorization granted for such activity.

5.3.5.4.2. Violation by act or omission – up to \$5,000

To violate, by act or omission, any term, variance, modification, condition or qualification placed by Oldham County or its designated representative upon any required permit, certificate, or other form of authorization of the use, development, or other activity upon land or improvements thereon.

5.3.5.4.3. Illicit Discharge – up to \$5,000

Any Person who is found to have improperly disposed of any substance defined as an illicit discharge, not an allowable discharge or causes Oldham County to be in noncompliance with any applicable environmental permit.

5.3.5.4.4. Household Products – up to \$500

Any Person who is found to have improperly disposed of any substance not included in Section 3(a) or 3(b) that was purchased over-the-counter for household use, in quantities considered normal for household purposes, which upon discharge to the MS4 or drainage network would have an adverse impact on water quality or cause Oldham County to be in noncompliance with any applicable environmental permit.

5.3.5.5. In the event there are penalties assessed by the State against Oldham County caused by any Person, said Person shall be assessed the equivalent amount of civil penalty. This shall include but is not limited to penalties for improper disposal or illegal dumping, or illicit connection into the MS4.

5.3.6. Administrative Fee – Any Person who undertakes any development activity requiring a stormwater management plan hereunder without first submitting the plan for review and approval shall pay to Oldham County, in addition to any permit or inspection fee, an administrative fee of up to \$7,500.

5.3.7. Order to clean and abate/restore – Any violator may be required to clean and/or restore land to its condition prior to the violation.

5.3.8. Cost Recovery - If corrective action, including maintenance delinquency, is not taken in the time specified or within a reasonable time, Oldham County may take

the corrective action and the cost of the corrective action shall be the responsibility of the owner and/or the developer. The cost of the abatement and restoration shall be borne by the owner of the property and the cost shall be invoiced to the owner of the property. If the invoice is not paid within ninety (90) days, the enforcement official shall have the authority to place a lien upon and against the property. If the lien is not satisfied within ninety (90) days, the enforcement official is authorized to take all legal measures available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a money judgment, by delivery to the assessor or a special assessment against the property.

5.3.9. Injunctions and/or proceedings at law or in equity – Any violation of this ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

5.3.10. Fee or utility credit revocation or adjustment – This enforcement tool is intended to be available or used if there are, at any time, provisions for a funding mechanism managed by Oldham County. This enforcement tool permits that credits (reductions), adjustments (increases) or other measures to modify fees or utility charges may be revoked or added, in full or in part, if any provisions of this article are violated.

5.3.11. Civil Actions – In addition to any other remedies provided in this ordinance, any violation of this ordinance may be enforced by civil action brought by Oldham County's attorney. Monies recovered under this subsection shall be paid to Oldham County to be used exclusively for costs associated with implementing or enforcing the provisions of this ordinance. In any such action, Oldham County may seek, as appropriate, any or all of the following remedies:

5.3.11.1. A temporary and/or permanent injunction;

5.3.11.2. Assessment of the violator for the costs of any investigation, inspection or monitoring survey which lead to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

5.3.11.3. Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;

5.3.11.4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.

5.3.12. Emergency Orders and Abatements. The enforcement official may order the abatement of any discharge from any source to the stormwater conveyance system when, in the opinion of the enforcement official, the discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, or welfare of the environment or a violation of a KPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be

effected without presenting an immediate danger to the public health, safety, or welfare of the environment or a violation of a KPDES permit, Oldham County may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this subsection.

5.3.13. 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, welfare and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by State and local law.

5.3.14. Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any remedies available under any applicable Federal, State or local law and Oldham County may seek cumulative remedies.

Section 6 – Penalty

6.1 Any person violating any provisions of this ordinance shall be deemed guilty of a Class A misdemeanor and shall, upon citation to court and subsequent conviction, be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or be imprisoned for a period not to exceed twelve (12) months, or both so fined and imprisoned. Each day a violation continues shall constitute a separate offense.

Section 7 – Compatibility and Severability

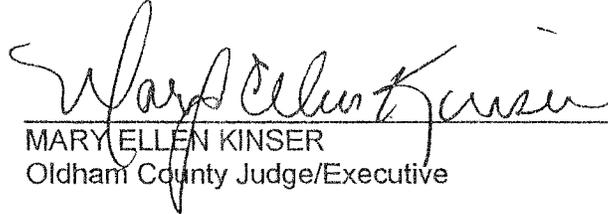
7.1 Should any article, section, subsection, clause or provision of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, each article, section, clause and provision being declared severable.

7.2 If any provisions of this ordinance and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

Section 8 – Effective Date

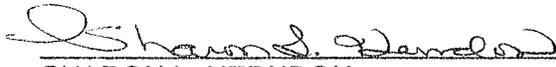
All sections of this ordinance shall take effect sixty (60) days from the adoption of the Ordinance.

Adopted by the Oldham County Fiscal Court, Oldham County, Kentucky at a regular meeting on the 21st day of December, 2004 and on the same occasion signed in open session by the County Judge/Executive as evidence of approval, attested under seal by the Oldham County Fiscal Court Clerk, and declared to be in full force and effect.



MARY ELLEN KINSER
Oldham County Judge/Executive

ATTEST:



SHARON L. HERNDON
Oldham County Fiscal Court Clerk

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