

**ORDINANCE NO. 092-2012**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS (1961) BY ADDING CHAPTER 32A ENTITLED "STORMWATER MANAGEMENT"; TO ESTABLISH A MUNICIPAL STORMWATER MANAGEMENT PROGRAM, AS PRESCRIBED BY FEDERAL AND STATE LAW; ESTABLISHING AN ADMINISTRATIVE PROCESS TO PROVIDE FOR PENALTIES AND REMEDIES; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, within the City of Texarkana, Texas, there exists a Stormwater (drainage) System developed over a number of years that collects and directs stormwater runoff; and

**WHEREAS**, on January 28, 2008, by Ordinance No. 14-2008, the City Council approved the submission of a Notice of Intent for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4) for monitoring storm water discharge in the City of Texarkana, Texas which was submitted to the Texas Commission on Environmental Quality (TCEQ); and

**WHEREAS**, to provide for the health, safety, and general welfare of the citizens of the City 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, the City Council desires to address the enforcement mechanisms required for the City's compliance with the Storm Water Phase II MS4 General Permit, set forth by the Texas Commission on Environmental Quality (TCEQ) by amending the Code of Ordinances by adding Chapter 32A, "STORMWATER MANAGEMENT" to read as set forth in Exhibit "A", attached hereto and made a part hereof by reference; and

**WHEREAS**, proper notice has been given and a public hearing has been held regarding the adoption of this Ordinance, as required by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, THAT:**

**SECTION 1:** The Code of Ordinances of the City of Texarkana, Texas, is hereby amended by adding Chapter 32A, "STORMWATER MANAGEMENT" to read as set forth in Exhibit "A" attached hereto and made a part hereof by reference.

**SECTION 2:** Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) for each violation, and in addition shall pay all costs and expenses involved or incurred in the

enforcement of the provisions of this Ordinance. Each day a violation occurs is a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

**SECTION 3:** The City Secretary be and is hereby directed to publish the caption of this Ordinance for three (3) successive days in the Texarkana Gazette within ten (10) days of the passage of this Ordinance, as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

**SECTION 4:** If a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a Court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this Ordinance.

**SECTION 5:** All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

**SECTION 6:** Following its passage and approval, this Ordinance shall be in full force and effect on January 1, 2013.

**PASSED AND APPROVED** in Regular Council Session on this the 23<sup>rd</sup> day of July, 2012.

  
BOB BRUGGEMAN, MAYOR

ATTEST:

  
KERRY MEREDITH, CITY SECRETARY

# Exhibit “A”

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## CHAPTER 32A. STORMWATER MANAGEMENT

### ARTICLE I. GENERAL PROVISIONS

#### Sec. 32A-1. Purpose/Intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City 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 Texas Pollutant Discharge Elimination System (TPDES) permit process. This ordinance will also prevent damage to the environment and minimize public and private losses due to erosion and sedimentation in all areas. The objectives of this ordinance are:

- (a) Protect human life, health and property;
- (b) Maintain flood control and storm drainage projects and cleaning sediment out of storm drains, streets, sidewalks and watercourses;
- (c) Minimize negative impacts to adjacent properties due to erosion and sedimentation;
- (d) Minimize negative impact to public streets and bridges, storm sewer systems and drainage ways;
- (e) Minimize damage due to drainage and erosion to public facilities and infrastructure, such as water and gas mains, electric service, telephone and sewer lines;
- (f) Help maintain a stable tax base and preserve land values;
- (g) Preserve the natural beauty and aesthetics of the community;
- (h) Control and manage stormwater runoff and the sediment load in that runoff from points and surfaces within subdivisions;
- (i) Establish a reasonable standard of design for development that prevents potential flood and erosion damage;
- (j) Reduce the pollutant loading to streams, ponds and other watercourses;
- (k) Prohibit Illicit Connections and Discharges to the municipal separate storm sewer system;
- (l) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance; and
- (m) Facilitate compliance with state and federal standards and permits by owners and operators of industrial and construction sites within the City by guiding, regulating, and controlling the design, construction,

use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the City.

**Sec. 32A-2. Administration.**

Enforcement and administration of this ordinance shall be the responsibility of such office(s) or officer(s) as designated by the Director of Public Works. The Director may appoint such inspectors and assistants as necessary to assist in the performance of these duties. The Director shall also be responsible to address other stormwater issues as they relate to the City's compliance with its Small MS4 Storm Water Permit as issued by TCEQ to the City.

**Sec. 32A-3. Related Ordinances.**

In addition to this chapter, the City has other ordinances, regulations and specifications possibly affecting water quality. In the event of an irreconcilable conflict between this chapter and any other ordinances of the City, the most restrictive ordinance shall govern.

**Sec. 32A-4. Incorporation of Federal and State Statutes, Rules, and Regulations.**

A reference within this chapter to a federal or state statute, rule, or regulation includes all amendments to such statute, rule, or regulation made after the adoption of the chapter.

**Sec. 32A-5. Acronyms.**

The following abbreviations, when used in this chapter, shall have the designated meanings:

- (a) BMP - Best management practices;
- (b) CFR - Code of Federal Regulations;
- (c) CGP - Construction General Permit, TXR150000;
- (d) CWA - Clean Water Act;
- (e) EPA - U.S. Environmental Protection Agency;
- (f) ESCP – Erosion and Sediment Control Plan
- (g) FR – Federal Register;
- (h) HHW - Hazardous household waste;
- (i) mg/l - Milligrams per liter;
- (j) MS4 - Municipal separate storm sewer system;
- (k) NOI - Notice of intent;
- (l) NOT - Notice of termination;

- (m) NPDES - National Pollutant Discharge Elimination System;
- (n) ppb - Parts per billion;
- (o) PST - Petroleum storage tank;
- (p) RPE - Registered professional engineer;
- (q) RQ - Reportable quantity;
- (r) SWO – Stop Work Order
- (s) SWPPP or SWP3 - Storm Water Pollution Prevention Plan;
- (t) TAC - Texas Administrative Code.
- (u) TCEQ – Texas Commission on Environmental Quality
- (v) TPDES - Texas Pollutant Discharge Elimination System;
- (w) TPH - Total petroleum hydrocarbons;
- (x) USC - United States Code.

**Sec.32A-6. Definitions.**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

*Agricultural storm water runoff.* Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

*Best Management Practices (BMPs).* 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 stormwater, receiving waters, or stormwater 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 areas.

*City.* The City of Texarkana, Texas (including, where applicable in context, the City’s officers, employees, agents, and representatives).

*Classified Segment.* Refers to a water body that is listed and described in Appendix A or Appendix C of the Texas Surface Water Quality Standards, at 30 TAC § 307.10.

*Common Plan of Development or Sale.* A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development or sale is

identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

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

*Construction.* The disturbance of soils associated with clearing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition). These activities may be subject to requirements of TPDES General Permit No. TXR150000 (Construction General Permit).

*Contaminated.* Containing a harmful quantity of any substance.

*Contamination.* The presence of or entry into a public water supply system, the MS4, of any substance which may be deleterious to the public health and/or the quality of the water.

*Cosmetic Cleaning.* Cleaning done for cosmetic purposes. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or any cleaning otherwise regulated under federal, state, or local laws.

*Day or Days.* Calendar days, unless otherwise stated.

*Director.* The City's Director of Public Works or the Director's designee responsible for the administration and enforcement of this ordinance.

*Discharge.* Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal separate storm sewer system (MS4).

*Discharger.* Any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction-site or industrial facility.

*Environmental Protection Agency (EPA).* The United States Environmental Protection Agency, or any duly authorized official of said agency.

*Erosion and Sediment Control Plan (ESCP).* A set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which pre-construction and construction-related land disturbance, fills and soil storage occur, and before final improvements are completed.

*Facility.* Any facility, including construction sites, required by the Federal Clean Water Act to have a permit to discharge stormwater associated with industrial activity.

*Fire Code.* The "Fire Prevention and Protection" chapter of the City code.

*Fire Department.* The Fire Department of the City, or any duly authorized representative thereof.

*Fire Protection Water.* Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.

*Harmful Quantity.* The amount of any substance that will cause pollution of the MS4, or that will cause lethal or sub-lethal adverse effects on representative, sensitive aquatic monitoring organisms belonging to the City, upon their exposure to samples of any discharge into waters in the MS4.

*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 32A-9 of this ordinance.

*Illicit Connections.* An illicit connection is defined as either of the following:

- a) 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 the City; or,
- b) 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 the City.

*Industrial Activity.* Activities subject to TPDES General Permits as defined in Part II, Section A, Paragraph 1 of TPDES General Permit No. TXR050000.

*Mobile Commercial Cosmetic Cleaning.* Power washing, steam cleaning, and any other mobile cosmetic cleaning operation, of vehicles and/or exterior surfaces, engaged in for commercial purposes.

*Municipal Separate Storm Sewer System (MS4).* The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

*National Pollutant Discharge Elimination System (NPDES).* The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act.

*Non-Point Source.* Any source of any discharge of a pollutant that is not a "point source."

*Non-Stormwater Discharge.* Any discharge to the storm drain system that is not composed entirely of stormwater.

*Notice of Change (NOC).* Written notification from the permittee to the executive director of TCEQ providing changes to information that was previously provided to the agency in a notice of intent.

*Notice of Intent (NOI).* The Notice of Intent that is required by the TPDES Storm Water Multi-Sector General Permit, the TPDES Storm Water Construction General Permit, or any similar general permit to discharge stormwater associated with industrial or construction activity that is issued by the EPA or the TCEQ.

*Notice of Termination (NOT).* A written submission to the executive director of TCEQ from a permittee authorized under a general permit requesting termination of coverage under the applicable general permit.

*NPDES Permit.* A permit issued by EPA (or by the state under authority delegated pursuant to 33 U.S.C. § 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.

*Operate.* Drive, conduct, work, run, manage, or control.

*Operator.* The person or persons associated with a large or small construction activity that is either a Primary Operator or Secondary Operator as defined below:

- a) Primary Operator – the person or persons associated with a large or small construction activity that meets either of the following two criteria:
  - 1) The person or persons have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
  - 2) The person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan (SWP3) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).
- b) Secondary Operator – The person whose operational control is limited to the employment of other operators or to the ability to approve or disapprove changes to plans and specifications. A secondary operator is also defined as a primary operator and must comply with the permit requirements for primary operators if there are no other operators at the construction site.

*Permittee.* The MS4 operator authorized under the TPDES General Permit TXR040000. An operator authorized under the TPDES General Permit TXR150000 or TPDES General Permit TXR050000. The authorization may be gained through submission of a notice of intent, by waiver, or by meeting the requirements for automatic coverage to discharge stormwater runoff and certain non-stormwater discharges.

*Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

*Point source.* Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

*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.

*Pollution.* The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the state or water of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

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

*Release.* Means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into ground-water, subsurface soils, surface soils, the municipal separate storm sewer system (MS4), the Water of the State, the Waters of the United States.

*Special Construction Sites.* Any construction activity (e.g., clearing, grading, excavating, etc.) greater than 5,000 square feet and less than 1 acre of land.

*State.* The State of Texas.

*Stormwater.* Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

*Stormwater Discharge Associated with Industrial Activity.* The discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial facility. For the purpose of the industrial general permit, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling areas; refuse/waste disposal areas; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms), intermediate products, and final products; similar areas where stormwater can contact pollutants related to industrial activity; and areas where industrial activity have taken place in the past and significant materials remain and are exposed to stormwater. [For the purposes of this definition, "material handling areas" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product]. The term includes discharges from facilities described under the industrial general permit that are operated by federal, state, or municipal entities. The term excludes areas located at industrial sites that are separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from areas of a facility that are covered by the industrial general permit. For the complete regulatory definition, including the categories of industrial activity, see 40 CFR §122.26(b)(14).

*Storm Drainage System.* 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.

*Stormwater Pollution Prevention Plan (SWPPP or SWP3).* 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

*Texas Commission on Environmental Quality (TCEQ).* The environmental agency for the state.

*Texas Pollutant Discharge Elimination System (TPDES) General Permit.* A permit issued to authorize the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by § 26.040, Texas Water Code.

*Total Suspended Solids (TSS).* Solids that either float on the surface, or are in suspension in, water, wastewater, or other liquids, and which are generally removable by a laboratory filtration device. TSS is expressed in milligrams per liter.

*Uncontaminated.* Not containing a harmful quantity of any substance.

*Wastewater.* Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

*Water of the State.* Ground-water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, wetlands, marshes, inlets, canals inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

*Waters of the United States.* All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

*Wetland.* Area that is inundated or saturated by surface or ground-water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

*Working days (or business days).* Monday through Friday, excepting legal holidays.

## ARTICLE II. ILLICIT DISCHARGES

### **Sec. 32A-7. Applicability.**

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

### **Sec. 32A-8. General Prohibitions.**

A person commits an offense if the person introduces or causes to be introduced into the MS4 any discharge that is not composed entirely of stormwater.

### **Sec. 32A-9. General Prohibition Exemptions.**

(a) It is an affirmative defense to any enforcement action for a violation of Section 32A-1 of this ordinance that the discharge was composed entirely of one or more of the following categories of discharges:

- (1) A discharge authorized by, and in full compliance with, an NPDES and/or TPDES permit (other than the NPDES and/or TPDES permit for discharges from the MS4);
- (2) A discharge or flow resulting from firefighting activities (firefighting activities do not include washing of trucks).
- (3) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;
- (4) A discharge from a fire hydrant flushing;
- (5) Incidental discharges from water line pressure release valves;
- (6) Uncontaminated runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- (7) Uncontaminated water used for dust control purposes;
- (8) A discharge or flow from a diverted stream flow or natural spring;
- (9) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
- (10) Uncontaminated groundwater infiltration (as defined as 40 C.P.A. 35.2005(20)) to the MS4;
- (11) Uncontaminated discharge or flow from a foundation drain, crawl space footing drain, or sump;
- (12) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
- (13) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
- (14) A discharge or flow from a riparian habitat or wetland;

- (15) A discharge or flow from cold water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, surfactant, emulsifier, dispersant, or any other harmful cleaning substance;
- (16) Stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber, filter, or any other source of pollutant;
- (17) Dechlorinated swimming pool discharges;
- (18) A discharge or flow from individual residential car washing activities;
- (19) Agricultural stormwater runoff;
- (20) A discharge or flow from water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
- (21) A discharge or flow of uncontaminated stormwater pumped from an excavation;
- (22) Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
- (23) Non-stormwater discharges that are specifically listed in the TPDES multi-sector general permit (MSGP) or the TPDES construction general permit;
- (24) Other similar occasional incidental non-stormwater discharges, unless the TCEQ develops permits or regulation addressing these discharges;
- (25) Discharges specified in writing by the City as being necessary to protect public health and safety;
- (26) Dye testing is an allowable discharge, but requires a verbal notification to the City prior to the time of the test; and
- (27) Any non-storm water discharge permitted under a TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Texas Commission on Environmental Quality, 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 from the Director for any discharge to the storm drain system.

(b) No affirmative defense is available under Sec. 32A-9(a) if the discharge or flow in question has been determined by the Director to be a source of a pollutant or pollutants to the MS4 or to the waters of the United States, written notice of that determination and to cease the discharge has been provided to the discharger, and the discharge has continued after the expiration of the time given in the notice to cease the discharge. The Director's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding;

(c) *Prohibition of Illicit Connections.*

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

- 3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(d) A person commits an offense if the person introduces or causes to be introduced into the MS4 any harmful quantity of any substance.

#### **Sec.32A-10. Specific Prohibitions and Requirements.**

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by this ordinance.

(a) No person shall recklessly introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's TPDES permit, or any other discharge permit for discharges from its MS4.

(b) It shall be a violation of this ordinance for any person to intentionally deposit, discharge, dispose, drain, dump, emit, empty, leak, leach, pump, pour, spill, throw or otherwise introduce or cause to be introduced into the MS4, or any storm sewer manhole, catch basin, private drain, ditch, street, gutter, creek, stream, tributary, or any other drainage device which connects with or drains into the MS4, any of the following described materials or substances within the City limits:

- (1) Any oil, antifreeze or any other motor vehicle fluid;
- (2) Any industrial waste;
- (3) Any direct discharge of concrete truck washout water;
- (4) Any hazardous waste, including hazardous household waste;
- (5) Any domestic sewage or septic tank waste, grit trap waste, or grease trap waste;
- (6) Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, maintenance facility, or automotive related facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment, by a business that operates more than two such vehicles.
- (7) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance.
- (8) Any wastewater from commercial floor, rug, or carpet cleaning.
- (9) Any commercial runoff or wash-down water from any animal pen, kennel or fowl or livestock containment area.
- (10) Any filter backwash from a swimming pool or fountain, without the backwash first being filtered through a water filtering device;

- (11) Any wastewater from street washing or other cosmetic cleaning that contains any soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material has been previously removed;
- (12) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
- (13) Any substance or material that will damage, block, or clog the MS4;
- (14) Any intentional disposal of garbage, rubbish, grass clippings, leaves or other vegetation into any gutter, street, sidewalk, inlet, or other drainage device that connects with or drains into the MS4;
- (15) Super chlorinated potable water from water line flushing and disinfection;
- (16) Any acid waste materials or alkaline waste materials;
- (17) Any water or waste containing fats, oils, grease, free-floating, or insoluble oil;
- (18) Any gasoline, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;
- (19) Any noxious, malodorous, poisonous, or reactive substance which, either singularly or by interaction with other substances, or by its accumulation in the MS4 becomes injurious or potentially injurious to human, plant or animal life, or property;
- (20) Any fire protection water containing oil or hazardous substances or materials that the Fire Code in this code requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge (this prohibition does not apply to discharges or flow from firefighting by the Fire Department);
- (21) Any water from a water curtain in a spray room used for painting vehicles or equipment;
- (22) Any contaminated runoff from a vehicle wrecking yard;
- (23) Any release from a petroleum storage tank (PST); any leachate or runoff from soil contaminated by a leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release unless the discharge is in compliance with all state and federal standards and requirements and does not contain a harmful quantity of any pollutant;
- (24) Any pavement wash water from a service station unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4;
- (25) Any harmful quantity of concrete, asphalt, sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of

what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable;

(26) Pesticides, herbicides, and fertilizers (regulated as follows):

- i. No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.
- ii. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.
- iii. Any license, permit, registration certification, or evidence of financial responsibility required by state or federal law for sale, distribution, application, manufacturer transportation, storage, or disposal of a pesticide herbicide or fertilizer must be presented to the Director or his or her delegate and any City law enforcement officer for examination upon request.
- iv. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.

(27) Used oil (regulated as follows):

- i. It shall be a violation of this ordinance for a person to:
  - (1) Intentionally discharge or dispose of used motor vehicle fluids (including motor oil and antifreeze) into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;
  - (2) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or directly dispose of used oil on land or in a landfill; or
  - (3) Intentionally apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.
- ii. All businesses that change motor oil for the public and municipal waste landfills are encouraged to serve as public used oil collection centers as provided by § 371.024 of the Tex. Health & Safety Code.

(28) Erosion control (regulated as follows):

- i. It is unlawful for any person having control of real property in the City to suffer or permit soil, rock, mud, or debris to wash, slide, or otherwise be moved from the

real property onto any adjacent property, street, alley, utility facility, right-of-way, or easement through erosion.

ii. Any person in control of real property shall:

- (1) Prevent soil, mud, rock, or debris from being deposited on or transported through erosion to any adjacent property, street, alley, utility facility, right-of-way, or easement;
- (2) Inspect the property and acquaint himself or herself with the conditions existing; and
- (3) Remedy any condition that might allow soil, mud, rock, or debris to wash, slide, or otherwise be transported to any adjacent property, street, alley, utility facility, right-of-way, or easement through erosion.

### **Sec.32A-11. Watercourse Protection.**

Any person owning property through which a watercourse passes and such person's lessee (if any) shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or retard the flow of water through the watercourse. In addition, the owner and lessee (if any) 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. The property owner and lessee (if any) shall provide protection against stream bank erosion by maintaining existing vegetation adjacent to watercourses.

### **Sec.32A-12. Suspension of MS4 Access.**

(a) Suspension due to Illicit Discharges in Emergency Situations. The City 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, the health or welfare of persons, or the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City 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.

(b) Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

(c) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

## **ARTICLE III. STORMWATER MANAGEMENT PROCEDURES**

### **Sec. 32A-13. Stormwater Discharges Associated with Construction Activity Including Industrial Activity.**

(a) *Applicability.* This ordinance applies to all facilities and construction sites (including special construction sites) located within the City limits or otherwise subject to the regulatory authority of the City that

have stormwater discharges associated with regulated industrial and/or construction activity by TPDES or NPDES permit requirements, and/or other construction activities determined by the City to pose a hazard to the quality of water flowing through the MS4. This includes the construction of an entry/exit location, drill pad site, utility and other construction activities as required for exploration and/or extraction of natural gas, other petroleum products, or any other minerals within City limits.

(b) *Access to Facilities.*

- (1) The Director is authorized by Section 32A-22 of this ordinance to enter and inspect all facilities and construction sites subject to regulation under this ordinance.
- (2) Site owners and/or operators shall allow the Director ready access to all parts of public and private premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or TPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The Director shall have the right to set up on any permitted construction site or facility such devices as are necessary in the opinion of the Director to conduct monitoring and/or sampling of the facility's or construction site's stormwater discharge.
- (4) Any temporary or permanent obstruction to safe and easy access to the site to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (5) Unreasonable delays in allowing the Director access to a permitted construction site or facility are a violation of a stormwater discharge permit and of this subchapter. A person who is the owner and/or operator of a facility and/or construction site with an NPDES or TPDES permit, or site qualified to be covered by an NPDES or TPDES permit, to discharge stormwater associated with construction activity or industrial activity commits an offense if the person denies the Director reasonable access to the permitted facility or construction site for the purpose of conducting any activity authorized or required by this ordinance.
- (6) If the City has been refused access to any part of the premises from which stormwater is discharged, and the Director is able to demonstrate probable cause to believe that there may be a violation of this chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

(c) *Damage to Stormwater Control Measures.*

It is a violation of this ordinance for any person to damage, or allow to be damaged, any temporary or permanent stormwater control measures, through his or her actions or inaction without promptly restoring the control measure to an effective and efficient state.

(d) *Non-Permitted Discharges Prohibited.*

A person who is the owner and/or operator of a construction site commits an offense if the person discharges, or causes to be discharged, stormwater associated with construction activity without first having obtained a NPDES or TPDES permit to do so, unless a permit is not required by a state or federal requirement.

(e) *Compliance with Permit.*

- (1) A facility or construction site shall be operated in strict compliance with the requirements of the subject TPDES permit to discharge stormwater associated with industrial or construction site activity.
- (2) A person commits an offense if the person operates a facility or construction site in violation of the requirements of the subject NPDES/TPDES permit to discharge stormwater associated with industrial or construction site activity.

(f) *Stop Work Order (SWO).*

- (1) Whenever the Director finds that any operator of a facility, has violated, or continues to violate, any provision of this chapter, or any permit or order issued thereunder, the Director may order that a stop work order be issued to the operator, posted at the facility, and distributed to all City departments and divisions whose decisions affect any activity at the site.
- (2) Whenever the Director determines that the operation of a construction site has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, as it may pertain to the operation of the construction site, the Director may order that a SWO be issued to the owner and/or operator, posted at the site, and distributed to all City departments and divisions whose decisions affect any activity at the site.
- (3) Unless express written exception is at issuance, the stop work order shall prohibit any further construction activity at the entire site and shall bar any further inspection or approval by the City.
- (4) A person receiving an order under this section may file a written notice of appeal with the Director, no later than the tenth day after receipt of the order. Such notice shall include an explanation as to why the person believes the enforcement action should not be taken.
- (5) Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

**Sec. 32A-13.1. Stormwater Discharges From Industrial Activity.**

(a) *General Provisions.* All operators of (1) municipal landfills; (2) other treatment, storage, or disposal facilities for municipal waste, including but not limited to transfer stations and incinerators; (3) hazardous waste treatment, storage, disposal, and recovery facilities; (4) industrial facilities that are subject to section 313 of title III of EPCRA; and (5) industrial or commercial facilities that the Director reasonably determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity, shall comply with the following requirements:

- (1) Any operator requiring coverage for stormwater discharge associated with industrial activity under the TPDES general permit for stormwater discharges associated with industrial activity (Industrial General Permit No. TXR050000) shall submit a signed copy of its notice of intent (NOI) to the Director contemporaneously with submittal of the original NOI to the TCEQ. If industrial activity is already underway, the NOI shall be submitted to the Director, or an authorized representative, within thirty (30) days from the effective date of this ordinance.
- (2) If relevant information provided in the NOI changes, a notice of change (NOC) must be prepared and implemented in accordance with the requirements of the industrial general permit or any individual or group TPDES permit issued for stormwater discharges from the facility. A copy of the NOC must be provided to the Director within fourteen (14) days of discovery of the change.
- (3) Where all stormwater discharges associated with industrial activity that are authorized by this ordinance, and by the TPDES permit for those discharges from industrial activities, are eliminated, or where the operator of stormwater discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the Director a notice of termination (NOT) that includes the information required for notices of termination by part II.C.6 of the industrial general permit.
- (4) The City's MS4 permit requires that all industrial facilities listed in Section 32A-6 be subject to site inspections of no less frequently than once per permit term (5 years). The Director retains the authority to inspect these industrial facilities as often as deemed necessary to assure permit compliance and safety of the MS4 and surface waters of the United States.
- (5) Qualified personnel are required to inspect the facility according to the requirements of the Industrial General Permit Part III. B. A copy of the report and all documentation must be submitted to the Director.
- (6) Industrial or commercial facilities that the Director determines are contributing a substantial pollutant load to the MS4 shall submit self-monitoring data to the City on an annual basis. Submittal date of self-monitoring data shall be determined by the Director.
- (7) An industrial facility may submit a "no exposure" certification to the City in lieu of self-monitoring; however, any facility operating under a "no exposure" certification is subject to periodic facility inspections (not less than once per permit term (5 years) to verify the facilities "no exposure" exemption. The inspection may be waived by the City for facilities that participate in the TCEQ's Small Business and Local Government Assistance Compliance Commitment Program.
- (8) The Director retains the authority to conduct inspections on any industrial facility subject to the TCEQ's TPDES multi-sector general permit or has been deemed to be, or has potential to be, contributing a substantial pollutant load to the MS4 in order to determine compliance and ensure safety of the MS4 and waters of the United States.
- (9) Operators must submit monitoring results to the Director upon his/her request for discharges subject to the semi-annual or annual monitoring requirements of part III of the TCEQ Industrial General Permit TXR050000.

- (10) Copies of the NOI, NOC, NEC, NOT may be delivered to the Director either in person or by mailing it to:

Stormwater Management Division

PO Box 1967

Texarkana, Texas 75504

- (11) A person commits an offense if the person owns or operates a construction site or industrial facility that is discharging stormwater associated with a regulated construction or industrial activity without having submitted a copy of the notice of intent to do so to the City.
- (b) *Facilities Operating With a TPDES or NPDES Individual Permit.*
- (1) The facility shall operate in accordance with all requirements of the appropriate TPDES or NPDES individual permit.
- (2) Upon inspection of the facility, the Director may notify the operator or owner at any time that facility operations do not meet the requirements of the appropriate TPDES or NPDES individual permit or any additional requirements imposed by or under this section or other City ordinances. Such notification shall be in writing and shall identify those provisions of the permit or ordinance that are not being met, and clearly identify the changes necessary to meet such requirements. Within thirty (30) calendar days of such notification from the Director, the operator or owner shall make the required changes and submit to the Director a written certification that the changes have been implemented. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or TCEQ, and/or the City may itself undertake any enforcement action authorized by Sections 32A-19 or 32A-21 of this ordinance. Exercise of the City's option for consultation under this subsection shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.
- (3) Copies of all sampling data and analyses reports required by the appropriate TPDES or NPDES individual permit shall be submitted to the Director at the same time that such reports are submitted to the EPA or TCEQ, unless otherwise notified in writing by the Director.
- (c) *Requirements to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.*
- (1) The City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S.
- (2) The owner and/or operator of a commercial or industrial establishment shall provide, at their 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 these structural and non-structural BMPs. Further, any person responsible for a

property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural 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 TPDES permit authorizing the discharge of stormwater 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 stormwater pollution prevention plan (SWP3) as necessary for compliance with requirements of the NPDES or TPDES permit.

- (3) The Director may require an owner and/or operator of a regulated facility to modify its BMP's if, in the best professional judgment of the Director, the BMP's do not provide effective protection from accidental discharge of prohibited materials or other wastes from entering into the municipal stormwater drainage system or waters of the United States.
- (4) The Director may require any operator of a facility to modify the facility's stormwater pollution prevention plan if in the best professional judgment of the Director, the SWP3 does not comply with the requirements of the facility's NPDES or TPDES permit or this ordinance to discharge stormwater associated with industrial activity.
- (5) The deficiencies in a facilities BMP's will be communicated in writing, and the Director will provide the owner and/or operator a reasonable amount of time, not to exceed sixty (60) days, to make the necessary changes in the BMP's. Permit time requirements for controlling pollutants in runoff shall remain applicable.

#### **Sec. 32A-14. Construction Stormwater Management.**

(a) *General Provisions.*

*Constructed Related Violations.* No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall constitute a separate offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration. Violations include, but are not limited to, the following:

- (1) Construction not conducted in accord with the requirements of this Ordinance shall be a deemed a violation of this Ordinance;
- (2) Construction not initiated or terminated within the time frame authorized by the Director by notice, permit, or license when such authorization is required by this Ordinance, shall be a violation of this Ordinance;
- (3) It shall be a violation of this Ordinance to not comply with requirements for timely application for a Stormwater Permit and requirements for a Stormwater Pollution Prevention Plan and/or an Erosion and Sediment Control Plan;

- (4) Conducting any land disturbing or construction activity without an approved erosion control plan for the location where the violation occurred;
- (5) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land disturbing activities, in compliance with the approved erosion control plan for the location where the violation occurred;
- (6) Failing to remove off-site sedimentation that is a direct result of land disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved erosion control plan for the location where the violation occurred;
- (7) A person commits an offense if the person owns or operates a construction site or industrial facility that is discharging stormwater associated with a regulated construction or industrial activity without having submitted a copy of the notice of intent to do so to the City.

(b) *Establishment of Stormwater Permit.* A stormwater permit is required to ensure conformance with the requirements of this ordinance prior to any land disturbing activity; including but not limited to, clearing, dredging, grading, excavating, transporting, storing, stockpiling, mining, disposing, and filling of soil, earthen materials, or land.

(c) *Regulatory Permits.* It shall be the private property owners, developers or builders responsibility to secure all regulatory permits associated with development drainage improvements and/or any land disturbing activities. These include but are not limited to U.S. Corps of Engineer 404 permits, TCEQ permits, and U.S. Environmental Protection Agency discharge permits.

(d) *Construction Sites.*

- (1) *Applicability/Site Limits.* This ordinance shall apply to all areas of land within the City limits. The erosion control provisions of this ordinance do not apply to land under active agricultural use. As soon as construction or modification to the lands under active agricultural use is proposed so that the use of land will change from agriculture to any other use, then the provisions of this ordinance shall be applicable to the once exempted land. Section 32A-14(g)(6) of this ordinance explains this exemption in greater detail.

A construction site is the location and all the areas wherein construction activity, which is all or part of a common development or project, are occurring, proposed to occur, or have occurred, irrespective of whether that construction is in compliance with this Ordinance, irrespective of whether that construction activity is ongoing or temporarily suspended for any purpose, and irrespective of whether the Director has granted authorization to undertake the construction activity. For purposes of this Ordinance, a construction site shall encompass:

- (A) All land and surface water areas where the construction activities of any type, including all areas of land surface disturbed by or as a consequence of the construction activities or other activities in support of the construction activities, are undertaken as part of a common plan of development or project;

- (B) All areas of land to be disturbed by construction of a common plan of development or project, irrespective of whether such construction is undertaken or planned to be undertaken in one phase or stage or different phases or stages and irrespective of whether such construction is undertaken or planned to be undertaken at different, separate, or simultaneous times;
  - (C) All areas of land where the land is to be disturbed by construction of a common plan of development or project, irrespective of whether undertaken at contiguous or separate locations within the general area encompassed by the common plan of development or project, provided such boundary lies on or is within the boundary of property collectively owned or leased by one or more parties undertaking any or all of the construction activities; and
  - (D) All areas of ongoing, temporarily suspended, yet-to-be undertaken, and completed construction encompassing the totality of the construction activities, irrespective of whether any or all the construction activities are within compliance with this Ordinance.
- (2) *Redefining of Construction Site Limits.* The Director shall have the right to redefine, for purposes of compliance with this Ordinance, the limits of a construction site in extent and amount necessary and sufficient in the judgment of the Director to prevent the actual or potential discharge of pollutants from the construction site to the MS4 or waters of the U.S. to the maximum extent practicable, provided the limits so defined lies on or within the boundary of property collectively owned or leased by one or more operators undertaking any or all of the construction activities at the site.
  - (3) *Cessation of Construction Site.* A construction site shall, for the purposes of this Ordinance, cease to be a construction site only at such time that all requirements for closure of the construction site as specified by this Ordinance have been met.
- (e) *Operators and Applicants.*
- (1) *Operator Responsibility.* A construction operator shall be fully responsible for compliance with all requirements of this Ordinance for construction activities, as may be applicable to the type of construction activities being conducted, proposed to be conducted, or that have been conducted by the operator at a construction site, including but not limited to making application for a Stormwater Permit, preparing a Stormwater Pollution Prevention Plan and/or ESCP, and performing closure of the construction site.
    - (A) All secondary operators and primary operators with control over construction plans and specifications must:
      - 1) Ensure the project specifications allow or provide that adequate BMPs are developed to meet the requirements of this ordinance and Part III of the construction general permit;
      - 2) Ensure that the SWP3 indicates the areas of the project where they have control over project specifications, including the ability to make modifications in specifications;

- 3) Ensure all other operators affected by modifications in project specifications are notified in a timely manner so that those operators may modify their best management practices as necessary to remain compliant with the conditions of this ordinance and the construction general permit;
- 4) Ensure that the SWP3 for portions of the project where they are operators indicates the name and site-specific TPDES authorization numbers for permittees with the day-to-day operational control over those activities necessary to ensure compliance with the SWP3 and other permit conditions. If the party with day-to-day operational control has not been authorized or has abandoned the site, the person with control over project specifications is considered to be the responsible party until the authority is transferred to another party and the SWP3 is updated.

(B) Change in Operator

- 1) In the event that the operator of the construction site changes, all or in part, any and all Stormwater Permits, and Stormwater Pollution Prevention Plans for construction yet to be completed must name the new and continuing operators' names. Any permits, plans, or notices that have been issued or approved by the City for the construction to the original operator(s) must be reissued or re-approved, as appropriate, with the name(s) of the new operator(s) in the same manner as the original operator, such re-issuance or re-approval being obtained no later than ten (10) working days after such change.
- 2) If there is a transfer of ownership from the applicant to an owner occupant of a residential lot covered by a TPDES permit than a final inspection will be required. The applicant will also be required to submit documentation that the resident has been made aware of the requirements for proper stabilization of any remaining unstabilized portion of the residential lot.

(2) *Applicant.* For the purpose of any applications for construction activities that may be required by this Ordinance, an applicant is the person or persons making such application and is:

(A) An operator at the property upon which construction is proposed or is taking place.

(3) *Division of Responsibility.* In the event the operator of a construction site is more than one legal entity, the applicant shall be considered responsible and held liable for complying with this Ordinance.

(f) *Construction Activities.*

(1) Types of Construction Activities

Construction activities are those activities which result in any land disturbing activity or exposure of raw soil on a temporary or permanent basis and may include, but are not necessarily limited to, one or more of the following activities or practices when such activities are done for the purpose(s) of:

- smoothing,
- clearing,
- removing trees and vegetation,
- configuring or shaping the land surface or subsurface;
- modifying drainage, drainage patterns, drainage conveyances, or drainage facilities;
- removing, replacing, expanding, altering, destroying, or demolishing existing structures, surfaces or facilities;
- preparing the land for construction of roads, highways, curbs, gutters, drainage devices, vehicle parking, buildings, structures, walls, roofs, floors, pads, foundations, tanks, basements, pipes, or utilities.

(2) Construction Conduct

- (A) Any construction at a construction site shall be performed so as to reduce, to the maximum extent practicable, the discharge of sediments and other pollutants from the construction site.
- (B) An owner and/or operator of a construction site shall maintain on-site and make available for inspection by the Director any notice permit or license for construction, and any pollution control plan that may be required by this Ordinance or other state or federal regulation.
- (C) A Stormwater Pollution Prevention Plan and/or an Erosion and Sediment Control Plan shall be submitted to, and approved by, the Director prior to commencement of any construction activity at a construction site for which a Stormwater Permit is required.
- (D) The Director shall require that a construction site of any size conform to any and all conditions of this Ordinance for construction activities if the Director determines that such requirements are necessary to prevent a significant discharge of pollutants to the City's MS4 or waters of the U.S., or are necessary because of imminent harm to the public or the environment.

(3) Closure and Final Stabilization of Construction Sites

(A) Closure Activities.

Construction activities at a site, for the purposes of this Ordinance, shall not be complete until proper closure of the site has been accomplished. Until such time proper closure has been achieved, the operator of the site is subject to all applicable requirements for conduct and completion of construction activities at the construction site. Any operator of a construction site shall complete all construction activities at a construction site in compliance with the requirements of this Ordinance for proper closure.

(B) Proper Closure

Proper closure includes, but is not limited to, the following:

- i. Final stabilization of the site;

- ii. Removal of all construction surplus and residual materials, supplies, packaging, drums, cans, and containers;
- iii. Removal of all surplus and residual soaps, cleaners, pastes, mastics, solvents, materials for soil amendment or preparation and similar construction materials;
- iv. Removal of all excess, surplus, and unused construction vehicle maintenance fluids, including lubricants, fuels, brake fluids, and coolants;
- v. Removal of all wastes, trash, and debris;
- vi. Removal of any waste bins, enclosures, drums, or similar containers which are not intended to serve as permanent waste storage containers at the site;
- vii. Removal of all temporary storm water pollution control devices, structures, and materials;
- viii. If not intended for removal in County approved plans or specifications for the site, and to the extent a construction operator or their activities are responsible for the damage or loss of function or capacity of storm water conveyances and appurtenances:
  - 1) Repair or replacement of damaged storm water conveyances and appurtenances;
  - 2) Repair or replacement of damaged drainage works and facilities; and
  - 3) Restoration of proper function and capacity of storm water conveyances.

(4) Inactive Construction Sites

A construction site for which active and ongoing on-site construction activities have halted for a period of thirty (30) continuous calendar days and for which proper closure actions as required by this Ordinance have not been conducted, shall be considered in violation of this Ordinance, unless the construction site owner and/or operator has demonstrated to the satisfaction of the Director that:

- (A) Such lack of active and ongoing on-site construction activity is a result of only temporary suspension of activities; and
- (B) Site conditions are and will be maintained in a condition satisfactory to prevent the discharge of pollutants to the City's MS4 or waters of the U.S. to the maximum extent possible during the period of temporary suspension of construction activities.

(g) *Stormwater Permit.*

(1) Applicability

- (A) Unless specifically exempted in writing, a stormwater permit must be obtained from the Director prior to commencement of any construction, development, excavating, grading, regrading, landfilling, berming, paving, diking, clearing and grubbing, or any land disturbing activities made to any property within the City. A separate permit is required for each separate, non-contiguous site or lot. The permit application and required submittal documents, when applicable, shall include a copy of the permit coverage and/or site notice for small or large construction sites issued from the Texas Commission of Environmental Quality (TCEQ). Approvals shall be secured per size of development from the City and TCEQ, as applicable prior to starting any clearing or earth work. It is the developer's responsibility to determine if other permits are required and to secure them.
  - (B) In addition, no stormwater permit will be issued for land disturbing activity that would require the uncovering or disturbance of 5,000 square feet or more of land without the approval of an Erosion and Sediment Control Plan by the Director.
- (2) General Provisions
- (A) A stormwater permit application shall be submitted to the Director using appropriate forms as provided.
  - (B) A Stormwater Permit authorizes a construction owner and/or operator to conduct construction activities. Obtaining a Stormwater Permit does not relieve an owner and/or operator of complying with any and all applicable requirements of this Ordinance exclusive of those dealing with construction.
  - (C) Application for a Stormwater Permit shall require the submission of a Stormwater Pollution Prevention Plan (SWP3) and/or an Erosion and Sediment Control Plan developed in accordance with the requirements of Section 32A-14(h) of this ordinance and the Construction General Permit to the Director for review, such plan shall provide information that will reduce the discharge of pollutants from the site to the maximum extent practicable.
  - (D) The Stormwater Permit must be obtained from the Director at least two (2) working days prior to commencement of construction. Only that construction activity which is described in the Stormwater Permit can be undertaken.
  - (E) The Stormwater Permit shall be posted at the construction site, and no construction activity can occur prior to the date of commencement, or after the date of termination, authorized by the Stormwater Permit.
  - (F) Construction must be started no later than (180) calendar days after the date of commencement of constructions specified in the Stormwater Permit. Failure to begin construction within the specified time frame will render the Stormwater Permit void.
  - (G) If for any reason the Stormwater Permit is suspended, revoked, terminated, or voided, construction activity at the site shall immediately cease.
- (3) Contents of a Stormwater Permit

- (A) Address or other description of location of the construction site;
  - (B) Name and address of the construction site owner, developer, and/or operator, either property owner or lessee, and name and address of general construction contractor, if different from property owner or lessee, and name and address of any consulting firm retained by the applicant;
  - (C) Name, address, and business telephone number of the construction site owner and/or operator's on-site representative;
  - (D) Earliest date of commencement of construction activity;
  - (E) Proposed dates of termination of construction activity, completion of final stabilization activities, and closure of the site;
  - (F) Practices to be employed for site stabilization during the course of the construction;
  - (G) Description of means by which the site is to be stabilized during suspension of construction activity for periods of fourteen (14) or more days and permanently stabilized by the time of completion of construction activities;
  - (H) Any other information the Director may deem necessary, whether or not required of any other owner and/or operator making application for a Stormwater Permit;
  - (I) Certification by the applicant for the Stormwater Permit that the information provided on the Stormwater Permit application is true and accurate.
  - (J) The approved stormwater permit shall contain certification by the applicant that all land clearing, construction, development and drainage will be done according to the Stormwater Pollution Prevention Plan and/or Erosion and Sediment Control Plan or previously approved revisions. Any and all stormwater permits may be revoked at any time if the construction of stormwater management facilities is not in strict accordance with approved plans.
  - (K) In addition to the plans and permits required from the City, applicants shall obtain all state and federal permits for the proposed development. The applicant shall also be responsible for determining the existence and limits of any wetlands and/or floodways as may be applicable, and be responsible for securing permits and approvals from the U.S. Army Corps of Engineers and Federal Emergency Management Agency as required.
- (4) Amendment to Stormwater Permit
- (A) If the activity authorized by the permit is not completed according to the approved schedule and permit conditions, the Director shall be notified. For revisions resulting in a schedule extension of more than 30 days, or if deviations from the permit conditions are expected to occur, approval of a permit modification is required by the Director.

- (B) If the application for amendment to a Stormwater Permit requires a change in the Storm Water Pollution Prevention Plan and/or Erosion and Sediment Control Plan in order for the SWP3 and/or Erosion and Sediment Control Plan to remain true and accurate should construction be undertaken in accordance with the amendment, an appropriately modified SWP3 and/or Erosion and Sediment Control Plan shall also be provided at the time of application for amendment to the Director.
  - (C) Application for amendment to a Stormwater Permit can be made at any time ten (10) or more working days prior to the time identified in the Stormwater Permit for completion of construction activities, provided the person(s) making application is not in violation of this Ordinance.
- (5) Late Filing of Amendment To a Stormwater Permit
- (A) If application for amendment to a Stormwater Permit is made less than two (2) working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and such activities or conditions are not authorized by the Stormwater Permit prior to application for amendment, the application shall be deemed to be a Late Filing of Stormwater Permit Amendment.
  - (B) A Late Filing of Stormwater Permit Amendment shall meet all the same conditions and requirements as application submitted more than two (2) working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and include other such information the Director may require.
  - (C) Construction to be undertaken in accord with a Late Filing of Stormwater Permit Amendment shall not be undertaken until such amendment is approved by the Director.
  - (D) Approval by the Director of a Late Filing of Stormwater Permit Amendment shall not relieve the applicant from any or all administrative enforcement remedies, judicial enforcement remedies, enforcement actions, or other remedies allowed by this Ordinance.
- (6) Exemptions
- The following activities are exempt from requirements of this ordinance:
- (A) Land use for agricultural purpose.
  - (B) Land where timber extraction takes place, provided that it is to be re-seeded as timber land.
  - (C) Existing commercial and industrial structures where additional structural improvements are less than 5,000 square feet.

- (D) Any activity directly related to the planting, growing and harvesting of agricultural crops.
  - (E) Action taken under emergency conditions, either to prevent imminent harm or danger to persons, or to protect property from imminent danger of fire, violent storms or other hazards.
  - (F) Customary and incidental routine grounds maintenance, landscaping, and home gardening which does not require platting, replatting, building permit, and which does not affect stormwater drainage on or through the site.
  - (G) Installation, maintenance and repair of any underground public utility lines when such activity occurs on an existing hard-surface road, street or sidewalk, provided the activity maintains pollution control and is confined to the area of the road, street or sidewalk which is hard-surfaced; and
  - (H) Construction, repair or rebuilding of tracks of a railroad company.
- (7) Review and Approval Process
- (A) The Director will review each application for a permit to determine its conformance with the provisions of this local regulation. Within ten (10) working days after receiving an application, the City shall, in writing:
    - 1) Approve the application for the permit; or
    - 2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
    - 3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.
  - (B) If the permit application, final Stormwater Pollution Prevention Plan and/or Erosion and Sediment Control Plan, and maintenance agreement are approved by the Director, all appropriate land disturbance activity permits shall be issued.
  - (C) Failure of the Director to act on original or revised applications under this ordinance within ten (10) calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the City.
- (8) Permit Duration
- (A) A construction sites permit is terminated automatically when all of the requirements listed under Section 32A-14(f)(3) of this ordinance are met. Unless revoked or otherwise modified permit coverage will automatically terminate two

(2) years after the permit issuance date. If continued permit is needed beyond the termination or expiration date, a new stormwater permit must be issued.

(h) *Requirements and Standards for Site Development.*

(1) Construction Sites Defined

- (A) Large Construction Sites include any construction activity that will result in the disturbance (e.g., clearing, grading, excavating, etc.) of five (5) or more acres of total land area. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land.
- (B) Small Construction Sites include any construction activity that will result in the disturbance (e.g., clearing, grading, excavating, etc.) of one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land.
- (C) Special Construction Sites include any construction activity that will result in the disturbance (e.g., clearing, grading, excavating, etc.) of 5,000 square feet of land and less than one (1) acre.

(2) Site Specific Stormwater Submittal and Planning Requirements

(A) General Provisions

- 1) Except as provided in subsection (b), a site specific storm water pollution prevention plan is required for all new development, redevelopment, residential, commercial, and industrial developments that disturbs one acre or more, and on sites that disturbs less than 1.0 acre when the site is part of a larger development.
  - a. For the purpose of this section, the area of the development must include all land of a common plan of development, regardless of the amount of land that will be affected by the specific development activity.
  - b. A stormwater pollution prevention plan is not required when a portion of a previously developed tract of land is redeveloped, unless the redevelopment will result in the conversion of more than one acre from a porous surface to an impervious surface.
- 2) The stormwater pollution prevention plan must be prepared at the time of submission of the NOI or construction site notice.

- 3) The plan must include an Erosion and Sediment Control Plan that describes the implementation of best management practices (BMPs), which will be used to reduce the pollutants in storm water discharges associated with construction and post-development runoff.
- 4) A site specific Erosion and Sediment Control Plan is required for all new development, redevelopment, residential, commercial, and industrial developments that disturbs 5,000 square feet or more. Minimum requirements for the ESCP can be found in Section 32A-14(h)(3)(B)(2) of this ordinance or in the construction general permit.
- 5) Implementation of the pollution control measures detailed in the SWP3 and ESCP is required. Inspection of the status of the pollution control measures will be performed by City personnel, during normal construction inspections, and at other times when construction activities may be conducted.
- 6) These documents may be delivered to the Director either in person or by mailing it to:

Stormwater Management Division

City of Texarkana, Texas

220 Texas Blvd.

Texarkana, Texas 75501

(B) Development of Sites one acre or more,

- 1) A stormwater pollution prevention plan is required for all construction projects where one or more acres will be disturbed during development. Developments of sites that disturb one acre or more within the City limits must prepare a stormwater pollution prevention plan that satisfies EPA or TCEQ regulations and the NPDES or TPDES construction general permit.
- 2) A copy of the stormwater pollution prevention plan, including the ESCP, must be provided to the City's Director upon request.
- 3) A copy of the notice of intent (NOI) (sites > five acres) and/or construction site notice (sites one to five acres) provided to EPA or TCEQ must be provided to the Director at least 48 hours prior to any land disturbing activity.
- 4) If relevant information provided in the NOI changes, a notice of change (NOC) must be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group TPDES permit issued for stormwater discharges from the facility or

construction site. A copy of the NOC must be provided to the Director within fourteen (14) days of discovery of the change.

- 5) A copy of the approved TCEQ TPDES Permit
- 6) Prior to the submittal of a notice of termination (NOT), the operator of the construction site shall first notify the Director to request an inspection of the construction site for approval of final stabilization. After final inspection approval, the operator of the construction site shall submit to TCEQ and the Director a notice of termination (NOT) that includes the information required by part II section F of the construction general permit.
- 7) A copy of the notice of termination (NOT) if the current measures are insufficient or construction activity has been completed (sites > five acres) submitted to EPA or TCEQ must be provided to the Director.
- 8) All projects under this category must meet the requirements in Section 32A-14(h)(3).
- 9) The area of the development will be based upon any or all of the following: platted lot(s), site plan of the development, phased-in name of the development and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person. Disturbance of a partial area of a tract is not a condition that will cause a change of the category in development size.

(C) Development of sites less than one acre, if part of a larger development

- (1) All projects under this category must meet the requirements in Sections 32A-14(h)(2)(B) and 32A-14(h)(3) .
- (2) The area of the development will be based upon any or all of the following: platted lot(s), site plan of the development, phased-in name of the development and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person. Disturbance of a partial area of a tract is not a condition that will cause a change of the category in development size.

(D) Development of sites less than one acre, if not part of a larger development (Special Construction Sites)

- (1) An erosion and sediment control plan, as described in Section 32A-14(h)(3)(B)(2), is required for new development, redevelopment, commercial construction, industrial construction, multi-family residential construction, and development of a residential subdivision within the City's jurisdictional area where 5,000 square feet of acre will be disturbed, when the site is not part of a larger development of an acre or more. The

area of the development will be based upon platted lot(s), site plan of the development, phased-in name of the development, and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person.

- 2) Post on-site the copy of the Construction Site Notice and City's stormwater permit
  - 3) Submit a copy of the site notice and ESCP plan prior to construction to the Director
  - 4) Maintain ESCP on-site and inspect stormwater controls weekly
  - 5) Contractors are required to implement an erosion control plan that establishes Best Management Requirements (BMPs) to reduce runoff.
  - 6) The erosion control plan may include any measures as required to comply with pollution control measures specified in Section 32A-14(h)(3)(B)(2).
- (3) Stormwater Pollution Prevention Plan Requirements (SWP3)
- (A) General Provisions
- 1) A Stormwater Pollution Prevention Plan (SWP3), if required by Section 32A-14(h)(2), shall be submitted for review in accordance with NPDES or TPDES permit requirements and this ordinance. Any operator desiring TPDES permit coverage shall submit to the Director a stormwater permit application, on a form provided by the City Stormwater Management Division, along with a copy of the SWP3 and/or the Erosion and Sediment Control Plan. Should the plan review process exceed ten (10) business days, construction activities may commence under the submitted SWP3. Once the plan review is complete, any necessary changes will be made to the SWP3 at the project site. No building permit, subdivision approval, or permit to allow land-disturbing activities shall be issued until approval of this plan. The SWP3 must be developed to address discharges and potential sources of pollution, which may reasonably be expected to affect the quality of stormwater discharges associated with industrial, construction, and development activities.
  - 2) The stormwater pollution prevention plan (SWP3) shall describe and ensure the implementation of best management practices (BMPs) required by this ordinance, which will be used to reduce the pollutants in stormwater discharges associated with construction and post-construction runoff, and assure compliance with the terms and conditions of a TCEQ or EPA stormwater permit.
  - 3) The City may deny approval of any building permit, certificate of occupancy, grading permit, subdivision plat, site development plan, permit to allow land disturbing activities, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed

upon a site inspection by the City are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable.

- 4) Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials, including waste disposal that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, concrete truck washout, etc. in accordance with the inspection schedule included in the Stormwater Pollution Prevention Plan (SWP3) for the site. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be maintained, repaired, or revised as appropriate, and as soon as is practicable and maintenance, repair or revision activities noted in the SWP3 for the site.
- 5) The City may require changes be made to an owner and/or operator's SWP3 if, in the best professional judgment of the Director the SWP3 does not comply with the requirements of the owner and/or operator's NPDES or TPDES permit or this ordinance to discharge stormwater associated with construction activities.
- 6) The deficiencies in an owner and/or operator's SWP3 will be provided in writing, and the Director will give the owner and/or operator a reasonable amount time, not to exceed fourteen (14) days, to make the necessary changes in the SWP3.
- 7) Any stormwater pollution prevention plan required by federal or state regulation shall be retained on site during all phases of construction and a copy must be submitted to the Director. Failure to produce such required SWP3s shall be grounds for issuance of a SWO.
- 8) The Director may request and receive in a timely fashion, at the time of, or after application for a Stormwater Permit, a copy of any SWP3 required by federal or state regulation for discharge of stormwaters from a construction site. Failure to provide such requested pollution control plan within a timeframe specified by the Director shall be grounds for a SWO.
- 9) The Director may require additional information, plans, or specifications to be provided in an SWP3 for a construction site if the Director determines such additional information, plans, or specifications are necessary to prevent the discharge of pollutants to the MS4 or waters of the U.S.
- 10) The SWP3 must be prepared by a Professional Engineer licensed to practice in the State of Texas.

(B) Contents of the Stormwater Pollution Prevention Plan (SWP3)

The SWP3 must include, at a minimum, the information described below:

- 1) A site or project description, which includes the following information:
  - a. A description of the nature of the construction activity;
  - b. A list of potential pollutants and their sources;
  - c. A description of the intended schedule or sequence of activities that will disturb soils for major portions of the site;
  - d. Description of the existing vegetation at the site, including coverage
  - e. The total number of acres of the entire property and the total number of acres where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas that are authorized under the permittee's NOI;
  - f. Data describing the soil or the quality of any discharge from the site;
  - g. A map showing the general location of the site (e.g. a portion of a City or county map);
  - h. A detailed site map (or maps) indicating the following:
    - (i) drainage patterns and approximate slopes anticipated after major grading activities;
    - (ii) areas where soil disturbance will occur;
    - (iii) locations of all major structural controls either planned or in place;
    - (iv) locations where temporary or permanent stabilization practices are expected to be used;
    - (v) locations of construction support activities, including off-site activities, that are authorized under the permittee's NOI, including material, waste, borrow, fill, or equipment storage areas;
    - (vi) surface waters (including wetlands) either at, adjacent, or in close proximity to the site;

(vii) locations where stormwater discharges from the site directly to a surface water body or a municipal separate storm sewer system; and

(viii) vehicle wash areas.

Where the amount of information required to be included on the map would result in a single map being difficult to read and interpret, the operator shall develop a series of maps that collectively include the required information.

- i. The location and description of support activities authorized under the permittee's NOI, including asphalt plants, concrete plants, and other activities providing support to the construction site that is authorized under the construction general permit;
- j. The name of receiving waters at or near the site that may be disturbed or that may receive discharges from disturbed areas of the project;
- k. A copy of this TPDES general permit, and
- l. The notice of intent (NOI) and acknowledgement certificate for primary operators of large construction sites, and the site notice for small construction sites and for secondary operators of large construction sites.

## 2) Erosion and Sediment Control Guidelines and Plan Requirements

- a. **General Description of Best Management Practices (BMPs)**  
The responsible party of any construction site within the City shall implement measures necessary to control erosion, sedimentation, debris, and stormwater pollution. The responsible party is responsible for the maintenance and performance of the temporary control measures until permanent measures are in place.  
The description must identify the general timing or sequence for implementation of BMPs relevant to each phase of site development such as, before clearing and grading activities begin, during all phases of construction, and post-construction/post development. At a minimum, the description must include the following components:
  - (i) Erosion and sediment controls must be designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall;
  - (ii) Control measures must be properly selected, installed, and maintained according to the manufacturer's or designer's specifications;

- (iii) Controls must be developed to minimize the offsite transport of sediment, litter, construction debris, and construction materials;
- (iv) Ensuring that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Stabilization measures may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures;
- (v) Final stabilization must be achieved prior to termination of permit coverage.

b. Erosion and Sediment Control Plan Requirements

- (i.) The ESCP shall include the following:
  - a) Project name;
  - b) Project type (residential, new development or redevelopment, commercial, industrial, road, etc.);
  - c) Project location;
  - d) Drainage Plan;
  - e) Names and addresses of the developer, owner, surveyor, engineer, contractors, subcontractors, and anyone else who will be responsible for project implementation;
  - f) Name of individual responsible for long-term maintenance of the project. This includes a maintenance plan and schedule for all temporary and permanent stormwater practices;
  - g) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, dates when stabilization measures are initiated, and establishment of permanent vegetation;

- h) All erosion and sediment control measures necessary to meet the objectives of this ordinance throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season;
- i) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

(ii.) Construction Phase Control Measures

Temporary Control Measures. The following subsection includes, but is not an exhaustive list, examples of temporary pollution control measures that can be used to control erosion and sedimentation.

- a) Structural Controls
  - i) Silt fences may be utilized, where necessary, to retain the sediments from disturbed areas within the site and decrease the velocity of sheet flows.
  - ii) Straw bales may be utilized, where necessary, to retain sediments from disturbed areas within the site and decrease the velocity of sheet flows. Straw bales are particularly useful in paved areas where silt fences cannot be erected.
  - iii) Stabilized construction entrances shall be designed to reduce the amount of soil tracked off the construction site by vehicles leaving the site. A stabilized construction entrance should be utilized, if necessary, to control tracking. The responsible party shall ensure that vehicles entering and leaving the construction site use the stabilized construction entrance. The owner or operator of a vehicle entering or leaving a construction site may not track soil off the construction site.
  - iv) Vegetative buffer strips, of appropriate size, should be maintained, where necessary and practical, to aid in reducing the velocity of

stormwater and in trapping sediments in the stormwater leaving the site. A vegetative buffer will usually suffice as a structural control until final stabilization is accomplished.

- v) Inlet protection barriers must be installed around all inlets until the area immediately surrounding the inlet is paved or stabilized.
- b) Waste controls. Waste disposal must be accompanied in a manner so that no solid wastes, including building materials, hazardous substances, oil, or packaging leave the site, except for disposal at an appropriate, approved solid waste management facility, in conformance with the Texas Solid Waste Disposal Act. To the extent practicable, no solid waste, including personal waste, building materials, hazardous substances, or oil may be allowed to enter the City's municipal separate storm sewer system, the City's streets, or the navigable waters of the United States. Building materials include, but are not limited to, uncovered stockpiles of soil, sand, dry cement, lumber, bricks, packaging or other products used in construction. The general contractor and/or builder, who are issued the building permit, are responsible for the conduct of all subcontractors with regards to disposal of wastes generated by the construction activities at the site.
- c) Soil stockpiles, or other BMPs installed, must be stabilized or covered at the end of each workday.
- d) Dust control. Reasonable measures shall be taken to control dust, particulate matter, and windblown debris.
- e) Hazardous material storage. Chemicals, paints, solvents, fertilizers, and other toxic materials must be stored in waterproof containers. Except during applications, the contents must be kept in trucks or in storage facilities. Runoff containing such materials shall be collected, removed from the site, and disposed of at an approved solid waste or chemical disposal facility.
- f) Concrete trucks. The responsible party may not allow the owner or operator of a concrete truck to wash out or discharge surplus concrete or drum

wash water at a construction site, unless the surplus concrete or drum wash water in concrete trucks is discharged at a facility on the construction site that will retain all concrete wash waters or leachates, including any wash waters or leachates mixed with storm water. Concrete wash waters and leachates may not be allowed to enter the municipal separate storm sewer system, City streets, the waters of the United States, or ground waters.

- g) Providing general good housekeeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;
- h) The responsible party may adopt alternative procedures, such as regularly scheduled street cleaning in the immediate vicinity of the construction site, instead of adopting temporary structural controls for erosion under subsection (ii.)(a) above. If alternative procedures are used, the responsible party shall include those provisions in its TPDES stormwater pollution prevention plan, erosion and sediment control plan, or the plans submitted for a stormwater or building permit, if a TPDES stormwater pollution prevention plan is not required;
- i) Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices, in good and effective operating condition. This includes applying effective stabilization measures for disturbed areas within 14 days when construction activities have temporarily or permanently ceased. Areas where construction activities will begin again within 21 days are not required to install stabilization measures;
- j) Off-site runoff shall be safely diverted away from construction areas to the extent it is practical to do so;
- k) Sanitary waste facilities shall be maintained so that they do not create a hazard to the environment. Sanitary facilities should not be placed over any paved surfaces;

- l) Installation of structural measures during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but are not limited to, the following: stormwater detention structures (including wet ponds); stormwater retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site, and are not responsible for maintenance after stormwater discharges associated with construction activity have terminated.
- (iii.) Final pollution control measures (post construction). These measures stabilize construction sites where either of the following conditions are met:
- a) All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
  - b) For individual lots in a residential construction site by either:
    - i.) The homebuilder completing final stabilization as specified in condition (3)(a) above; or
    - ii.) The homebuilder of single-family homes establishing final stabilization for an individual lot by sodding the front yard with a vegetative cover with a minimum of 70 percent density (no bare spots) and installing a perimeter of sod for the remaining portions of the yard to prevent soil erosion.

- c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas which are not being returned to their pre-construction agricultural use must meet the final stabilization conditions of condition (3)(a) above.
- d) Once final stabilization has been achieved, the responsible party shall notify the director of engineering, building official, or designated representative that final stabilization has been achieved.
- e) Erosion control structures must be provided where necessary to control erosive velocities in unlined channels or swales leaving the site.
- f) Sediment traps must be provided on the site, as necessary, to control sedimentation from concentrated storm water discharges into an environmentally sensitive area. Individual assessments must be made on a site-specific basis. However, a rock rubble low berm must be installed around an outfall that discharges directly into an environmentally sensitive area, unless this requirement is waived by the director of engineering because the responsible party has installed another type of sediment trap that provides equal or better protection.

(iv.) Non-Structural Control Measures

The use of non-structural stormwater treatment practices is encouraged in order to minimize the reliance on structural practices.

(4) Post Construction Control Measures

- (A) On areas that undergo new development or redevelopment, site construction resulting in the disturbance of one acre or more total land area, post-construction control measures in the form of structural and/or non-structural practices are required. A description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that may occur after construction operations have been completed must be included in the SWP3 and/or ESCP. Permittees are only responsible for the installation and maintenance

of stormwater management measures prior to final stabilization of the site or prior to submission of an NOT.

(B) Post-construction phase control measures shall be incorporated to preserve pre-development hydrologic regimes. Post-construction stormwater pollutant loading should not exceed pre-construction pollutant loading. Pre-construction refers to the site immediately before the planned land disturbance and development activities occur.

(C) Post-construction phase control measure include, but are not limited to:

1) Velocity Dissipation Measures

a) On-Site

- i) vegetated swales
- ii) check dams
- iii) vegetated filter strips

b) Off-Site

- i) surrounding local topography
- ii) concrete-lined drainage channels

2) Pre-development Peak Flow Preservation

a) On-Site

- i) detention basins/ponds
- ii) constructed wetlands
- iii) bio-retention
- iv) wet basins

b) Off-Site

- i) in-line detention
- ii) outfall pump systems

3) Low Impact Development Standards

a) Minimization of the width or size of:

- i) roads/streets
- ii) sidewalks
- iii) cul-de-sacs
- iv) parking lots

b) Open-space design

c) Roof drainage control

(5) Maintenance Requirements

(A) All protective measures identified in the SWP3 and/or ESCP must be maintained in effective operating condition. If, through inspections or other means, the permittee determines that BMPs are not operating effectively, then the permittee shall perform maintenance as necessary to maintain the continued effectiveness of

stormwater controls, and prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWP3 and/or and maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.

- (B) The responsible party shall maintain and ensure adequate performance of the temporary pollution control measures until permanent pollution control measures are in place.
- (C) Whenever the temporary or permanent pollution control measures do not keep soil, sediment, and debris on the construction site, such as excessive tracking of dirt offsite by vehicles and runoff of sediments from the site over sidewalks and into the streets and gutters, etc., the responsible party shall remove the soil, sediment, and debris from streets, sidewalks, and inlets, as necessary, return the soil and sediment to the areas to be stabilized, and properly dispose of the debris. If the permittee does not own or operate the off-site conveyance, then the permittee must work with the owner or operator of the property to remove the sediment.
- (D) The responsible party is responsible for the maintenance of any permanent pollution control measures located on the site, unless the owner has dedicated the permanent pollution control measure to the City and has provided the City with any easements necessary to allow access to the permanent pollution control measure and to conduct any required maintenance activities.
- (E) Commitment of Long Term Maintenance of On-Site Post-Construction Control Measures
- (F) For new and significant redevelopment projects that require on-site control post-construction control measures such as detention ponds, constructed wetlands, bio-retention systems, or the like, the developer shall be required to make a long term commitment to the City for maintenance of the said control measure(s).
  - 1) An affidavit (supplied by the City), signed by the developer, or the person or persons who will be responsible for the maintenance of the control measure(s), must be submitted to the Director no later than two (2) calendar days after the date of termination of construction, and will serve as a legal commitment to the City.
  - 2) Once an affidavit has been submitted to the Director, the Director may require that a Maintenance Agreement be issued to ensure the maintenance is performed according to the said legal commitment.

(6) Inspection of Controls

- (A) The City shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the SWP3 and/or Erosion and Sediment Control Plan as

approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the City Engineer, shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Director at least two (2) working days before the following:

- 1) Start of construction and installation of erosion and sediment control measures (all applicable BMPs)
  - 2) Completion of final construction (final stabilization)
- (B) The contractor or responsible party shall inspect all pollution control measures every 7 days (on a specifically defined day) and within 24 hours following a rainfall of 0.5 inches or greater, at the site, and maintain a record of each inspection.
- (C) Stabilized areas shall be inspected once every thirty (30) days.
- (D) The inspection reports are to be considered part of the contractor's stormwater pollution plan (SWP3) and/or ESCP, and as such, are subject to the same record retention schedule and availability requirements of the SWP3.
- (E) The inspection reports, as well as, the entire SWP3 and/or ESCP shall be made available for inspection by a representative of the City, during normal business hours.
- (7) Revisions/Modifications
- (A) The permittee must revise or update the SWP3 and/or ESCP whenever the following occurs:
- 1) A change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3;
  - 2) Changing site conditions based on updated plans and specifications, new operators, new areas of responsibility, and changes in BMPs; or
  - 3) Results of inspections or investigations by site operators, operators of a municipal separate storm sewer system receiving the discharge, authorized TCEQ personnel, or a federal, state or local agency approving sediment and erosion plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under this ordinance or the construction general permit.
- (B) The SWP3 and/or ESCP shall accurately reflect site conditions and the construction activities proposed to be undertaken. Revisions necessary to maintain an accurate and up-to-date SWP3 and/or ESCP shall be made in a timely fashion but in no case later than two (2) working days after the occurrence of conditions or activities requiring such revisions.

- (C) If the conditions or activities described by a SWP3 and/or ESCP revision could be reasonably expected to result in an increase in the actual or potential discharge of pollutants from the site, such revision must be approved by the Director prior to implementation of the proposed revision at least two (2) working days prior to the implementation of activities described by the revision.
  - (D) The Director shall have ten (10) working days to approve or reject a revision to a Stormwater Pollution Prevention Plan or ESCP after submittal of a proposed revision. If the Director does not issue an approval or rejection of the revision within the acceptable time frame, the revision(s) shall be assumed to be approved.
- (8) It is a violation of this chapter if a discharge occurs from a construction site containing materials other than stormwater and such discharge and/or materials are allowed to accumulate within the MS4 and such accumulation persists for a period beyond three (3) days unless greater time is allowed by the Director. This includes discharges of sediment, to include off-site tracking by vehicles entering and exiting the site, paints, solvents, cleaners, windblown debris, or other materials associated with the construction activity at the site.

#### **Sec. 32A-15. Spill or Leak Reporting and Cleanup.**

(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 water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three business days of the phone notice. 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.

(b) Notification shall not relieve the responsible person(s) of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this ordinance or to state or federal law.

(c) Spills or leaks of polluting substances discharged to or having the potential to be indirectly transported to the MS4 shall be contained, controlled, collected and removed promptly. All affected areas shall be restored to their preexisting condition. Any costs of the containment, control, collection, removal or restoration incurred by the City shall be reimbursed to the City by the person or persons associated with the spill or leak.

(d) Any person operating a vehicle that causes or results in an accidental discharge or release to the MS4 shall be responsible to reimburse the City for any incurred costs resulting from any testing, containment, cleanup, abatement, removal and disposal of contamination.

#### **Sec. 32A-16. Citizen Reports of Violations.**

(a) All citizens are encouraged to report to the City any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4, and any other violation of this chapter of which they become aware.

(b) The City will designate an individual or office within the Department of Public Works to receive all such citizen reports by telephone, in writing, and in person. A written record of each citizen report will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the City will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

#### ARTICLE IV. NUISANCES, RIGHT OF ENTRY, ENFORCEMENT, AND APPEALS

##### **Sec. 32A-17. Nuisances.**

(a) An actual or threatened discharge to the MS4 that violates or would violate this ordinance is hereby declared to be a nuisance.

(b) A line conveying sewage or designed to convey sewage that is connected to the MS4 is hereby declared to be a nuisance.

(c) Allowing accumulation of litter, yard waste or other solid waste to enter the MS4 is hereby declared to be a nuisance.

(d) Intentional acts causing damage to a temporary or permanent stormwater control measure is hereby declared to be a nuisance.

##### **Sec. 32A-18. 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.

##### **Sec. 32A-19. Administrative Enforcement Remedies.**

(a) *Notification of Violation.* When the Director finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City may serve upon that person a written notice of violation. Within ten days of the receipt of this notice, the alleged violator shall submit to the Director in writing (1) an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, including specific required actions, or (2) an explanation of any denial of a violation or any contention that no corrective action is necessary. Submission of an explanation or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the City to take any action, including emergency action or any other enforcement action, without first issuing a notice of violation.

(b) *Emergency Cease and Desist Orders.*

(1) When the Director finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed

to an actual or threatened discharge to the MS4, waters of the state, 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 Director may issue an order to the violator directing it immediately cease and desist all such violations and directing the violator to:

- a) Immediately comply with all subchapter requirements; and
  - b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and terminating the discharge.
- (2) Any person notified of an emergency order directed to it under this section 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 Director may take such steps as deemed necessary to prevent or minimize harm to the MS4, waters of the State of Texas, or waters of the United States, or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal services. The City may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement to the Director within five days of receipt of the emergency order, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence. 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.

(c) *Nuisance Abatement.*

- (1) Unless specifically stated otherwise, any nuisance as defined within this ordinance is hereby declared a nuisance if it exists within the corporate limits of the City or within 5,000 feet of such limits. The Director may give notice to cease, abate, remove or otherwise remedy a nuisance immediately to:
  - a) The owner of property upon which a nuisance is located or from which a nuisance originated or is emanating. If the person creating, allowing, or maintaining the nuisance is not the owner of the property, notice shall also be given to such person.
  - b) Any person creating, allowing, or maintaining a nuisance.
- (2) The notice must be given:
  - a) Personally to the owner/person in writing; or
  - b) By letter addressed to the owner/person at the owner's/person's post office address and sent certified mail, return receipt requested. However, if personal or certified mail service cannot be obtained or the owner's/person's post office address is unknown, notice may be given:

- i. By publication in a newspaper of general circulation within the City at least twice within ten consecutive days;
  - ii. By posting the notice on or near the front door of each building on the property to which the nuisance relates; or
  - iii. By posting the notice on a placard attached to a stake driven into the ground on the property to which the nuisance relates.
- (3) The notice may order the owner/person to undertake and implement any appropriate action:
  - a) To remediate and/or abate any adverse effects of the nuisance upon the MS4, the waters of the state, the waters of the United States, or any other aspect of the environment; and/or
  - b) To restore any part of the MS4, the waters of the state, the waters of the United States, or any other aspect of the environment that has been harmed.
- (4) Remediation, abatement, and restoration action may include, but not be limited to:
  - a) Monitoring, assessing, and evaluating the adverse effects and determination of the appropriate remediation, abatement, and/or restoration action;
  - b) Confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination;
  - c) Prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the nuisance; and
  - d) Restoration or replacement of City property or natural resources damaged by the nuisance.

(d) The notice may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this section does not relieve the violator of liability for any violation, including any continuing violation.

(e) If the owner/person does not comply with the notice within ten days of service, the Director may enter any public or private property containing the nuisance and do any work necessary to abate the nuisance, except the demolition of buildings.

(f) If the Director deems immediate abatement of the nuisance is necessary to protect the environment or the public health, safety, or welfare from an imminent and substantial endangerment, the Director may, without complying with the notice provisions of this section or without waiting the ten-day period, enter the subject property and do or cause to be done any work necessary to abate the nuisance and remediate and restore the environment. After abating the nuisance, the Director may inform the owner/person in a notice sent certified mail, return receipt requested, that if the owner/person commits another violation of the same kind or nature that poses a danger to the environment or to the public health and safety on or before the

first anniversary date of the original notice, the City may without further notice correct the violation at the owner's expense and assess the expense against the owner's property.

(g) All costs incurred by the City to abate a nuisance and remediate and restore the environment, including the cost of giving notice as required, shall be initially paid by the City and charged to the owner of the property.

(h) To obtain a lien against the property, the Director causing the abatement shall file a statement of expenses with the County Clerk of Bowie County. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall be security for the costs incurred and interest accruing at the rate of 10% on the amount due from the date of payment by the City. The lien is inferior only to tax liens and liens for street improvements. A lien may not be filed against real estate protected by the homestead provisions of the Texas Constitution.

#### **Sec. 32A-20. Administrative Reconsideration and Appeal.**

(a) *Reconsideration.*

- (1) Any person subject to an emergency cease and desist order under Section 32A-19(b) or a stop work order under Section 32A-13(f) may petition the City to reconsider the basis for the order within ten days of the affected person's notice of issuance of such an order.
- (2) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
- (3) In the petition, the petitioner must state the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's contest, any alternative terms of an order that the petitioner would accept, and whether the petitioner requests a hearing on the petition.
- (4) Any stop work order shall be stayed pending the City's reconsideration of the petition unless the City expressly makes a written determination to the contrary. Any emergency cease and desist order under Section 32A-19(b) shall not be stayed pending the City's reconsideration unless the City expressly and in writing stays the emergency order.
- (5) Within 15 days of the submittal of a petition for reconsideration, the City shall either;
  - a) Grant the petition without hearing and withdraw or modify the order accordingly;
  - b) Deny the petition without hearing if the City determines no material issue of fact is raised; or
  - c) Set a hearing on the petition and provide the petitioner (or any authorized representative of the petitioner) with written notice of the hearing setting at least ten days prior to the hearing by either personal delivery or by registered or certified mail, return receipt requested.
- (6) Hearing; Director's Report and Recommendation; City Order

- a) The Director shall be the presiding officer at the hearing, have authority to issue notices in the name of the City requesting the attendance and testimony of witnesses and the production of evidence, and shall receive evidence. The petitioner and the City are entitled to present oral and documentary evidence and to cross-examine witnesses. Upon request and pre-payment of the reasonable charges, a transcript or audio recording of the hearing shall be made available to the petitioner.
- b) Within thirty days of the hearing, the Director shall submit to the City, with a copy to the petitioner, a report of the hearing and recommendation to the City for action to be taken on the petition.
- c) The City shall issue an order accepting, rejecting, or modifying the Director's report and recommendation and may issue further orders and directives as the City deems necessary and appropriate.

(b) *Appeal to City Council.*

- (1) Within ten days of the date of the City's order on the petition for reconsideration, the petitioner may appeal the City's order to the City Council by filing a written appeal with the City Secretary. Failure to file a timely written appeal to the City Secretary shall be deemed a waiver of further administrative review.
- (2) In the written appeal, the appellant must state the provisions of the order objected to, the reasons for the objection(s), any determinations of the Director or City that are contested, the evidence that supports the appellant's contest, any alternative terms or an order that the appellant would accept, and whether the appellant requests an oral presentation on the appeal.
- (3) Absent a resolution of the City Council stating otherwise, the City's order shall not be stayed pending the appeal to the City Council.
- (4) The City shall place consideration of the appeal on an agenda for a City Council meeting so that the appeal is considered within 30 days of the date of filing. The appellant shall be notified at least 15 days in advance of the date and time the City Council will meet and consider the appeal. If requested in the written appeal, the appellant shall have the right to present oral argument to the City Council. The City Manager and Director shall respond to oral argument presented.
- (5) The City Council may issue a final decision on the appeal or may defer a final decision until the next regularly-scheduled City Council meeting. The City Council may also remand the appeal to the Director to reopen the hearing and receive additional evidence.
- (6) The appellant may challenge any final decision by the City Council in a court of competent jurisdiction.

**Sec. 32A-21. Penalty.**

- (a) *Civil Remedies.* Pursuant to § 54.012(5) of the Tex. Loc. Gov't. Code, the provisions of subchapter B of Ch. 54 of the Tex. Loc. Gov't. Code are hereby implemented for any violation of this chapter,

any such violation being classified by the Texas Penal Code as a Class C misdemeanor, so that the City may seek civil penalties and injunctive relief under the provisions of subchapter B of Ch. 54.

(b) *Criminal Penalties.*

- (1) Except as otherwise provided in this chapter, any person who has violated any provision of this chapter, or any order issued hereunder, shall be strictly liable for such violation regardless of the presence or absence of a culpable mental state and shall, upon conviction, be subject to a fine of not more than \$2,000 per violation, per day, or any greater fine authorized by law. Each day, or portion of a day, for which a violation occurs shall constitute a separate violation.
- (2) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this chapter shall, upon conviction, be subject to a fine of not more than \$2,000 per violation, per day, or any greater fine authorized by law. Each day, or portion of a day, for which a violation occurs shall constitute a separate violation.
- (3) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

(c) Civil suit under the Texas Water Code. Whenever it appears that a violation or threat of violation of any provision of § 26.121 of the Tex. Water Code, or any rule, permit, or order of the Texas Water Commission, has occurred or is occurring within the jurisdiction of the City, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the Texas Water Commission, may have a suit instituted in a state district court for the injunctive relief or civil penalties or both authorized in § 26.123(a) of the Tex. Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to § 26.124 of the Tex. Water Code. In any suit brought by the City under this subsection, the Texas Water Commission is a necessary and indispensable party.

**Sec. 32A-22. Right of Entry.**

(a) The Director may enter premises or vehicles regulated by this chapter at all reasonable times, whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, to inspect permits and records required by this chapter, to collect air, water, waste, or wastewater samples, or whenever probable cause exists to believe that a violation of this chapter or other environmental laws exists on such premises.

(b) The Director shall first present credentials and demand entry if the premises are occupied. If the premises are unoccupied, the Director shall make a reasonable attempt to locate the owner or person in control of the premises and demand entry.

(c) Where premises have security measures in force which require proper identification and clearance before entry, the person in control of the premises shall make necessary arrangements with its security

guards so that, upon presentation of suitable identification, the Director or authorized representative will be permitted to enter without delay for the purpose of performing specific responsibilities.

(d) If entry is denied or if a person in control cannot be located, the Director shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure; and for the purposes of same, any person with enforcement authority under this chapter is hereby declared to be a "health officer."

**Sec. 32A-23. 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 City 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.

**Sec. 32A-24. Compensatory Action.**

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

**Sec. 32A-25. Criminal Prosecution.**

Any person that violates or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of up to \$2,000 per violation per day as authorized by State law and City Code Section 32A-21. The City may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**Sec. 32A-26. Remedies Non-Exclusive.**

The remedies provided for in this ordinance are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator at any time, regardless of timelines identified in this subchapter, to gain compliance with this ordinance and any state or federal regulations. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

**Sec. 32A-27. Computing Time Periods.**

When computing any period of time for any deadline as provided in this Ordinance, if the last day of the period so computed is a Saturday, Sunday, or legal holiday, the period of time runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**Sec. 32A-28. Adoption Of Ordinance.**

This ordinance shall be in full force and effect January 1, 2013 after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.