

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING IN ITS ENTIRETY CODE OF ORDINANCES CHAPTER 6 "HEALTH AND ENVIRONMENT," ARTICLE VII "STORM WATER MANAGEMENT" AMENDING THE CITY'S STORM WATER MANAGEMENT REGULATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, City Administration has recommended certain amendments to the City's storm water management regulations be adopted to comply with changes in state law and regulations as well as to provide better enforcement of such regulations; and,

**WHEREAS**, the City Council finds it to be in the public interest to adopt such amendments.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending in its entirety Chapter 6 "Health and Environment," Article VII "Storm Water Management" to read as follows:

**ARTICLE VII.- STORM WATER MANAGEMENT**

**DIVISION 1. - GENERALLY**

**Sec. 6-161. - Title.**

This article shall be known as the "storm water management ordinance" of the City of Allen, Texas.

**Sec. 6-162. - Purpose.**

The purpose and objectives of this article are as follows:

- (a) To protect human life, health, and property;
- (b) Minimize the expenditure of public funds for building and maintaining flood control and storm drainage projects and cleaning sediment out of storm drains, streets, sidewalks and watercourses;
- (c) To preserve the natural beauty and aesthetics of the community;
- (d) To maintain and improve the quality of surface water within the city;
- (e) To regulate the contribution of pollutants and prohibit illicit connections and discharges to the municipal separate storm sewer system (MS4) and natural waters within the city;
- (f) To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants or otherwise

control the discharge of spills and prohibit dumping or disposal of materials other than storm water, into the storm sewers and natural waters of the city;

- (g) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
- (h) To enable the city to comply with all federal and state laws and regulations applicable to storm water discharges; and
- (i) To respond to non-compliance with best management practices (BMPs) required by the city.

#### **Sec. 6-163. - Conflicts.**

No provision of this article is intended to, nor shall any part hereof be construed, so as to modify, repeal or conflict with any other ordinance, rule, regulation or state or federal law including the Texas Water Code. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

#### **Sec. 6-164. - Administration.**

Except as otherwise provided herein, the city manager shall administer, implement and enforce the provisions of this article. For public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the city, the city manager or duly appointed representative of the city department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this article. The city manager or duly appointed representative of each city department shall also implement and enforce the provisions of this article for all municipal operations under such person's direction.

#### **Sec. 6-165. - Interpretation.**

In the interpretation and application of this article, all provisions shall be:

- (a) Considered minimum requirements; and
- (b) Deemed neither to limit nor repeal any other powers granted under state statutes.

#### **Sec. 6-166. - Application.**

This article shall apply to the incorporated limits and extraterritorial subdivision jurisdiction of the city.

#### **Sec. 6-167. - Responsibility.**

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

#### **Sec. 6-168. - Definitions.**

The following words and terms shall have the respective meanings assigned. Where words or terms are not defined, they shall have their ordinary accepted meaning within the context with which they are used. Words in the singular include the plural and the singular. Words in the masculine gender include the feminine, and the feminine the masculine.

*Appeal* means a request for review or interpretation of any provisions of this article or a request of a variance.

*Best management practice* or *BMP* means schedules of activities, prohibitions of practices, maintenance procedures, structural control, local ordinances and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

*Capital improvement project* means any construction performed or funded in whole or part by the city that provides improvements on a property or public facility to increase its value.

*CFR* means Code of Federal Regulations.

*Channel* means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

*Charity car wash* means a car washing event typically associated with fund raising for a school, a sports association or any other youth organization or charity. These washes are generally temporary in nature, usually lasting two (2) days or less.

*City manager* means the chief executive officer of the city, or designee.

*Commencement of construction* means the initial disturbance of soils associated with clearing, grading, excavating, landfilling, and other construction activities.

*Commercial* means activity pertaining to any business, trade, industry, or other activity engaged in for profit.

*Common plan of development or sale* means 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.

*Construction* means any land disturbing activity that involves clearing, grading, excavation, landfilling, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

*Construction activity* means soil disturbance activities, including clearing, grading, excavating, and other construction related activity(e.g., stockpiling of fill material and demolition); and construction support activity but not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

*Construction Support Activity* means a construction-related activity that specifically supports construction activity, which can involve earth disturbance or pollutant-generating activities of its own, and can include, but are not limited to, activities associated with concrete or asphalt batch plants, rock crushers, equipment staging or storage areas, chemical storage areas, material storage areas, material borrow areas, and excavated material disposal areas. Construction support activity must only directly support the construction activity authorized under this general permit.

*Construction site operator* means the entity or entities associated with a small construction activity or large construction activity that meet(s) either of the following criteria:

(a) The entity or entities that have operational control over construction plans and specifications (including approval of revisions) to the extent necessary to comply with the requirements and conditions of the TXR150000 permit; or

(b) The entity or entities that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a stormwater pollution prevention plan (SWP3) for the site or other permit conditions (for example they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

*Contaminated* means containing a harmful quantity of any substance.

*Conveyance* means curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff.

*Detention* means the temporary storage of storm water runoff with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

*Detention basin* means a basin or alternative structure designed for the purpose of temporary storage of stream flow or surface water runoff and provides a gradual release of stored water at controlled rates.

*Developer* means the person, business, partnership, corporation, or association responsible for the development of a subdivision, addition or tract of land.

*Development* means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, dredging, filling, grading, paving, excavation, drilling operations clearing, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land.

*Dewatering* means the act of draining rainwater or groundwater from building foundations, vaults, and trenches.

*Director* means any city department representative, or designated representative authorized by the city manager to administer, implement and enforce the provisions of this article.

*Discharge* means introduction of any pollutant or storm water into the municipal separate storm sewer system (MS4) or into waters of the United States, or the drainage, release, or disposal of pollutants in stormwater and certain non-stormwater from areas where soil disturbing activities (e.g., clearing, grading, excavation, stockpiling of fill material, and demolition), constructions materials or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck wash out, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

*Disturbance* means any operation or activity, such as clearing, grubbing, filling, excavating, mining, cutting, grading, or removing channel linings, which results in the removal or destruction of protective cover of soil, including vegetative cover, channel linings, retaining walls, and slope protection.

*Disturbed areas* means any area or tract of land in which any operation or activity, such as clearing, grubbing, filling, excavating, mining, cutting, grading, or removing channel linings has occurred and results in the removal or destruction of protective cover of soil, including vegetative cover, channel linings, retaining walls, and slope protection.

*Domestic sewage* means discharges of liquid waste matter from homes, apartment complexes, office buildings, institutions that contain pathogens and byproducts that are harmful to humans and the environment.

*Environmental Protection Agency or EPA* means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

*Erosion* means the wearing away of a land surface by running water, wind, ice or other geological agents, including such processes as gravitational creep.

*Erosion Control Design Plan* means a property site plan signed and sealed by a professional engineer licensed in the State of Texas where land disturbing activity will take place that outlines the locations and types of structural devices, procedures and practices to be used on a construction site. The Erosion Control Design Plan shall be developed in accordance with the City of Allen Erosion Control Design Plan standard template.

*Facility* means any building, structure, installation, process, or activity from which there is or may be a discharge of pollutant.

*Final stabilization* means a construction site status where any of the following conditions are met:

- (a) All soil disturbing activities at the site have been completed and are uniform (for example, 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:
  - (1) The homebuilder completing final stabilization as specified in condition (a) above; or
  - (2) The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.
- (c) For construction activities on land used for agricultural purposes (for example pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land surfaces from the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.

*Grading* means the stripping, cutting, filling, stockpiling or combination thereof that modifies the existing land surface contour.

*Grass* means any member of the botanical family Gramineae, herbaceous plants with bladelike leaves arranged in two (2) ranks on a round to flattened stem. The term "grass" is sometimes used to indicate a combination of grass and legumes grown for forage or turf purposes.

*Hazardous materials/waste* means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*HOA* means homeowners' association.

*Household hazardous waste* or *HHW* means any product found in the home that can be hazardous to the environment if not disposed of correctly. Examples of household hazardous waste include cleaning solutions, pesticides, pool chemicals, motor oil, antifreeze, or used batteries.

*Illicit connections* means:

- (a) Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (b) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Illicit discharge* means any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges pursuant to the TXR040000, TXR150000 or a separate authorization and discharges resulting from emergency fire-fighting activities.

*Immediately* means as soon as practicable, but no later than the end of the next work day.

*Impervious cover* means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

*Infiltration* means the process of percolating storm water into the subsoil.

*Inlet* means a surface connection to a closed drain system, a structure at the diversion end of a conduit, or the upstream end of any structure through which storm water may flow.

*Landowner* means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

*Large construction activity* means construction activity that results in land disturbance of equal to or greater than five (5) acres of land. 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.

*Livestock containment area* means a lot or facility that stables, confines, and feeds or maintains livestock in either an open or housed lot for a total of forty-five (45) days or more in any twelve-month period.

*Municipal operations* means day to day operation and maintenance activities by the city that have the potential for contributing pollutant runoff to the MS4.

*Municipal separate storm sewer system (MS4)* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (a) Owned or operated by the U.S., a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such

as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the CWA §208 that discharges to surface water in the state;

- (b) That is designed or used for collecting or conveying stormwater;
- (c) That is not a combined sewer; and
- (d) That is not part of a publicly owned treatment works (POTW) as defined in 40 CFR §122.2.

*National Pollutant Discharge Elimination System or NPDES* means a program to issue authorizations to discharge pollutants into waters of the United States if certain conditions are met.

*NPDES general permit for storm water discharges from construction sites or construction general permit* means the construction general permit issued by EPA on June 24, 1998 and published in Volume 63 of the Federal Register at page 36485 on July 6, 1998, and any subsequent modifications or amendments thereto.

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

*Nonpoint source pollution* means pollution from any source generally carried off land by storm water runoff that are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet.

*Nonstructural best management practice or BMP* means preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas.

*Notice of intent or NOI* means the notice of intent that is required by the construction general permit or other general permit for the discharge of storm water.

*Notice of termination or NOT* means the notice of termination that is required by either the construction general permit or other general permit for the discharge of storm water.

*Operator* means the person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

*Primary Operator*-the person or persons associated with construction activity that meets either of the following two criteria:

- (a) The person or persons have on-site operational control over the construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (b) 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 (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

Secondary operator means the person or entity, often the property owner, whose operational control is limited to:

- (a) The employment of other operators, such as a general contractor, to perform or supervise construction activities; or
- (b) The ability to approve or disapprove changes to construction plans and specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

Secondary operator operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site, where they have control over the construction plans and specifications.

If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators.

*Outfall* means a point source at the point where a small MS4 discharges to waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S. For the purpose of this permit, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts; traffic or right-of-way barriers with drainage slots that drain into open culverts, open swales or an adjacent property, or otherwise not actually discharging into waters of the U.S. are not considered an outfall.

*Owner/property owner* means the person(s) or entity(ies) who are the record owners of fee simple title to the property on which part or all of a stormwater facility is located as determined by the Real Property Records of Collin County, Texas. 1.

*Permanent (post-construction) erosion control devices (Permanent BMP)* means devices or practices installed prior to final approval of a project's construction and maintained after said final approval to prevent or minimize the erosion and deposit of soil materials; all practices and facilities employed to meet and maintain stormwater runoff quantity and quality requirements after site development has been completed. Such devices may include, but shall not be limited to, permanent seeding, sod, storm drain channels, channel linings, storm drain pipes, storm sewer inlet/outlet structures, storm sewer outlet velocity control structures and storm water detention or retention structures.

*Permanent ground cover* means permanent vegetative cover existing or placed on all open soil areas of a property not occupied by a permanent structure or other landscaping improvements, including but not limited to, live sod, perennial grasses or other materials which lessen runoff and soil erosion on the ground surface.

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

*pH* means measure of acidity or alkalinity.

*Pollutant* means any substance introduced into the environment that adversely affects the usefulness of a resource, whether in minute or mass quantity, and may include, but are not limited to: dredged spoil; incinerator residue; filter backwash; radioactive materials; heat; paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, rock, sand, cellar dirt, industrial, municipal or other discarded, wrecked or abandoned objects, ordinances, and accumulations, that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; agricultural waste, hazardous substances and wastes; sewage, sewage sludge, 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.



*Post-Construction* means activities and operations performed after the Notice of Termination for a development or redevelopment project has been filed and approved.

*Pollution* means unauthorized contamination of surface or subsurface waters or land.

*PST* means petroleum storage tank.

*Qualified personnel* means persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, and required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

*Redevelopment* means any construction, alteration or improvement of an area where the existing land use has already been defined as something other than open space or agricultural.

*Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the MS4 or the waters of the United States.

*Responsible party* means a business entity, franchised utility company, developer, property owner, contractor or holder of a building permit who is required to comply with the terms of this article.

*Runoff* means excess precipitation that makes its way toward stream channels or lakes as surface or subsurface flow.

*Sanitary sewer or sewer* means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).

*Sediment or silt or sand* means solid soil material, both mineral and organic, that is being moved or has been moved from its original location by wind, gravity, flowing water or ice.

*Sewage or sanitary sewage* means domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant utilized by the city for treatment.

*Site* means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

*Small construction activity* means construction activity that results in land disturbance of equal to or greater than 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.

*Soil* means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of plants.

*Stabilized* means to be protected from possible erosion losses, usually by mechanical means or the use of vegetative cover.

*State* means the State of Texas.

*Stop work order or red tag* means an order issued which requires that all construction activity on a site be stopped, issued by the chief building official or his/her designee.

*Storm drainage system* means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

*Storm water facility* means any natural or engineer facility that is designed to convey storm water runoff, remove pollutants, and or control flow rates.

*Storm water management* means the use of structural or non-structural control practices/BMPs designed to reduce storm water pollutant runoff, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperatures that affect water quality.

*Storm water pollution prevention plan or SWPPP* means a plan for storm water discharge that includes erosion prevention measures and sediment controls that, when implemented, is designed to identify sources of pollution or contamination at a site and actions to eliminate or reduce pollutant discharges, decrease soil erosion on a parcel of land and decrease off-site nonpoint source pollution.

*Structure* means any construction, including a building or any portion thereof, erected for the purposes of support, shelter or enclosure of persons, animals or property of any kind, including swimming pools located adjacent to a designated collector or arterial, as designated on the thoroughfare plan, decks in excess of thirty (30) inches in height, and roof overhangs exceeding three (3) feet. A wooden fence eight (8) feet or less in height shall not be considered a structure for purposes of this article, nor shall a masonry, brick, or concrete wall or split rail or picket fence thirty-six (36) inches or less located in front yards.

*Structural best management practice or BMP* means any storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches.

*Surface water in the state/waters of the state* means lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, watercourses, waterways, wells, reservoirs, aquifers, irrigation systems, drainage systems the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out ten and thirty-six hundredths (10.36) miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, public or private, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state.

*Temporary erosion control devices* means devices installed or practices implemented and maintained during land disturbing activities to prevent, minimize or control the erosion and deposit of soil materials.

*Texas Commission on Environmental Quality or TCEQ* means the State of Texas agency by that name, the regional offices thereof, any state department, agency, or commission that may succeed to the authority of the TCEQ, and any duly authorized official of TCEQ or such successor agency.

*Texas Pollutant Discharge Elimination System or TPDES* means a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

*TPDES general permit for storm water discharges from construction sites or construction general permit* means the latest construction general permit issued by TCEQ as authorized under provision of Section 402 of the Clean Water Act and V.T.C.A, Water Code Ch. 26, as amended.

*TPDES permit* means a permit issued by the TCEQ that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable to an individual, group, or general area-wide basis.

*Uncontaminated* means not containing a harmful quantity of any substance.

*USC* means the United States Code.

*Vegetative cover* means plants of all sizes and species typically found in an area, irrespective of whether they have forage or other value, but especially used to refer to vegetation producing a mat on or immediately above the soil surface. Temporary vegetative cover refers to the use of annual plants for cover until seasonably viable to establish permanent vegetative cover. Permanent vegetative cover refers to the use of perennial plants, grown or established to a mowable or other condition acceptable to this article.

*Violation* means the failure of a person, individual, owner, landowner, developer, builder, operator, structure or other development to be fully compliant with this article.

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

*Watercourse* means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

*Water quality standard* means the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Ordinance 307 of Title 31 of the Texas Administrative Code.

*Watershed* means the area drained by a stream or drainage system.

*Waters of the United States (waters of the U.S.)* has the meaning described in the latest revisions of the Code of Federal Regulations (40 CFR 122.2).

*Yard waste* means leaves, grass clippings, yard and garden debris and brush that result from yard care.

#### **Sec. 6-169. - General prohibition.**

- (a) No person shall introduce or cause to be introduced into the municipal separate storm sewer system any pollutants or waters containing any pollutants, other than storm water.
- (b) It is an affirmative defense to a violation of subsection (a) of this section by the discharger that the discharge was not damaging the environment and complies with the City's Water Conservation and Water Resource Management Plan, adopted pursuant to Section 14-14.1 of this Code or that the discharge was composed entirely of one (1) or more of the following categories of discharges:
  - (1) A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);
  - (2) A discharge or flow resulting from fire-fighting or emergency potable line break, not containing "hazardous materials" as defined in the section 5-52 of the City Code of Ordinances, as amended, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;
  - (3) Agricultural storm water runoff;

- (4) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- (5) A discharge or flow from a diverted stream flow or natural spring; uncontaminated pumped groundwater or rising groundwater and springs;
- (6) Uncontaminated groundwater infiltration, as defined in 40 CFR §35.2005(20) to the MS4;
- (7) Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
- (8) Water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations);
- (9) Uncontaminated water used to control dust;
- (10) 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;
- (11) A discharge of flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
- (12) A discharge or flow from individual residential or charity car washing (external surfaces only);
- (13) A discharge or flow from a riparian habitat or wetland;
- (14) Discharges from deck drains of all swimming pools and spas, including residential pools, discharged to a lawn, leaching field, or natural drainage course;
- (15) A discharge or flow from water used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
- (16) Discharges associated with dye testing;
- (17) Other similar occasional incidental non-storm water discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges;
- (18) Other allowable non-storm water discharges listed in 40 CFR §122.26(d)(2)(iv)(B)(1); and
- (19) Non-storm water discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000. (c) No affirmative defense shall be available under subsection (b) of this section if the discharge or flow in question has been determined by the director to be a source of a pollutant or pollutants to the waters of the United States or to the MS4;

**Sec. 6-170. - Specific prohibitions and illicit discharges.**

- (a) No person shall 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 state-issued discharge permit for discharges from its MS4.
- (b) No person shall dump, drain, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, throw, place or otherwise introduce or cause, allow, or permit to be introduced any of the following substances in or on any public street, alley, storm sewer, drainage structure, drainage channel, stream, river, pond or any other public property. The following are illicit discharges:
- (1) Any used motor oil, antifreeze, grease, solvents, toxic chemicals, paint, stain or any other petroleum product or waste;
  - (2) Any industrial waste;
  - (3) Any hazardous waste or infectious waste, including household hazardous waste;
  - (4) Any garbage, trash, filth, junk, domestic sewage or septic tank waste, cooking oil, grease trap waste, or grit trap waste;
  - (5) Any trash, rubbish, refuse, or waste paper;
  - (6) Any wastewater from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance 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 (2) such vehicles;
  - (7) Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
  - (8) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building or mechanical equipment exterior that contains any soap, detergent, degreaser, solvent, other harmful cleaning substance;
  - (9) Any wastewater from commercial floor, rug, or carpet cleaning;
  - (10) Any wastewater from the sawcutting, wash down or cleaning of pavement that contains soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the washing or cleaning of pavement where any spill, leak, or other release of petroleum based products, hazardous material, hazardous substance, hazardous waste or other pollutant has occurred, unless all such released material has been previously removed;
  - (11) Any effluent, overflow or blow down, from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or boiler;
  - (12) Any ready-mixed concrete, mortar, ceramic, asphalt base material, hydromulch material, or any wastewater or substance from the cleaning of any vehicle or equipment containing, or used in transporting or applying, such material;
  - (13) Any runoff or wash down water from an animal pen, kennel, or fowl or livestock containment area;
  - (14) Any filter backwash from a swimming pool or fountain;

- (15) Any swimming pool, hot tub water, or public interactive water fountain containing disinfectants;
  - (16) Any discharge from water line disinfection by hyperchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;
  - (17) Any fire protection water, not including fire fighting water used by the fire department, containing "hazardous materials" as defined in the fire protection and prevention ordinance of the city;
  - (18) Any wastewater from a water curtain in a spray room used for painting vehicles or equipment;
  - (19) Any contaminated or unpermitted storm water discharge associated with an industrial activity;
  - (20) Any substance or material that will damage, block, or clog the MS4;
  - (21) Any release from a petroleum storage tank (PST), or 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;
  - (22) Any petroleum oil, non-biodegradable cutting oil, transmission fluid, hydraulic fluid, brake fluid, power steering fluid, antifreeze or other household hazardous wastes;
  - (23) Any rubble, debris, rubbish, tile, concrete, brick, asphalt, or other building material resulting from demolition activities;
  - (24) Any ashes or burn refuse;
  - (25) Any weeds, grass cuttings, brush, or other yard debris;
  - (26) Solid or liquid substances which may cause obstruction to the flow in storm sewers or other interference with the proper operation of the storm water system;
  - (27) Any wastewater from washout of concrete and wastewater from water well drilling operations, unless managed by an appropriate control;
  - (28) Any wastewater from washout and cleanout of stucco, paint, from release oils, and other construction materials;
  - (29) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
  - (30) Any discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate BMPs; and
  - (31) Any kind of other matter that will cause damage to the MS4 or any receiving bodies of water.
- (c) Sediment and erosion control.
- (1) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other construction activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or

captured by employing sediment and erosion control measures to the maximum extent practicable.

- (2) No person shall implement erosion or sediment control measures not currently approved by the city.
- (3) A construction project (commercial, residential, or capital improvement) shall not be considered complete and acceptable by the city until permanent erosion control measures have been installed to the city's satisfaction.
- (4) No person shall conduct any land disturbing or construction activities:
  - (i) on property over one (1) acre in area without a director-approved Erosion Control Design Plan and a TCEQ submitted storm water pollution prevention plan (SWPPP) for that area; or
  - (ii) on property less than one (1) acre in area that constitutes more than 50% of the site without a director approved Erosion Control Design Plan
- (5) No person shall knowingly fail to install or to maintain erosion control devices as shown or represented in the approved Erosion Control Design Plan and/or storm water pollution prevention plan (SWPPP), including maintenance of grass or sod and sediment cleaning of erosion control devices.
- (6) No person shall allow the build-up of off-site sediment from above or below ground construction related activities in any open space areas.
- (d) No person shall connect or maintain a line conveying sewage, domestic or industrial, to the MS4.
- (e) Any wash water from the service area, garage, or enclosure of a minor auto repair or fuel service station shall not discharge into the MS4.
- (f) Regulation of pesticides, herbicides, and fertilizers.
  - (1) No person shall use or cause to be used any pesticide, herbicide, or fertilizer contrary to any directions for use on any labeling required by state or federal law.
  - (2) 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.
  - (3) 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.
  - (4) If provided with a display notice containing the provisions of this subsection, pertaining to the regulation of pesticides, herbicides, and fertilizers (or a reasonable description thereof), and the information that any user of the product may obtain further information from the director or designated individual, any person selling pesticides, herbicides, or fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.
- (g) Used oil regulation.

- (1) No person shall:
  - (i) Pour, spill, leak, pump, empty, leach, dispose, or otherwise discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;
  - (ii) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill; or
  - (iii) Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.
- (2) All businesses that change motor oil for the public and municipal waste transfer stations are encouraged to serve as public used oil collection centers as provided by V.T.C.A., Health and Safety Code § 371.024, as amended.
- (3) A retail dealer who annually sells directly to the public more than five hundred (500) gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the city or by the state informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the state used oil information center.
- (h) No person shall have inadequate or unsanitary sewage or plumbing facilities, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city and state that could pollute the MS4 sewer system.
- (i) No person shall introduce or cause to be introduced into the sanitary sewer system any discharge of storm water, polluted or unpolluted, or any discharge that causes or contributes to causing the city to violate a water quality standard, its agreements associated with the regional sewage treatment plants, or any state issued permit.
- (j) Any person that causes a spill, release, or other discharge of a prohibited substance or other pollutant to the MS4 is responsible for the cleanup and removal of the substance from the MS4 or any area adjacent to the MS4 that is exposed to storm water runoff. The owner of the property on which the spill, release, or discharge occurred is responsible for the cleanup or removal of the substance from the MS4 or any area adjacent to the MS4 if the person that caused the spill, release, or discharge to the MS4 is unknown.
- (k) Sanitary sewer overflows shall be prevented in any way possible. All sanitary sewer overflows shall be reported to the City as soon as the owner, occupant, or person otherwise having control of the sanitary sewer becomes aware of the overflow and to the appropriate federal and state agencies within twenty-four (24) hours.
- (l) No person shall store items segregated for separate collection, disposal, recycling or reuse in a manner that allows pollutants to enter the MS4. Drums, dumpsters and polycarts shall be closed, not leaking, and in good condition.
- (m) Parking lot storm drain inlets shall be maintained free of trash, litter, garbage, rubbish, grass clippings, leaves, and other debris material.
- (n) Trash and litter on any parcel of land shall be collected for appropriate disposal prior to mowing.



- (o) The owner, owner's representative, operator, contractor or developer of property shall comply with the TXR150000 general construction permit, Industrial TXR050000 permit or City approved Erosion Control Design Plan relating to said property.

**Sec. 6-171. - Prohibition of illicit connections.**

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited, including, but not limited to, 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.
- (b) A person violates this article if such person connects or maintains a line conveying sewage to the MS4.
- (c) Connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the director.
- (d) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the director requiring that such location be completed. Results of these locations are to be documented and provided to the director.

**Sec. 6-172. - Watercourse protection.**

The owner or lessee of property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. The owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, such that the structures are not or will not become a hazard to the use, function, or physical integrity of the watercourse.

**Sec. 6-173. - Cleanup.**

- (a) Spills and leaks of hazardous materials, hazardous substances, and hazardous wastes or harmful quantity of a pollutant, including motor vehicle fluids, shall be cleaned up immediately after the spill occurs or the leak is detected. Surface soil contaminated by the spill or leak must be removed or otherwise protected from contact with storm water.
- (b) Overflows of sanitary sewer and resultant contaminated storm water created within the MS4 shall be cleaned up immediately by the owner, occupant, or person otherwise having control of the sanitary sewer.
- (c) Drip pans, absorbent mats, or equivalent controls shall be used to collect and properly dispose of leaking fluids from motor vehicles that are parked outside during maintenance and repairs or while awaiting repairs at commercial repair facilities. Used engines, transmissions, radiators, and other vehicle components that have automotive fluids in or on them shall be stored in a manner that prevents pollutants from entering the MS4.
- (d) Wash water, detergents, and solvents used for washing parts and equipment shall be collected for disposal in accordance with the appropriate federal and state regulations. Vats of solvents or wash bins used outside shall be covered when not in use to prevent rainfall from filling the vat or bin and causing an overflow.

- (e) Trash, litter, garbage, rubbish, grass clippings, leaves, and other debris material removed from the inlets shall be disposed of in a trash receptacle or collected for composting and shall not be allowed to enter the MS4.
- (f) Any absorbent used for cleanup must be picked up immediately. If wash water is used to clean the spill or leak, the wash water must be collected for appropriate disposal and not allowed to flow into the MS4.

## **DIVISION 2. - STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES**

### **Sec. 6-181. - General requirements.**

- (a) Private property owners, developers, operators or builders shall be responsible for the movement of soil from their property or construction site which results in accumulation of sediment in dedicated streets, alleys, lakes, ponds, any waterway or other private properties. Any accumulation or deposit of soil material beyond the limits of the property or in city streets, alleys or drainage facilities in an amount sufficient to constitute a threat to public health, safety and comfort as determined by the director shall constitute a nuisance and violation of this section. The only exemptions to this provision are lands under active agricultural use. As soon as construction or modification to the exempted land is to begin so that the use of land will change from agriculture to any other use, then the land shall lose its exemption and become subject to the provisions of this article.
- (b) Private property owners, developers, operators or builders shall immediately initiate erosion control and stabilization measures on portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. These measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures and best management practices.
- (c) All operators of construction sites shall use best management practices to control and reduce the discharge to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with demolition, clearing, grading, excavation, and other construction activities to the maximum extent practicable. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES construction general permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control, and be restored to serve their post-construction function before development or redevelopment activities are completed.
- (d) The best management practices used at construction sites may include, but are not limited to, the following measures:
  - (1) Ensuring that existing vegetation is preserved where feasible
  - (2) In drought conditions, alternative stabilization measures must be employed as approved by the director, to stabilize all disturbed areas, and can be irrigated in accordance with the water conservation and water resource management plan.
  - (3) Minimizing the disturbance of areas using erosion and sediment controls and BMPs to protect areas, if necessary, adjacent to construction areas;
  - (4) Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the maximum extent practicable;

- (5) Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;
- (6) Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or surface water in the State;
- (7) 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;
- (8) Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground contact with hazardous chemicals and trash;
- (9) Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain each in good and effective operating condition;
- (10) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls (City of Allen Standard Construction Details – Erosion Control); and
- (11) Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Installed structural measures may include, but are not limited to, the following:
  - (i) Storm water detention structures (including wet ponds);
  - (ii) Storm water retention structures;
  - (iii) Flow attenuation by use of open vegetative swales and natural depressions;
  - (iv) Other velocity dissipation devices;
  - (v) Infiltration of runoff on site, and;
  - (vi) Sequential systems which combine several practices.

Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

- (e) Qualified personnel (provided by the operator of the construction site) as described in the TPDES General Permit No. TXR150000, shall conduct inspections, perform maintenance of controls, and maintain documentation for disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm that is one-half (0.5) inches or greater.
- (f) 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 of the state and the MS4. Based on the results of these

inspections, best management practices shall be modified as appropriate, prior to the required TXR150000 inspection schedule.

- (g) The director may require plans and/or specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required in this section that will be implemented on the construction site by means of an Erosion Control Design Plan and/or storm water pollution prevention plan (SWPPP).
- (h) The director may deny approval of any permit or any other city approval necessary to commence or continue construction, or to receive a certificate of occupancy if the management practices described in the Erosion Control Design Plan, storm water pollution prevention plan (SWPPP), or observed upon a site inspection by the director are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, or other construction activities to the maximum extent practicable.
- (i) Any owner of a site of construction activity, whether or not such owner is an operator, is jointly and severally responsible for compliance with the requirements in this section.
- (j) Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under such person's contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible with the owner for any willful or negligent failure on such person's part to adequately implement that control measure.
- (k) Whenever the management practices at a construction site are modified (as a result of change in the construction project, in order to implement more effective management practices, in response to an order or request from the director, or for any other reason), a written description of such modifications of the management practices may be requested by the director. If modified, the new management plan must be submitted as soon as possible, but in no case later than seven (7) calendar days following the modification.
- (l) No land disturbing associated with development construction shall commence without the prior approval of a director issued grading permit or a set of construction plans stamped by the city "Approved for Construction."
- (m) An Erosion Control Design Plan must be submitted and approved by the director and implemented by private property owners, developers, operators or builders prior to the commencement of any land disturbing or construction activities:
  - (1) on property with an area of more than one (1) acre
  - (2) on property with an area of less than one (1) acre that constitutes more than 50% of the site.

#### **Sec. 6-182. - One acre or greater disturbances.**

All operators of sites of construction activity, including soil disturbance activities, construction-related activity (e.g., stockpiling of fill material), demolition, clearing, grading, excavation, construction support activity and landfiling activities, that result in the disturbance of one (1) or more acres of total land area, or are part of a common plan of development or sale within which one (1) or more acres of total land area are disturbed, shall comply with the following additional requirements:

- (a) Any primary or secondary operator who is required to obtain general permit coverage from the state for storm water discharges from a construction site under the TPDES general permit for storm water discharges from construction sites (construction general permit) must do so prior to commencement of land disturbing activities.

- (b) A storm water pollution prevention plan (SWPPP) shall be prepared and implemented prior to the commencement of construction activities as required in the construction general permit or any individual NPDES or TPDES permit issued for storm water discharges from the construction site. Secondary operators must either prepare their own SWPPP or participate in a shared SWPPP that covers the areas of the construction site, where they have control over the construction plans and specifications, and with any additional requirement imposed by this or any other city ordinance or state requirement.
- (c) The storm water pollution prevention plan (SWPPP) shall be prepared and certified by a licensed professional engineer or other professional, approved by the director, certified in a discipline that includes erosion and sediment control principals appropriate for the site. The signature, date and seal of the licensed professional engineer or other appropriate certification for the professional certifying the plan shall constitute his/her attestation to the best of his/her knowledge that the SWPPP fully complies with the requirements of the construction general permit, or with any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this article. The SWPPP shall contain the name, title, and business address of the professional signing the SWPPP, and the date that he/she did so.
- (d) The SWPPP shall be updated and modified as appropriate and as required by the NPDES or TPDES permit and this article. Any update or modification to the SWPPP that results in a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States shall be prepared, signed, dated, and sealed by a licensed professional engineer or other professional, approved by the director, certified in a discipline that includes erosion and sediment control principals appropriate for the site.
- (e) A copy of any SWPPP that is required by this article shall be submitted to the director in conjunction with any application for a building permit, demolition permit, early grading release, and/or any other city approval necessary to commence or continue construction at the project site.
- (f) If, upon the director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the director may conduct, the director determines that the SWPPP does not comply with the requirements of the construction general permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this article, the director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the director determines that the SWPPP is not being fully implemented, the director may similarly issue an order prohibiting the continuation of any construction activity at the site.
- (g) Upon review of the SWPPP and any site inspection that is conducted, if at any time the director determines that the SWPPP is not being fully implemented the director may suspend or deny approval of any building permit, early grading release, or any other city approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the construction general permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this article.
- (h) All owners, developers, contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

"I \_\_\_\_\_ certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit and the Texas Pollutant

Discharge Elimination System (TPDES) permit that authorizes the storm water discharges associated with land disturbing activity from the construction site identified as part of this certification, with the Storm Water Management Ordinance of the City of Allen, and with those provisions of the Storm Water Pollution Prevention Plan (SWPPP) for the construction site for which I am responsible."

The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

- (i) The SWPPP, with the licensed professional engineer's signature, seal, and date affixed, and the certifications of owners, developers, contractors and subcontractors required by this article, and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.
- (j) The operator shall make a copy of the SWPPP and any modification thereto available to the EPA, state inspectors, director and any other authorized city personnel at the construction site upon request.
- (k) The director may, but is not obligated to, notify the operator at any time that the SWPPP does not meet the requirements of the construction general permit, any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this article. Such notification shall identify those provisions of the permit or this article which are not being met by the SWPPP and identify which provisions of the SWPPP require modifications in order to meet such requirements. Compliance with permits issued by other agencies shall be the sole responsibility of the operator. Within seven (7) calendar days of such notification from the director (or as otherwise provided by the director), the operator shall make the required changes to the SWPPP and shall submit to the director a written certification that the requested modifications have been made and sent to the appropriate state and federal authorities.
- (l) The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity.
- (m) The SWPPP shall be modified by the operator to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.
- (n) All modifications to the SWPPP shall be signed, dated, and sealed by a licensed professional engineer or other professional certified in a discipline that includes erosion and sediment control principles appropriate for the site, then submitted to the director within seven (7) calendar days of a change, determination of ineffectiveness, either by the city or the operator, or effective date of changes in contractor and/or subcontractor.
- (o) The operator shall follow all state and federal guidelines as shown in the TPDES and NPDES when any changes are made to the SWPPP.
- (p) Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the

- end of the storm that is one-half (½) inches or greater of rain. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
- (q) Construction site inspections performed by city personnel shall not relieve the requirements of the operator to perform the operator's own inspections in accordance with subsection (p) above.
  - (r) Based on results of the inspections required by this article that identify a pollution protection issue, the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven (7) calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven (7) calendar days following the inspection. When requested, all modifications to the SWPPP shall be submitted to the director within seven (7) calendar days of the date of inspection, but in all cases, revisions to the SWPPP shall be kept in a central location available for inspection within one (1) hour after the request by the director.
  - (s) A written report summarizing the scope of any inspection required by this article, and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with this article shall be made and retained by the operator as part of the SWPPP for at least three (3) years after the date that the site is finally stabilized. This report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES or TPDES permit, and this article. The report shall be certified and signed by the person responsible for making the report and consistent with the signing requirements of the permit.
  - (t) The operator shall retain copies of any SWPPP and all reports required by this article or by the NPDES or TPDES permit for the site, and records of all data used to complete the notice of intent (NOI), for a period of at least three (3) years from the date that the site is finally stabilized.
  - (u) Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this article and by the NPDES or TPDES permit are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the director, and to any other responsible city department personnel, a notice of termination (NOT) that includes the information required by the construction general permit administered by the TCEQ.

**Sec. 6-183. - Submission of Notice of Intent (NOI).**

- (a) Any person subject to a construction activity NPDES or TPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form reasonably acceptable to the Director prior to the allowances of discharges to the MS4.
- (b) A copy of any NOI required by the EPA or TCEQ shall be delivered to the director either in person or by mailing it to:

Notice of Intent to Discharge Storm Water  
Attn: Engineering Director  
City of Allen

### **DIVISION 3. - STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY**

#### **Sec. 6-186. - General requirements.**

For regulations relating to storm water discharges from an industrial activity, the operator shall follow the guidelines set forth in the Industrial General Permit TXR050000, latest edition and revisions thereof published by TCEQ.

### **DIVISION 4. - POST-CONSTRUCTION RUNOFF CONTROL**

#### **Sec. 6-191. - Findings of fact.**

(a) It is hereby determined that:

- (1) Land development projects, construction activities and associated increases in impervious surface area alter the hydrologic characteristics and response of local watersheds. These alterations increase storm water runoff volume and accelerate the rate of flow, which may lead to erosion, flooding, stream channel erosion, and sediment transport and deposition.
  - (2) Storm water runoff and impervious surfaces contribute to increased quantities of water-borne pollutants which are carried to local water bodies via runoff.
  - (3) Storm water runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of storm water runoff from development sites.
- (b) The city establishes this set of water quality and quantity policies applicable to all surface waters in the city to provide reasonable guidance for the regulation of storm water runoff for the purpose of protecting local water resources from degradation.
- (c) It is determined that the regulation of storm water runoff discharges from land development projects and other construction activities in order to control and minimize increases in storm water runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with storm water runoff is in the public interest and will prevent threats to public health and safety.

#### **Sec. 6-192. - Purpose.**

The purpose of this division is to establish minimum storm water management requirements and proper management of post-construction stormwater runoff. Minimizing damage to public and private property and infrastructure, safeguard the public health, safety, environment, general welfare, and protect water resources. This division seeks to meet that purpose through the following objectives:

- (1) To establish minimum post-construction stormwater management standards to minimize increases in storm water runoff volumes and regulate subsequent quality from any development or redevelopment in order to reduce flooding, siltation and streambank erosion and maintain the integrity of stream channels;
- (2) To minimize the total annual volume of surface water runoff which flows from any specific site during and following development or redevelopment to not exceed the pre-development hydrologic conditions to the maximum extent practicable;



- (3) To accommodate new development and redevelopment projects in a manner that protects public safety, groundwater and surface water quality and aquatic living resources and their habitats;
- (4) To employ permanent nonstructural and structural best management practices (BMPs) to protect water quality thereby raising public awareness to storm water quality related issues;
- (5) To remove and/or treat storm water pollutants prior to discharge to ground and surface waters throughout the city;
- (6) To ensure the long-term operation and maintenance of all permanent storm water quality features;
- (7) To identify the long-term responsibility for maintenance of permanent BMPs and setting forth plans to ensure continued functionality; and
- (8) To reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, to the waters of the state through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to the public.

**Sec. 6-193. - Applicability.**

This division shall be applicable to all land development or redevelopment applications for both small and large construction activities, as defined by the TCEQ, unless eligible for an exemption or granted a waiver by the director.

**Sec. 6-194. - Drainage design manual development.**

- (a) The city may provide additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this division and may provide such information in the form of a drainage design manual.
- (b) The drainage design manual may be amended from time to time based on improvements in engineering, science, monitoring and local maintenance experience. Storm water treatment practices that are designed and constructed in accordance with these design criteria will be presumed to meet the minimum water quality performance standards.

**Sec. 6-195. - Withholding of permits.**

No owner or operator shall be issued any building, grading or other land development permits that are required for land disturbance activities without first satisfying the requirements of this division prior to commencement of the proposed activity.

**Sec. 6-196. - General criteria for post-construction runoff control.**

- (a) All applicable land development sites shall be designed according to the specific performance criteria outlined in the city drainage design manual or in conformance with a plan designed by an engineer licensed in the State of Texas, approved by the director.
- (b) Prior to design, applicants are required to consult with the director to determine if they are subject to additional post-construction storm water design requirements.

**Sec. 6-197. - Minimum control requirements.**

All storm water management practices and permanent BMPs shall be designed to comply with the criteria, specifications and the specific storm frequency storage volumes (e.g., water quality, channel protection, ten-

year, one-hundred-year) as identified in the current drainage design manual or Allen Land Development Code, unless the director grants a waiver or the owner is exempt from such requirements. Stormwater runoff quality after development or redevelopment of the property shall replicate pre-development conditions, to the greatest extent practicable. If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the director may impose any additional requirements deemed necessary to control the volume, quality, timing, and rate of runoff.

**Sec. 6-198. - Site design feasibility.**

Storm water management practices for a site shall be chosen based on the physical conditions of the site. Among the factors that should be considered:

- (1) Topography;
- (2) Total maximum drainage area;
- (3) Depth to water table;
- (4) Soils;
- (5) Slopes; and
- (6) Terrain.

Applicants shall consult the drainage design manual for guidance on the factors that determine site design feasibility when selecting a storm water management practice.

**Sec. 6-199. - Conveyance issues.**

All storm water management practices shall be designed to convey storm water and allow for maximum removal of pollutants and reduction in flow velocities, which shall include, but are not be limited to:

- (1) Use of structural and nonstructural best management practices (BMPs) and controls;
- (2) Maximizing of path flow distance from inflow points to outflow points;
- (3) Protection of inlet and outfall structures; and
- (4) Elimination of erosive flow velocities.

**Sec. 6-200. - Maintenance agreements.**

All storm water management and/or treatment practices shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. Such agreement will include any and all maintenance easements required to access and inspect the storm water practices, and to perform routine maintenance as necessary to ensure proper functioning of the storm water practice.

**Sec. 6-201. - Structural storm water practices.**

Owners are required by the city to implement structural measures to reduce runoff volumes and velocities at sites where downstream infrastructure is insufficient to accommodate developed flows. The following methods shall be considered appropriate for consideration as structural storm water practices:

- (1) Swales and channels;

- (2) Culverts, inlets and pipes;
- (3) Detention;
- (4) Energy dissipaters;
- (5) Infiltration trenches;
- (6) Storm water ponds;
- (7) Porous surfaces; and
- (8) Re-use (rain harvesting, etc.).

**Sec. 6-202. - Use of other or new storm water practices.**

- (a) New and innovative technologies shall be evaluated and are encouraged for use providing that there is sufficient documentation as to their effectiveness and reliability.
- (b) Alternately, new structural storm water practices will not be accepted for inclusion in the city until independent performance data shows that the structural control conforms to local and/or state criteria for treatment, conveyance, maintenance and environmental impact.

**Sec. 6-203. - Landscaping and final stabilization requirements.**

- (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within fourteen (14) calendar days from substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts:
  - (1) any construction activity where any of the following conditions are met:
    - (i) All soil disturbing activities at the site have been completed and are uniform (for example, 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.
    - (ii) For individual lots in a residential construction site by either:
      - a. The homebuilder completing final stabilization as specified in condition (a) above; or
      - b. The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.
  - (2) For construction activities on land used for agricultural purposes (for example pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

- (3) Replanting with native woody and herbaceous vegetation must be accompanied by placement of matting, mulch or an equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
  - (4) Any area of revegetation must exhibit survival of a minimum of seventy (70) percent of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy (70) percent survival for one (1) year is achieved.
- (b) Upon instruction from the director, a landscaping plan prepared by a Texas registered landscape architect shall be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. The landscaping plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. The landscaping plan, if required, must be approved by the director prior to land disturbing activities.

**Sec. 6-204. - Privately-owned erosion control requirements.**

*(a) Storm water system responsible party.*

- (1) For privately-owned storm water drainage systems and/or water quality devices used for residential or commercial areas, the developer shall be responsible for all of the maintenance and repair of such storm water drainage systems and/or water quality devices serving that residential or commercial area until the developer or owner no longer has an ownership interest in any property served by the storm water drainage system and/or water quality device.
- (2) Once an HOA is organized and becomes active for a residential area served by a storm water drainage system and/or water quality device, the HOA shall be responsible for the maintenance and repair of the storm water drainage system and/or water quality device. If there is no active HOA or the HOA fails to maintain the privately-owned storm water drainage system and/or water quality device, then the city may, but is not required, to maintain and repair the system and/or device.
- (3) Maintenance of a storm drainage system and/or water quality device shall include such items, but not be limited to:
  - (i) Mowing of tall weeds and grass;
  - (ii) Regular and routine removal of floatables and debris;
  - (iii) Dredging of silt and sludge and removal and proper disposal of such silt and sludge off-site;
  - (iv) Correcting failures of inlet or outlet control structures;
  - (v) Implementation of erosion mitigation measures;
  - (vi) Repair and maintenance of aeration equipment; and
  - (vii) Maintaining optimal operation of underground and above ground detention.

(b) *Disclosure of HOA information to the MS4.*

- (1) Upon the organization and formation of an HOA, the HOA should provide updated contact information to the city for compliance and reporting communications. The minimum information to be provided by the HOA to the city includes:
  - (i) Name of subdivision and HOA;
  - (ii) Name, address, telephone number and email address of any management company involved with activities related to the HOA (if applicable);
  - (iii) Name, address, telephone number and email address of a direct contact person representing or authorized to act on behalf of the HOA;
  - (iv) Date of formation of the HOA;
  - (v) Current listing of storm water drainage structures and/or water quality devices over which the HOA has control; and
  - (vi) Dates when any changes were made to the HOA board, structure or the storm drainage system and/or water quality device over which the HOA has control.
- (2) Any changes to the contact information regarding the HOA must be reported within 30 days to the City.
- (3) The HOA is required to annually contact with the city planning department to ensure that all information is up to date.

(c) *Authorization to inspect, adopt and impose best management practices.*

- (1) The city has the authority to conduct storm water inspections to require implementation of best management practices where appropriate.
- (2) The selection, application and maintenance of BMPs must be sufficient to prevent or reduce the likelihood of pollutants entering the receiving storm drainage system.
- (3) The city may adopt and impose requirements identifying specific BMPs for any activity, operation or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMPs are required, every person undertaking such activity or operation or owning or operating such facility shall implement and maintain BMPs at the person's own expense.

**Sec. 6-205. - Failure to maintain practices.**

- (a) In the event a storm water management facility, storm water drainage system and/or water quality device is deemed by the city to be in need of maintenance or repair or is determined a danger to public safety or public health, the responsible person for such storm water management facility shall have thirty (30) days after receipt of notice from the city to effect maintenance and repair of the facility in an approved manner.
- (b) If a responsible party fails or refuses to comply with the storm water facility maintenance requirements of this article, the director, after reasonable notice, may cause the necessary work to be done to correct a violation of the design standards or maintenance and assess the responsible party for all incurred costs and expenses.

## **DIVISION 5. - COMPLIANCE EXAMINATION AND NOTIFICATION**

### **Sec. 6-211. - Right of entry: inspection and sampling.**

- (a) The director shall have the right to enter the premises of any person discharging storm water to the MS4 or to waters of the United States to determine if the discharger is complying with all requirements of this article, and with any state or federal discharge permits, limitations, or requirements.
- (b) The director shall be permitted to enter any property or facility subject to this article at any reasonable time, for the purpose of making inspections to determine compliance with this article.
- (c) The director shall be permitted to inspect any records, documents, plans, drainage control facilities, or drainage related improvements or control measures, to conduct sampling, or to evaluate any storm water treatment practices, for the purpose of determining compliance with this article.
- (d) Dischargers shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.
- (e) Dischargers shall make available to the Director, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this article and with any state or federal discharge permit.
- (f) Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the director will be permitted to enter without delay for the purposes of performing his/her responsibilities.
- (g) The director shall have the right to install on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.
- (h) The director may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
- (i) The director may require the discharger to install monitoring equipment as necessary at the discharger's expense. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
- (j) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
- (k) It shall be unlawful for any person to interfere with the Director, or designees, in the performance of their duties as prescribed in this article. Unreasonable delays greater than one (1) hour in allowing the director access to the discharger's premises shall be a violation of this article.

### **Sec. 6-212. - Inspection or search warrants.**

If the director has been refused access to any property or facility subject to this article, and such person has probable cause to believe that there is a violation of this article or any state or federal discharge permit,

limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article, then the director may seek issuance of an inspection or search warrant from any court of competent jurisdiction.

**Sec. 6-213. - Notification of spills.**

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, 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 nonhazardous materials, said person shall notify the director in person or by phone or email immediately. 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.
- (b) Failure to provide notification of a release as provided above is a violation of this article.

**DIVISION 6. - REPORTS OF VIOLATION**

**Sec. 6-216. - Citizen reports of violations.**

- (a) All citizens are encouraged to report any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this article to the director.
- (b) A written record of each citizen report to the city will be prepared and maintained in accordance with the city records retention policy. A copy of the city's record of the report will be furnished to the reporting citizen upon request. The director will, upon request, inform the reporting citizen of any action taken by the city.

**DIVISION 7. - ENFORCEMENT**

**Sec. 6-219. - Enforcement authority.**

The enforcement authority for the provisions of this article shall be the city manager.

**Sec. 6-220. - Violations.**

- (a) It shall be unlawful for any person to violate any provision or fail to comply with any provision of this article. Any person who has violated or continues to violate a provision of this article, may be subject to the enforcement actions outlined in this article or may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) In the event a violation constitutes an immediate danger to public health or public safety, the city is authorized to enter upon the private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property.

**Sec. 6-221. - Notice of violation and compliance orders.**

- (a) When the director finds that a person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, the director shall serve upon that person a

written notice of violation, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease.

- (b) The director may issue the violator a compliance order directing that the violator come into compliance within a specified time, prior to commencement or continuance of operation, or immediately. The order may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States.
- (c) Investigation and/or resolution of the matter in response to a notice of violation or compliance order in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the notice or order.
- (d) Nothing in this subsection shall limit the authority of the director to take any action, including emergency actions or any other enforcement actions.

**Sec. 6-222. - Remediation, abatement, and restoration orders.**

(a) When the director finds that a person has violated, or continues to violate, any provision of this article, or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the United States, the director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the United States, and/or to restore any part of the MS4, or the waters of the United States.

- (b) Such remedial, abatement, and restoration action may include, but not be limited to:
  - (1) Monitoring assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action;
  - (2) Confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination;
  - (3) Prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation, and/or;
  - (4) Restoration or replacement of city property or natural resources damaged by the violation.
- (c) The order 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.
- (d) An order issued under this subsection does not relieve the violator of liability for any violation, including any continuing violation.
- (e) Issuance of an order under this subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

**Sec. 6-223. - Emergency cease and desist orders.**

- (a) When the director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s), or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of



persons or to the environment, the director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all requirements of this article; and
  - (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- (b) Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge.
  - (c) 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 or waters of the United States, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services.
  - (d) The director may allow the person to commence or 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 article.
  - (e) A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the director within ten (10) calendar days of receipt of the emergency order.
  - (f) 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.

**Sec. 6-224. - Stop work orders or "red tags".**

- (a) Whenever the director finds that any owner and/or operator of a construction site has violated, threatens to violate, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue a stop work order or "red tag" to the operator, and require that a copy of the stop work order be posted at the construction site and distributed to all city departments and divisions whose decisions affect any activity at the site.
- (b) Unless express written exception is made by the director, the stop work order or "red tag" shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the city associated with a building permit, early grading release, or any other city approval necessary to commence or continue construction or to assume occupancy at the site.
- (c) Issuance of a stop work order or "red tag" shall not be a bar against, or a prerequisite for, taking any other action against the violator.

**Sec. 6-225. - Appeal.**

Any person may appeal the decision of the director to the city manager. The decision of the city manager is final.

**Sec. 6-226. - Judicial enforcement.**

- (a) *Injunctive relief.*

- (1) Whenever it appears that a person has violated, or continues to violate, any provision of this article or order issued hereunder, the city may seek the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance by that person of any requirement imposed by this article or any order issued hereunder.
- (2) The director may also seek other action as appropriate for legal and/or equitable relief, including a requirement for a violator to conduct environmental remediation, abatement, or restoration.
- (3) Action for injunctive relief shall not be a bar against, or prerequisite for, taking any other action against a violator.

(b) *Civil remedies.*

- (1) Any person who has violated, or continues to violate, any provision of this article, or any order issued hereunder, shall be liable to the city for a maximum civil penalty of not more than two thousand dollars (\$2,000.00) per violation, per day.
- (2) The city may file suit in the state district court to recover all penalties, reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, the cost of any actual damages incurred by the city, and any costs of remediation, abatement, and restoration incurred by the city, as well as civil penalties, in any court of competent jurisdiction.
- (3) In determining the amount of civil liability, 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, and any other factor as justice requires.
- (4) A suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a violator.

(c) *Criminal prosecution.*

- (1) Any person who knowingly violates any provision of this article, or any order issued hereunder, shall, upon conviction be guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000.00) per violation. Each day a violation continues to exist shall be considered a separate offense.
- (2) Any person who knowingly introduced any substance into the MS4 or waters of the United States which causes personal injury or property damage shall, upon conviction in the municipal court, be guilty of a misdemeanor and be subject to a penalty of not more than two thousand dollars (\$2,000.00) per violation. Each day a violation continues to exist shall be considered a separate offense. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.
- (3) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article shall, upon conviction, be subject to a fine of not more than two thousand dollars

(\$2,000.00) per violation. Each day a violation continues to exist shall be considered a separate offense.

(d) *Civil suit under the Texas Water Code.* Whenever it appears that a violation or threat of violation of any provision of the Texas Water Code, or any rule, permit, or order of the TCEQ, has occurred or is occurring within the jurisdiction of the city, exclusive of its extraterritorial jurisdiction, the city, in the same manner as the TCEQ, may have a suit instituted in a state district court through its city attorney for the injunctive relief or civil penalties or both authorized by the Texas Water Code, against the person who committed or is committing or threatening to commit the violation.

(e) *Remedies nonexclusive.*

- (1) The remedies provided for in this article are not exclusive of any other remedies that the city may have under local, state or federal law.
- (2) The city may take any, all, or any combination of these actions against a violator.
- (3) The city is empowered to take more than one (1) enforcement action against any violator.
- (4) These actions may be taken concurrently.

#### **Sec. 6-227. - Supplemental enforcement actions.**

(a) *Performance and maintenance bonds.*

- (1) The director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this article, any order issued hereunder, any required best management practice, and/or any storm water pollution prevention plan provision, and/or to achieve final stabilization of the site.
- (2) The director may deny approval of any city permit or approval necessary to commence or continue construction or any industrial activity at a site, or to assume occupancy, until such a performance or maintenance bond has been filed.

(b) *Liability insurance.* The director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge. Any insurance obtained by an owner or operator must name the city as additionally insured. Secs.6-228—6-230.-Reserve

### **DIVISION 8. - MISCELLANEOUS PROVISIONS**

#### **Sec. 6-231. - Charges and fees.**

- (a) The city may adopt reasonable fees for reimbursement of costs of constructing, operating, and maintaining the city's MS4, and for reimbursement of costs of implementing its storm water management program as required by the EPA or the state, and the cost of implementing this article, which costs may include, but not be limited to, the following:

- (1) Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;
  - (2) Fees for spill and release reports and responding and remediating spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants, and;
  - (3) Other fees as the city may deem necessary to carry out the requirements contained in this article.
- (b) These fees relate solely to the matters covered by this article and are separate from all other fees, fines, and penalties chargeable by the city.

**SECTION 2.** All ordinances of the City in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication of the caption as the law and charter may require.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 10<sup>TH</sup> DAY OF DECEMBER 2019.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

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**Peter G. Smith, CITY ATTORNEY**  
(kbl:12/4/19:112514)

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**Shelley B. George, TRMC, CITY SECRETARY**