

ARTICLE III. - MS4/SWPPP ORDINANCE FOR THE CITY OF CLUTE

FOOTNOTE(S):

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**Editor's note**—Ord. No. 2010-7, Exh. A, added Art. III, consisting of §§ 54-100 through 54-131, to the Code. With the city's consent, the editor has reserved sections between the various divisions to allow for growth within the article.

DIVISION I. - GENERALLY

Sec. 54-100. - Objectives.

The objectives of this chapter are as follows:

- (1) To maintain and improve the quality of surface water within the city;
- (2) To prevent or reduce the discharge of contaminated stormwater runoff from construction and residential sites into the municipal separate storm sewer system (MS4) and surface waters within the city;
- (3) To facilitate compliance with federal and state rules and regulations by owners, operators, contractors, and subcontractors of construction sites and commercial facilities within the city;
- (4) To enable the city to comply with all federal and state laws and regulations applicable to stormwater discharges.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-102. - Administration.

The director of public works and the director's authorized representatives are authorized to administer, implement, and enforce the provisions of this chapter [article].

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-103. - Submission of documents.

All persons required by federal or state regulations or this chapter to submit documents, pertaining to discharges of stormwater or accidental discharges into the local MS4, shall submit all applicable documents to the following mailing address:

City				Manager
City		of		Clute
108	East		Main	Street
Clute, TX 77515				

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-104. - Definitions.

As used in this chapter [article]:

Agricultural stormwater runoff. Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR § 122.23 or discharges from concentrated aquatic production facilities as defined in 40 CFR § 122.24.

Best management practice or BMP. Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, and other management practices to prevent the pollution of the MS4 and waters in the state. Best management practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage areas.

City. The City of Clute, Texas, or any authorized person acting in its behalf.

Commencement of construction activities. The initial disturbance of soils associated with clearing, grading or excavation activities, as well as other construction-related activities (e.g. stockpiling of fill material, demolition).

Common plan of development or sale. A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development or sale is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Construction activity. Construction activities including clearing, grading, and excavating that result in land disturbances of equal to or greater than one acre. Construction activity also includes the disturbance of less than one 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 acre of land. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

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

Contractor. For the purposes of this chapter [article], the contractor is the person or persons that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with local pollution prevention requirements, although they do not qualify as an operator under the construction permit.

Conveyance. Curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

Discharge. To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of any substance, or to cause, allow, permit, or suffer any of these acts or omissions.

Domestic sewage. Waterborne human waste and waste from domestic activities, including the use of toilet facilities, washing, bathing, and food preparation.

Erosion. The process of land being diminished or worn away due to wind or water. Erosion occurs naturally, but can be intensified by land-disturbing activities such as development, farming, road building, timber harvesting, etc.

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

Final stabilization. A construction site status where any of the following conditions are met:

- (1) All soil disturbing activities at the construction site have been completed and a uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as riprap, geotextiles, or gabions) have been employed;

- (2) For individual lots in a residential construction site, the homebuilder has completed final stabilization on the individual lot(s) as specified in condition (1) above;
- (3) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or rangeland), 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 surface water and areas, which are not being returned to their preconstruction agricultural use, shall meet the final stabilization conditions of condition (1) above.

Hazardous substance or materials. Any substance listed in table 302.4 of 40 CFR part 302.

Hazardous waste. Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR part 261.

Illicit connection. Any manmade conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit discharge. Any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges authorized under an NPDES or TPDES permit and discharges resulting from emergency fire fighting activities.

Large construction activity. Construction activities including clearing, grading, and excavating that result in land disturbances of equal to or greater than five acres of land. Large construction activity also includes the disturbance of less than five 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 acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar stormwater conveyance. Large construction activity does not include the routine grading of existing dirt roads, asphalt overlays or existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Maximum extent practicable or MEP. The technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges that was established by CWA § 402(p).

MS4 operator. The public entity, and/or the entity contracted by the public entity, responsible for management and operation of the municipal separate storm sewer system.

Municipal separate storm sewer system or MS4. A separate storm sewer system owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state.

National Pollutant Discharge Elimination System or NPDES. The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing requirements of certain sections of the federal Clean Water Act. Nonpoint source. Any source of any discharge of a pollutant that is not a "point source".

Notice of intent or NOI. A written submission to TCEQ from an applicant requesting coverage under a general permit.

NPDES permit. A permit issued by the EPA that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general basis. In the State of Texas, the EPA retains authority for permitting oil and gas exploration activities and Indian Country land.

Oil. Any kind of oil in any form including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

**Outfall.** A point source at the point where a municipal separate storm sewer discharges to water in the state 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.

**Owner.** For the purposes of this chapter [article], the owner is the person or persons that have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, although they do not qualify as an operator under the construction permit.

**Permit.** Either an NPDES or TPDES permit, whichever is applicable.

**Permittee.** An MS4 operator authorized under an NPDES or TPDES permit.

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

**Point source.** (from 40 CFR §122.22) Any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

**Pollutant.** Dredged spoil, solid waste, incinerator residue, garbage, sewage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

**Pollution.** (from V.T.C.A., Water Code §26.001(14)) The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**Release.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or water in the state.

**Responsible party.** The owner, occupant, developer, builder, or general contractor who has operational control over the site, including the ability to make modifications in specifications, or who has operational control over day-to-day activities at the site and is able to ensure compliance with plan requirements and permit conditions (e.g., a person who is authorized to direct the conduct of workers at the site). Any person who has filed an notice of intent (NOI) or completed a construction site notice is presumed to be a responsible party.

**Riparian.** Any area relating to or located on the bank of a natural watercourse.

**Runoff.** Drainage or flood discharge that leaves an area as surface flow or as pipeline flow.

**Sediment.** Soil, sand, and minerals washed from land into water, usually after rain.

**Separate storm sewer system.** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, outfalls, or storm drains), designed or used for collecting or conveying stormwater; which is not a combined sewer, and which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR § 122.2.

**Small construction activity.** Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres of land. Small construction activity also includes the disturbance of less than one 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 and less than five acres of land. Small construction activity does not include routine

maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar stormwater conveyance. Small construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Storm drain. An opening leading to an underground pipe or an open ditch for carrying surface runoff.

Stormwater. Any flow occurring during or after any form of natural precipitation, including rainfall runoff, snowmelt runoff, and surface runoff and drainage.

Stormwater associated with construction activity. Stormwater runoff from a construction activity where soil disturbing activities (including clearing, grading, and excavating) result in the disturbance of one or more acres of total land area, or are part of a larger common plan of development or sale that will ultimately result in the disturbance of one or more acres of total land area.

Stormwater permit. Authorization issued by the city to conduct construction activities.

Stormwater pollution prevention plan or SWP3. A plan required by a construction general permit to discharge stormwater associated with construction and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction at the facility.

Stormwater quality plan. A plan describing how construction is to be performed and how the site closure is to be accomplished, including postconstruction control measures, at a construction site.

Structural control (or practice). A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: wet ponds, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, sediment traps, check dams, stabilized construction entrances, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

Temporary stabilization. A condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles, mulches, perimeter controls, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.

Texas Pollutant Discharge Elimination System or TPDES. The state program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing requirements of certain sections of the federal Clean Water Act.

Texas Commission on Environmental Quality (TCEQ). The permitting authority for stormwater discharges.

TPDES permit. A permit issued by the state that authorizes discharges of pollutants to water in the state and waters of the United States, whether the permit is applicable on an individual, group or general basis.

Water in the state. Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, 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 inside the jurisdiction of the state.

Waters of the United States. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters

within the federal definition of "waters of the United States" at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

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

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-105. - Citizen reporting.

- (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 of which they become aware to the city manager.
- (b) Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the city will be prepared and kept on file for a period of three years, and a copy of the city's record of the report will be furnished to the reporting citizen upon request. Also upon request, the city manager will inform the reporting citizen of any action undertaken by the city in response to the citizen's report.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-106. - Notification of spills.

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 into stormwater, 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. In the event of a release of nonhazardous materials, said person shall notify the city manager no later than the next working day. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be retained for at least five years.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Secs. 54-107—54-124. - Reserved.

DIVISION 2. - STORMWATER SYSTEM

Sec. 54-125. - Illicit discharge.

No person shall introduce, cause to be introduced, or allow to be introduced an illicit discharge into the MS4, except those discharges listed in section 54-126. Illicit discharge may result in the termination of the MS4 access by the city manager.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-126. - Allowable nonstormwater discharges.

- (a) The following nonstormwater discharges may be discharged to the MS4, provided that subsection (b) below does not apply:
- (1) A discharge authorized by and in full compliance with a TPDES or NPDES permit;
  - (2) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely effect aquatic life);
  - (3) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing uncontaminated sources of potable water, groundwater, or surface water;
  - (4) Discharges from a potable water source;
  - (5) Diverted stream flows;
  - (6) Rising groundwaters and springs;
  - (7) Uncontaminated ground water infiltration;
  - (8) Uncontaminated pumped ground water;
  - (9) A discharge from a foundation drain or a footing drain;
  - (10) Air conditioning condensate;
  - (11) Water from a crawl space pump;
  - (12) A discharge from residential car washing and non-commercial car washing events;
  - (13) Flows from a riparian habitat or wetland;
  - (14) Dechlorinated swimming pool discharges;
  - (15) Street wash water;
  - (16) Dye testing if verbal notification to the city is given prior to the time of the test;
  - (17) A discharge or flow from emergency firefighting activities; and
  - (18) Other similar occasional nonstormwater discharges, unless the TCEQ develops permits or regulations addressing these discharges.
- (b) The city may, on a case-by-case basis, prohibit any of the above listed allowable nonstormwater discharges in subsection (a) provided:
- (1) The discharge or flow in question has been determined by the TCEQ or city manager to be a significant contributor of a pollutant or pollutants to water in the state or the MS4; and
  - (2) Written notice of such determination has been provided to the discharger.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-127. - Illicit connections prohibited.

It is unlawful for any person to construct, use, maintain, or continue the existence of an illicit connection. Illicit connections may be terminated by order of the city manager without prior notice.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-128. - Suspension of MS4 access.

- (a) The city manager may, without prior notice, issue an emergency order suspending MS4 discharge access when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. If the person who receives the suspension order fails to comply, the city manager may take steps to prevent or minimize damage to the MS4 or to minimize danger to the public.
- (b) Access may not be reinstated without written approval from the city manager.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Secs. 54-129—54-139. - Reserved.

### DIVISION 3. - CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 54-140. - Construction site.

- (a) A construction site includes all areas where construction activity which is all or part of a common development or project is occurring, proposed to occur, or has occurred, irrespective of whether that construction is in compliance with this chapter [article], irrespective of whether that construction activity is ongoing or temporarily suspended for any purpose, and irrespective of whether the city manager has granted authorization to undertake the construction activity. A construction site shall encompass:
  - (1) All land and surface water areas where construction activities of any type, including all areas of land surface disturbed by or as a consequence of the construction activities or other activities in support of the construction activities, are undertaken as part of a common plan of development or project;
  - (2) All areas of land to be disturbed by construction of a common plan of development or project, irrespective of whether such construction is undertaken or planned to be undertaken in one phase or stage or different phases or stages and irrespective of whether such construction is undertaken or planned to be undertaken at different, separate, or simultaneous times;
  - (3) All areas of land where the land is to be disturbed by construction of a common plan of development or project, irrespective of whether undertaken at contiguous or separate locations within the general area encompassed by the common plan of development or project, provided such boundary lies on or is within the boundary of property collectively owned or leased by one or more parties undertaking any or all of the construction activities; and
  - (4) All areas of ongoing, temporarily suspended, yet-to-be undertaken, and completed construction encompassing the totality of the construction activities, irrespective of whether any or all the construction activities are within compliance with this chapter.
- (b) The city manager shall have the right to redefine, for purposes of compliance with this chapter [article], the limits of a construction site in extent and amount necessary and sufficient in the judgment of the city manager to prevent the actual or potential discharge of pollutants from the construction site to the MS4 or waters of the U.S., provided the limits lie on or within the boundary of property collectively owned or leased by one or more operators undertaking any or all of the construction activities at the site.
- (c) A construction site shall cease to be a construction site only at such time that all requirements for closure of the construction site as specified by this chapter [article] and in the stormwater permit have been met, at which time the stormwater permit will automatically terminate.

- (d) The stormwater permit coverage will automatically terminate two years after the permit issuance date. If a permit is needed beyond the termination or expiration date, a new permit must be issued.
- (e) A construction site for which active and ongoing on-site construction activities have halted for a period of 21 continuous calendar days and for which proper closure actions as required by this chapter [article] have not been conducted, shall be considered in violation of this chapter, unless the construction site owner and/or operator has demonstrated to the satisfaction of the city manager that:
  - (1) Such lack of active and ongoing on-site construction activity is a result of only temporary suspension of activities; and
  - (2) Temporary stabilization practices were initiated no later than 14 calendar days after the site becoming inactive.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-141. - Adoption of the stormwater management guidance document.

The Brazoria County Stormwater Quality Coalition MS4 Construction Guidance Document is adopted to ensure stormwater entering the navigable waters of the United States from the city's municipal separate storm sewer system does not violate the terms of the city's stormwater national pollution discharge elimination system permit. The guidance document contains suggested best management practices that owners, developers, and contractors should consider adopting to help control and reduce pollutants that are transported by stormwaters and technical guidance related to erosion and sediment controls and other measures to reduce pollutants from new construction projects. The manual can be found at [www.ms4web.com/bcswqc](http://www.ms4web.com/bcswqc).

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-142. - Stormwater permit.

- (a) The owner and/or operator of a construction site must apply for a stormwater permit at least ten days prior to the start of any construction activity. Construction must be started no later than 180 calendar days after the date the stormwater permit is issued. Failure to begin within 180 calendar days shall render the stormwater permit void.
- (b) The stormwater permit must be posted at the construction site.
- (c) The owner and/or operator of a construction site may apply for a change in the date of commencement of construction or the date of termination of construction specified in the stormwater permit, this application must be made at least two working days prior to:
  - (1) The date of the proposed change for commencement; and/or
  - (2) The date of the termination date.
- (d) If for any reason the stormwater permit is suspended, revoked, terminated, or voided, construction activity at the site shall immediately cease.
- (e) Application for amendment to a stormwater permit can be made at any time ten or more working days prior to the time identified in the stormwater permit for completion of construction activities, provided the person(s) making application is not in violation of this chapter [article]. An appropriately modified stormwater quality plan shall also be provided at the time of application for amendment to the city manager. Construction undertaken in accordance with the amended stormwater permit shall not commence until the amendment is approved by the city manager. Approval of such amendment does not relieve the applicant or owner and/or operator from any or all administrative enforcement remedies, judicial enforcement remedies, enforcement actions, or other remedies allowed by law.

- (f) In the event that the operator of the construction site changes within ten working days of the change, any and all stormwater permits, and stormwater quality plans, permits, plans, or notices must be amended to reflect the must name of the new operator.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-413. - Same—Contents.

The stormwater permit shall contain the following:

- (1) Stormwater quality plan;
- (2) Address or other description of location of the construction site;
- (3) Name, address, and telephone number of the construction site owner and/or operator and the operator's on-site representative, either the property owner or lessee, and name and address of general construction contractor, if different from property owner or lessee;
- (4) Earliest date of commencement of construction activity;
- (5) Proposed dates of termination of construction activity, completion of final stabilization activities, and closure of the site;
- (6) Any other information the city manager may deem necessary; and
- (7) Certification by the applicant for the stormwater permit that the information provided on the stormwater permit application is true and accurate.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-144. - Same—Exemptions.

Exemptions from the requirements for a stormwater permit and stormwater quality plan shall apply for the following situations or conditions:

- (1) The construction activity is undertaken at a single or multiple family residential property site for the sole purpose of maintenance of the residential property site; and
- (2) The construction is necessary on an emergency basis because of imminent harm or endangerment to the public or environment, in which case the construction may by continued only so long as such imminent harm or endangerment or threat of harm or endangerment exists.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-145. - Same—Waiver.

The city manager may provide a waiver to the requirement for a stormwater permit upon the written request of the owner and/or operator seeking such waiver. The waiver is to be provided only if the construction for which waiver is sought is demonstrated to the satisfaction of the city manager to meet all of the following conditions:

- (1) The waiver will not contribute to a violation of this chapter [article] or any permit or license the city may hold to discharge stormwater;
- (2) The construction activity is of such size, extent, magnitude, or location as to neither allow, cause, or have potential to cause a significant discharge of sediments or other pollutants to the city's MS4 or waters of the United States;

- (3) There is a compelling public interest for issuance of a waiver;
- (4) It is in the general interest of the health and safety of people in the city or protection of the environment that such waiver be provided, such interest not to be based upon cost or economic considerations; and
- (5) Other such conditions the city manager may deem necessary to ensure that significant discharge of sediment and other pollutants does not occur.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-146. - Stormwater quality plan.

- (a) [Preparation of plan.] The Stormwater quality plan shall be prepared in accordance with the Brazoria County Stormwater Quality Coalition MS4 Construction Guidance Document and best management practices (BMPs). The objective of the plan is to identify potential sources of pollution, including sediment, which will affect the quality of stormwater discharges associated with construction and development. The plan must describe the implementation of BMPs that will be used to reduce the pollutants in stormwater discharges associated with construction and post-development runoff. Stormwater quality plans shall be retained on site during the course of construction and shall be available for inspection by the city upon request.
- (b) Contents of stormwater quality plan.
  - (1) Site description.
    - a. Total area of the site, and total disturbed area, including off-site staging/storage areas;
    - b. A description of the existing vegetation at the site, including coverage;
    - c. The location of other sources of pollution, such as vehicle fueling, storage of chemicals, concrete washout areas, etc.; and
    - d. The name of the receiving water(s) and description of any outfalls (size, type, and location), if the discharge is to a MS4, the name of the system, the location of the storm sewer discharge, and the ultimate receiving water(s).
  - (2) Construction documents.
    - a. A description of the construction activity;
    - b. A copy of the development plans; and
    - c. Construction schedule.
  - (3) Best management practices (BMPs). The BMPs must include locations and descriptions of control measures for each phase of development, including before clearing and grading activities begin; during all phases of construction; and postconstruction/postdevelopment.
  - (4) Control measures.
    - a. Construction phase control measures should include, but are not limited to, the following:
      1. Temporary sediment control measures.
        - a) Silt fence;
        - b) Sand bag berms;
        - c) Hay bales;
        - d) Check dams;
        - e) Interceptor swales/dikes.
      2. Temporary stabilization measures.

- a) Temporary seeding;
  - b) Erosion control blankets/matting;
  - c) Mulch/compost;
  - d) Temporary sodding.
3. Final stabilization measures.
- a) Permanent seeding;
  - b) Permanent sodding;
  - c) Impervious surfaces.
- (c) [Postconstruction phase.] Postconstruction phase control measures shall be incorporated into the stormwater quality plan to preserve predevelopment hydrologic regimes. These control measures do not apply to residential home construction. Postconstruction phase control measures should include, but are not limited to, the following
- (1) Velocity dissipation measures.
- a. On-site
    - i) Vegetated swales;
    - ii) Check dams;
    - iii) Vegetated filter strips.
  - b. Off-site.
    - i) Surrounding local topography;
    - ii) Concrete-lined drainage channels;
    - iii) Low velocity drainage channels.
- (2) Predevelopment peak flow preservation.
- a. On-site.
    - i) Detention basins/ponds;
    - ii) Constructed wetlands;
    - iii) Bio-retention;
    - iv) Wet basins.
  - b. Off-site.
    - i) In-line detention;
    - ii) Outfall pump systems;
    - iii) Off-site (regional) detention;
    - iv) Low velocity drainage channels.
- (3) Longterm maintenance of on-site postconstruction control measures.
- a. For new and significant redevelopment projects that are determined by the city to require on-site control postconstruction control measures such as detention ponds, constructed wetlands, bio-retention systems, the developer or the person or persons who will be responsible for the maintenance of the control measures shall execute an affidavit that states that postconstruction control measures shall be in place and maintained for as long as required.

- b. The affidavit must be submitted to the city manager no later than ten calendar days before the commencement of construction activities and will serve as a legal commitment to the city.
  - c. The city manager may also require that a maintenance bond be issued to ensure the maintenance is performed according to the said legal commitment.
- (4) Inspections. The plan shall provide that qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.
- (5) Revisions to stormwater quality plan.
- a. The stormwater quality plan shall accurately reflect site conditions and the construction activities proposed to be undertaken. Revisions necessary to maintain an accurate and up-to-date stormwater quality plan shall be made in a timely fashion but in no case later than two working days after the occurrence of conditions or activities requiring such revisions.
  - b. If the conditions or activities described by a stormwater quality plan revision could be reasonably expected to result in an increase in the actual or potential discharge of pollutants from the site, such revision must be approved by the city manager prior to implementation of the proposed revision.
  - c. If the city manager does not approve or reject of the revision within ten working days, the revision(s) shall be assumed to be approved.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-147. - Stormwater pollution prevention plan (SWP3).

- (a) For a construction site that is one or more acres but less than five acres or is five or more acres and that is required by state or federal regulation to have a SWP3, the SWP3 shall be prepared in accordance with applicable state and federal regulations.
- (b) Any SWP3 required by federal or state regulation shall be retained on site during all phases of construction and a copy must be submitted to the city/county. Failure to produce such required SWP3s shall be grounds for issuance of a stop work order.
- (c) The city manager may require additional information, plans, or specifications in an SWP3 for a construction site if the city manager determines such additional information, plans, or specifications are necessary to prevent the discharge of pollutants to the MS4 or waters of the U.S.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Secs. 54-148—54-164. - Reserved.

DIVISION 4. - CIVIL ENFORCEMENT

Sec. 54-165. - Responsibility of other entities.

- (a) Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and individually responsible for compliance with the requirements in this section.
- (b) Any contractor or subcontractor on a site of construction activity who is not an owner or operator but who is responsible under his/her contract or subcontract, for implementing a best management practices control measure, is jointly and individually responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-166. - Right of entry.

The city manager and/or appointed representative may, where reasonable cause exists, with or without a warrant, enter upon any property for examination of the same to ascertain whether a violation of the requirements of this chapter [article] exists and shall be exempt from any legal action or liability on account thereof.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-167. - Stop work order.

- (a) Whenever the city manager determines that there is a violation on a construction site of any provision of this chapter [article], or any order issued hereunder, the city manager may issue a stop work order (SWO) for that construction site.
- (b) Unless express written exception is made by the city manager, the SWO shall prohibit any and all further construction activity at the site, and shall bar any further inspection or approval by the city of any work associated with a building permit, stormwater permit, or any other city approval necessary to commence construction or to assume occupancy at the site.
- (c) Issuance of an SWO shall not be a bar against, or a prerequisite for, taking any other action against the construction site owner and/or operator.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-168. - Notification of violation (NOV).

- (a) When the city manager finds that any person has violated, or continues to violate, any provision of this chapter [article] or any order issued hereunder, the city may serve upon that person a written NOV. Within ten calendar days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention of recurrence thereof, including specific required actions, shall be submitted by the alleged violator to the city manager. If the alleged violator denies that any violation occurred, or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the city manager within ten calendar days of receipt of the notice.
- (b) Submission of an explanation or plan in no way relieves the alleged violator of liability for any violations of this chapter [article] or any state or federal regulation occurring before or after receipt of the NOV.
- (c) Nothing in this section shall limit the authority of the city manager to take any action, including emergency action or any other enforcement action, without first issuing a NOV.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-169. - Consent orders.

The city manager may enter into consent orders, assurances of voluntary compliance, or other written agreements with the owner and/or operator for noncompliance with any provision in this chapter [article] or any order issued hereunder. Such agreements may include specific action to be taken to correct the noncompliance within a time period specified by the agreement. Such agreements shall have the same force and effect as administrative orders issued pursuant to this chapter [article] and shall be judicially enforceable.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-170. - Compliance order.

- (a) When the city manager finds that any person has violated or continues to violate any provision of this chapter [article] or any order issued hereunder, the city manager may issue a compliance order to the violator directing that the violator come into compliance with this chapter within a specified time limit. Compliance orders also may contain other requirements to address the noncompliance, including self-monitoring and implementation of best management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the U.S.
- (b) A compliance order does not relieve a person of liability for any violation, including any continuing violation.
- (c) Issuance of a compliance order shall not be a bar against, or a prerequisite for, any other action against the violator.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-171. - Remediation, abatement and restoration orders.

- (a) When the city manager finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, and the city manager has reasonable evidence to suspect that such a violation has adversely affected the MS4 or waters of the United States, the city manager may issue a remediation, abatement and restoration order to the violator directing said violator to undertake and implement any appropriate action the city manager may designate to remediate or abate any adverse effects of the violation upon the MS4, and to restore any part of the MS4 within the city that has been harmed. Such remediation, abatement, and restoration actions may include but shall not be limited to:
  - (1) Monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, or restoration actions;
  - (2) Confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination.
  - (3) Prevention, minimization, or mitigation of any damage to the public health or the environment that may result from the violation; and
  - (4) Restoration or replacement of city property or natural resources damaged by the violation.
- (b) The remediation, abatement, and restoration order may direct that the remediation, abatement, or restoration be accomplished on a specified compliance schedule and be completed within a specified period of time.
- (c) The cost for preparation, implementation, construction, and maintenance of any remediation, abatement, or restoration as may be ordered by the city manager shall be borne by the person to whom the city manager has issued such order.

- (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.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-172. - Emergency cease and desist orders.

- (a) When the city manager finds that any person has violated or continues to violate any provision of this chapter [article] or any order issued hereunder, or that the person's past violations are likely to recur, and that the violation(s) has 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 city manager may issue an emergency cease and desist order to the violator directing said violator to immediately cease and desist all such violations and directing the violator to:
  - (1) Immediately comply with all chapter [article] requirements;
  - (2) Terminate any discharges which the city manager determines to present an imminent or substantial endangerment to persons or to the environment; and
  - (3) Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations, terminating the discharge or both
- (b) Any person to which an emergency cease and desist order has been directed, shall, upon receipt of such order, immediately take action to stop or eliminate the endangering discharge. In the event of said person's failure to immediately comply voluntarily with said order, the city manager may take such action(s) as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States or endangerment to persons or to the environment. Such actions may include, but are not limited to, immediate termination of water supply, sewer connection or other municipal utility service provided to said person; to any facility owned, leased or operated all or in part by said person; or to any site for which said person is all or in part an owner or lessee.
- (c) The city manager shall allow the person to whom an emergency cease and desist order has been issued to recommence discharges when the city manager determines that the period of endangerment has passed, unless further termination proceedings are initiated against the person to whom the order was issued.
- (d) A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a written statement, in a form as may be acceptable to the city manager, describing the causes of the harmful discharge and measures taken or to be taken within a timely fashion to prevent any future occurrence, to the city manager within 14 calendar days of receipt of the emergency order.
- (e) Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-173. - Appeals.

- (a) Any person adversely affected by a decision under this chapter [article], with the exception of a citation, may appeal the decision to the city manager or the city manager's designee within 15 calendar days from the date of the adverse decision. The appeal must be in writing and set forth specifically why the decision should be considered for relief.

- (b) The effect of any order, except for an emergency cease and desist order, shall be stayed pending the appeal unless the city manager makes a written determination to the contrary. An emergency cease and desist order shall not be stayed pending appeal.
- (c) Within 14 calendar days of the appeal, the city manager or his designee shall either:
  - (1) Grant the petition and withdraw or modify the order;
  - (2) Deny the petition if there is no material issue of fact; or
  - (3) Schedule a hearing on the petition. Written notice of the hearing shall be sent to the appellant. At the hearing, any interested party may present evidence and testify.
- (d) After the hearing, the city manager shall grant the petition and withdraw or modify the order or deny the petition.
- (e) The city manager's ruling shall be final.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Secs. 54-174—54-189. - Reserved.

#### DIVISION 5. - CRIMINAL PENALTIES

Sec. 54-190. - Violations of chapter [article].

Any person who violates a provision of this chapter [article] or any order issued hereunder shall be subject to a fine as set forth in section 1-8 of this Code. No culpable mental state is required.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-191. - Public nuisance.

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

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-192. - Remedies not exclusive.

The remedies listed in this chapter [article] are not exclusive of any other remedies available under any applicable federal, state, or local law.

(Ord. No. 2010-7, Exh. A, 3-25-10)

Sec. 54-193. - Fees.

- (a) The city may adopt reasonable fees for reimbursement of costs of implementing this chapter, which costs may include, but not 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 issuance of permits;
  - (3) Fees for review of notices and plans for construction, termination of construction, and stormwater pollution prevention control, irrespective of any acceptance or rejection of such notices or plans by the city manager;
  - (4) Fees for conduct of site inspections by the city when requested by an operator of a site or facility, irrespective of whether such inspection is required by this chapter [article];
  - (5) Fees for site inspection by the city pursuant to determination of compliance to conditions of a conditional notice of termination of construction;
  - (6) Fees for responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and
  - (7) Other fees as the city may deem necessary to carry out the requirements contained in this chapter [article].
- (b) Reserved.
- (c) All fees shall be adopted by separate resolution of the city council of the city specifically referring to this section.
- (d) The stormwater permit fees and the fees for spills relate solely to the matters covered by this chapter [article] and are separate from all other fees, fines, and penalties chargeable by the city.

(Ord. No. 2010-7, Exh. A, 3-25-10)