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DIVISION 4. STORMWATER QUALITY ORDINANCE

***DIVISION 4. STORMWATER QUALITY ORDINANCE*** <sup>[5]</sup>

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**Sec. 106-126. Interpretation.**

- (a) This division sets forth the administrative procedures, standards, and enforcement remedies which shall be used by the city in meeting the requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Separate Storm Sewer System (MS4) General Permit as promulgated by the NPDES Permitting Authority.
- (b) The provisions of this chapter shall be regarded as the requirements for the protection of the public health, safety, general welfare, and environment.
- (c) This chapter is not intended to interfere or conflict with, abrogate, or annul any other regulation, ordinance, statute, or provision of law.
- (d) Whenever a provision of this chapter and a provision of any other law, ordinance, resolution, rule, or regulation of any kind, including any other provision of this Ordinance, contains any restrictions covering the same subject matter, the more restrictive shall govern.

(Ord. No. 2009-14, § I, 8-24-09)

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**Sec. 106-127. Intent and objectives.**

- (a) *Intent.* The intent of this division is to comply with regulations set forth by the Texas Pollution Discharge Elimination System (TPDES) Phase II MS4 General Permit No. TXR040000.
- (b) *Objectives.* The objectives of this division are protecting the quality of water in the city's drainage ways and subsequent receiving waters in accordance with federal, state and local regulations.

(Ord. No. 2009-14, § II, 8-24-09)

**Sec. 106-128. Administration.**

Except as otherwise provided herein, the city building official, shall administer, implement, and enforce the provisions of this division. Any powers granted to, or duties imposed upon the city building official, may be delegated to an appointed representative.

(Ord. No. 2009-14, § III, 8-24-09)

**Sec. 106-129. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this division shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this division.

(Ord. No. 2009-14, § IV, 8-24-09)

**Sec. 106-130. Abbreviations.**

The following abbreviations, when used in this division, shall mean the following:

BMP - Best management practice.

MS4 - Municipal separate storm sewer system.

NOTC - Notice of termination of construction.

NOV - Notice of violation.

NPDES - National Pollution Discharge Elimination System.

SWO - Stop work order.

SWP3 - Stormwater pollution prevention plan.

TCEQ - Texas Commission of Environmental Quality.

TPDES - Texas Pollution Discharge Elimination System.

(Ord. No. 2009-14, § V, 8-24-09)

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**Sec. 106-131. Definitions.**

For the purposes of this division, unless a provision explicitly states otherwise, the following shall mean:

*Affidavit.* A sworn statement in writing, submitted by a person, or persons, to the city building official, that is to be used as a legal document committing the said person to a long-term maintenance agreement with the city for maintenance of post-construction control measures.

*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; discharges from concentrated aquatic animal production facilities as defined in 40 CFR § 122.24; or discharges from residential irrigation or landscape watering.

*Applicant.* Any person that submits an application for a stormwater permit and is (1) the owner of the property upon which construction is proposed or is taking place; or (2) the lessee if the lessee undertakes development of the property under the terms of the lease.

*Authorized representative.* A person delegated authority to act on behalf of another for the purpose of complying with specified requirements of this division.

*Best management practices (BMPs).* Schedules of activities; prohibitions of practices; maintenance procedures; material storage shelters or covers; drainage management; runoff control devices or structures; retention or detention structures; trapping, separating, or settling devices; spill prevention or control devices and tools; waste treatment plants and devices; managed waste disposal devices and procedures; and other management practices as approved by the city/county to prevent or reduce the pollution of Waters of the U.S.

*City.* The City of Nederland, Texas.

*City building official.* Person appointed to the position of city building official, or his or her duly appointed representative.

*City council.* The City Council of the City of Nederland.

*Closure activities.* Activities, or the process thereof, that result in the final stabilization of a construction site and leave the site in good repair.

*Commencement of construction.* The first disturbance of soils associated with or caused by move-in of equipment, installation of access roads or trails, storage of materials or equipment, clearing, grading, demolition, building, excavation or similar activities at a construction site.

*Compliance order.* An order issued by the city building official requiring a discharger to comply with this division by means specified in the order.

*Consent order.* An order issued by the city building official to which a discharger agrees to bring the discharge into compliance to this division.

*Construction.* Activities involving clearing, grading, demolition, excavation, filling, or building of above and below ground structures and buildings, support and auxiliary facilities, transportation facilities, container and containment structures, above and below ground utilities and associated auxiliary facilities, pipelines and conveyances, and similar activities undertaken for public purposes or needs; for preparation of land, structures, or facilities for commercial purposes, use, or sale; or for preparation of land, structures, or facilities for industrial purposes, use, or sale.

*Construction site.* The entire location where any construction or construction related activities occur which are part of a common development or project.

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

*Discharge permit.* A NPDES permit, a TPDES permit or other state or federally issued permit or license for the discharge of waste or stormwaters to the water of the United States.

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

*Emergency cease and desist order.* An order issued by the city building official requiring immediate cessation of a discharge because of imminent endangerment to the public or the environment.

*Facility.* Any building, structure, installation or area of activity from which there is or may be a discharge of a pollutant, excluding a construction or grading site.

*Final stabilization.* The condition, or the activities leading thereto, of a construction site wherein all soil disturbing activities at the site have been completed, and a uniform perennial vegetative cover, or equivalent permanent erosion prevention measures, has been established over at least 70 percent of all areas not paved or covered by permanent structures or impervious surfaces.

*Garbage.* Putrescible animal and vegetable waste materials from the handling, preparation, cooking or consumption of food, including waste materials from markets, storage facilities and the handling and sale of produce and other food products.

*Guidance document.* The guidance document is a document produced by the city that serves as the detailed technical specifications, procedures and other materials related to or required by the stormwater permit and stormwater quality plan.

*Harmful.* Causing pollution of waters in the state or waters occurring in the MS4.

*Hazardous substance.* Any substance listed in Table 302.4 of 40 CFR Part 302.

*Illicit connection.* Any connection to a stormwater conveyance without stormwater permit or exemption from prohibition of such connections as required by this division.

*Illicit discharge.* A discharge of liquid or solid wastes, or combination thereof, which is discharged to a stormwater conveyance without stormwater permit or exemption from prohibition of such discharge as required by this division.

*Impervious.* A condition of the land surface for which more than 90 percent of the rainfall on the land surface would be reasonably expected to run off.

*Lessee.* The person who leases a construction site or industrial or commercial facility and acts as an owner in regard to the conduct of construction at a construction site or operation of the facility at an industrial or commercial facility.

*Maintenance bond.* Legally enforceable written agreement whereby an owner, lessee, or organization guarantees proper maintenance of drainage features or water quality control structures for a certain period of time.

*Maximum extent practicable.* A standard for water quality that applies to all MS4 operators regulated under the NPDES program. Since no precise definition of MEP exists, it allows for maximum flexibility on the part of MS4 operators as they develop and implement their programs to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the administrator or the state determines appropriate for the control of pollutants.

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*MS4.* The municipal separate storm sewer system, incorporating the entire system of stormwater conveyances, but not sanitary or industrial wastewater sewers, or a single conveyance in such entire system, natural or manmade, lying within the boundaries of the city.

*MS4 permit.* The TPDES permit issued to the city and other co-permittees for the discharge of stormwaters from the MS4.

*Municipal separate storm sewer system (MS4).* Stormwater conveyances lying within the corporate limits of the city, including but not limited to, stormwater sewers, inlets, catch basins, traps, gutters, drains, ditches, culverts, canals, ponds, and other stormwater conveyances, both natural and manmade, designed or used for collecting or conveying stormwater, and which are not used for collecting or conveying sewage.

*Notice of violation (NOV).* A legal notice issued by the city building official indicating a discharge is in violation of this division and that the violator must eliminate such discharge.

*Open space design.* A low impact site design technique that concentrates dwellings in a compact area in one portion of the development in exchange for open space and natural areas elsewhere on the site. Open space designs are used to reduce impervious surfaces, stormwater pollutants, and the loss of natural areas on a site.

*Operator of a construction site.* The person or persons associated with a large or small construction activity that is an operator as defined below:

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

*Outfall.* The outlet of a body of water, in particularly, the point where a storm conveyance reaches its receiving water.

*Owner.* The person who owns a facility, property on which a facility occurs, part of a facility, or part of the property on which a facility occurs; in the case of a mortgaged facility or property, the person who has a mortgage on the property and who will obtain, upon proper payment to a financial institution, ownership of the property; in the case of a facility or property for which a person has an option to purchase and such person acts, in effect, as an owner. Also, the person who owns a site or facility and who has ultimate financial responsibility for activities conducted at the site or facility.

*Person.* Any individual; group of people by virtue of contract or mutual consent acting as a single entity; group of people assigned joint responsibility under requirements of this Ordinance; partnership; co-partnership; firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity; or the legal representatives, agents, or assigns of any person as defined in this paragraph. This definition includes all federal, state, and local governmental entities.

*Petition for reconsideration.* Written document submitted by a person to the public works director requesting reconsideration of a previously issued SWO; compliance order; remediation, abatement, and restoration order; or emergency cease and desist order.

*Pollutant.* Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged

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into water. The term "pollutant" does not include tail water or runoff from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pasture land, and farm land.

*Pollution.* The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the U.S. that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, 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.

*Receiving waters.* Any water of the state that accepts stormwater runoff as overland sheet flow, channelized flow from a manmade or natural drainage channel, or similar structure, and is considered to be the ultimate destination of the stormwater.

*Remediation, abatement, and restoration order.* A legally issued order by the city building official to correct or repair damage; stop, or otherwise control pollutant discharge; and/or to rehabilitate and return to original quality some condition in the environment.

*Rubbish.* Nonputrescible solid waste, excluding ashes, that consist of (1) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves or similar materials; or (2) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

*Runoff coefficient.* A measurement of the amount of the precipitation that falls on a specific surface actually ends up as stormwater runoff.

*Scour velocity.* The velocity, measured in feet per second, at which water has the ability to cause erosion. Scour velocities depend on topography, soils, and runoff rates.

*Show cause hearing.* A hearing for which a violator of this division must provide reason why a proposed enforcement action by the city building official should not be undertaken.

*Significant development/redevelopment.* A development or redevelopment project that results in a net increase of impervious surface area by one or more acres.

*Site.* 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.

*Solid waste.* Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, municipal, commercial, mining or agricultural operations, or from community and institutional activities.

*State.* The State of Texas.

*Stop work order (SWO).* A legal order issued by the city building official to stop construction because of noncompliance to this division.

*Stormwater.* Water derived solely and directly from rainfall or snowmelt runoff and appearing as overland flow, flow in drainage conveyances, or flow in natural watercourses and manmade waterways.

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

*Stormwater pollution prevention plan (SWPPP or SWP3).* A plan that describes the practices, and the procedures for their implementation, that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity at a facility. Plan must be approved and/or sealed by a professional engineer or a certified professional in erosion and sediment control (CPESC).

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*Stormwater quality plan.* A plan describing how construction is to be performed and how the site closure is to be accomplished, including post-construction control measures, at a construction site. A stormwater quality plan is required to obtain a stormwater permit from the city.

*Texas Pollution Discharge Elimination System (TPDES) permit.* Texas Pollution Discharge Elimination System permit issued by the TCEQ for the discharge of stormwaters pursuant to authority delegated to the state by the EPA for issuance of TPDES permits.

*TPDES Permitting Authority* — The environmental agency that is responsible for the oversight and enforcement of the TPDES Phase II MS4 Stormwater Permit is the TCEQ.

*Urban forestry.* A low impact site design technique that utilizes environmentally sensitive practices and promotes the planting of trees and other vegetation to help control erosion and improve the quality of stormwater runoff from construction sites within urbanized areas.

*Warning notice.* A notice issued by the city building official stating that a discharge is in violation of this division and requesting that the cause of discharge be investigated and that any violations be stopped.

*Waste, debris, trash.* Solid waste composed of mixtures of floatables and nonfloatables derived from identifiable and ill-defined residential, industrial and commercial sources, commonly consisting of miscellaneous containers, bottles, cans, packaging, dead vegetation, discarded construction materials, soil, silt, yard waste, paper, cardboard, bottle and container caps and tops, oil and grease, paint and painting supplies, discarded auto parts or repair or maintenance tools or supplies, discarded clothes, discarded furniture, discarded household appliances or discarded parts of furniture or appliances.

*Waters in the state (or water of 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 nonnavigable 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.

*Water quality standard.* The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed necessary by the state to protect those uses as specified in the Texas Administrative Code, or in Waters of the U.S. as specified by the federal Clean Water Act.

*Waters of the U.S.* 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 in which the use, degradation, or destruction 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 which under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

*Working day.* Any calendar day, 8:00 a.m. to 5:00 p.m., but not including Saturday, Sunday, any legal holiday recognized by the city or any day for which the city offices are closed for ordinary and general business.

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(Ord. No. 2009-14, § VI, 8-24-09)

**Sec. 106-132. Illicit discharges and connections.**

(a) *Discharge prohibitions.*

(1) *Prohibition of illicit discharge.* It is unlawful for a person to intentionally, knowingly, recklessly or with criminal negligence, create, cause, introduce or contribute to creating, causing or introducing any discharge that causes and/or contributes to a violation of applicable water quality standards, except for a discharge or flow composed of one or more of the following:

- a. Entirely of stormwater;
- b. Waterline flushing or other potable water sources;
- c. Landscape irrigation or lawn watering;
- d. Diverted storm flows;
- e. Rising ground water;
- f. Ground water infiltration to storm drains;
- g. Uncontaminated pumped ground water;
- h. Foundation or footing drains (not including active ground water dewatering systems);
- i. Crawl space pumps;
- j. Air conditioning condensation;
- k. Diverted stream flow or natural springs;
- l. Noncommercial washing of vehicles;
- m. Natural riparian habitat or wetland flows;
- n. Swimming pool draining;
- o. Firefighting/training activities;
- p. Any water source not containing pollutants;
- q. Discharges specified in writing by the city as being necessary to protect public health and safety;
- r. Dye testing, provided there is a verbal notification to the city prior to the time of the test; and
- s. Any nonstormwater discharge permitted under a TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the TPDES Permitting Authority, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(2) *Prohibition of illicit connections.* It is unlawful for a person to intentionally, knowingly, recklessly or with criminal negligence, construct, use, maintain, or allow continued existence of an illicit connection to the MS4.

(b) *Suspension of MS4 access.*



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- (1) Suspension due to illicit discharges in emergency situations.
  - a. The city building official may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States or as described in [section 106-136\(g\)](#).
  - b. If the violator fails to comply with a suspension order issued in an emergency, the city building official may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to the public.
- (2) *Suspension due to the detection of illicit discharge.*
  - a. Any person discharging to the MS4 in violation of this division may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The city building official will notify a violator of the proposed termination of its MS4 access. The violator may petition the city for a reconsideration and hearing (See [section 106-137](#)).
  - b. It is unlawful for a person to intentionally, knowingly, recklessly or with criminal negligence reinstate ms4 access to premises terminated pursuant to this section, without the prior written approval of the city building official.

(Ord. No. 2009-14, § VII, 8-24-09)

**Sec. 106-133. Construction stormwater management.**

(a) *General provisions.*

(1) *Construction related violations.*

- a. It is unlawful for a person to knowingly, intentionally, recklessly or with criminal negligence to engage in construction not conducted in accord with the requirements of this division.
- b. It is unlawful for a person to knowingly, intentionally, recklessly or with criminal negligence to engage in construction not initiated or terminated within the time frame authorized by the city building official by notice, permit or license when such authorization is required by this division.
- c. It is unlawful for a person to knowingly, intentionally, recklessly or with criminal negligence to not comply with requirements for timely application for a stormwater permit, a stormwater quality plan and/or a stormwater pollution plan (SWP3) as specified in this division.

(2) *Pollution prevention requirements.*

- a. Any and all owners and/or operators of a construction site and any and all other persons undertaking construction activities as a contractor or subcontractor at a construction site shall use best management practices pursuant to the construction permit to control, reduce, and prevent, to the maximum extent practicable, the discharge of pollutants to the MS4 and/or Waters of the U.S.
- b. The discharge of pollutants to the MS4 and/or Waters of the U.S. from activities conducted by said operator, contractor, or subcontractor include but is not limited to: Sediment, silt, earth, soil, dirt, sand and gravel; lime, liquids, solids, and semi-solids used for soil treatment, preparation, or amendment; concrete, slurries, grout, tar, and asphalt; construction vehicle cleaning and wash waters; construction vehicle maintenance fluids

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such as hydraulic fluids, lubricants, fuels, brake fluids, and coolants; hazardous or extremely hazardous materials; materials resulting from repair, renovation, or demolition such as concrete, reinforcing bar, steel, wire, tar paper, roofing materials, sheet rock, plaster, wood, cellar dirt and carpeting; residual and surplus construction materials; paint, paint thinner, paint equipment cleaner and wastewater from the cleaning of painting equipment and supplies; waste construction material packaging and containers; and construction trash, debris, and waste.

(3) *Stop work order (SWO).*

- a. Whenever the city building official determines that the operation of a construction site has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, as it may pertain to the operation of the construction site, the city building official may order that a SWO be issued.
- b. When a SWO is issued, it shall be issued to the operator of the construction site for which construction is to stop, be posted at the site, and distributed to all city departments and divisions whose decisions affect any activity at the site.
- c. Unless express written exception is made by the city building official, 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.
- d. Issuance of a SWO shall not be a bar against, or a prerequisite for, taking any other action against the construction site operator.

(b) *Construction site.*

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

- a. All land and surface water areas where the construction activities of any type, including all areas of land surface disturbed by or as a consequence of the construction activities or other activities in support of the construction activities, are undertaken as part of a common plan of development or project;
- b. All areas of land to be disturbed by construction of a common plan of development or project, irrespective of whether such construction is undertaken or planned to be undertaken in one phase or stage or different phases or stages and irrespective of whether such construction is undertaken or planned to be undertaken at different, separate, or simultaneous times;
- c. All areas of land where the land is to be disturbed by construction of a common plan of development or project, irrespective of whether undertaken at contiguous or separate locations within the general area encompassed by the common plan of development or project, provided such boundary lies on or is within the boundary of property collectively owned or leased by one or more parties undertaking any or all of the construction activities; and

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- d. All areas of ongoing, temporarily suspended, yet-to-be undertaken, and completed construction encompassing the totality of the construction activities, irrespective of whether any or all the construction activities are within compliance with this division.
- (2) *Redefining of construction site limits.* The city building official shall have the right to redefine, for purposes of compliance with this division, the limits of a construction site in extent and amount necessary and sufficient in the judgment of the city building official to prevent the actual or potential discharge of pollutants from the construction site to the MS4 or Waters of the U.S. to the maximum extent practicable, provided the limits so defined lies on or within the boundary of property collectively owned or leased by one or more operators undertaking any or all of the construction activities at the site.
- (3) *Cessation of construction site.* A construction site shall, for the purposes of this Ordinance, cease to be a construction site only at such time that all requirements for closure of the construction site as specified by this division have been met.
- (c) *Operators and applicants.*
- (1) *Operator responsibility.* A construction operator shall be fully responsible for compliance with all requirements of this division for construction activities, as may be applicable to the type of construction activities being conducted, proposed to be conducted, or that have been conducted by the operator at a construction site, including but not limited to making application for a stormwater permit, preparing a stormwater quality plan, and performing closure of the construction site.
- a. *Change in operator.* In the event that the operator of the construction site changes, all or in part, any and all stormwater permits, and stormwater quality plans for construction yet to be completed must name the new and continuing operators' names. Any permits, plans, or notices that have been issued or approved by the city for the construction to the original operator(s) must be reissued or re-approved, as appropriate, with the name(s) of the new operator(s) in the same manner as the original operator, such re-issuance or re-approval being obtained no later than ten working days after such change.
- (2) *Applicant.* For the purpose of any applications for construction activities that may be required by this Ordinance, an applicant is the person or persons making such application and is:
- a. An operator at the property upon which construction is proposed or is taking place.
- (3) *Division of responsibility.* In the event the operator of a construction site is more than one legal entity, the applicant/permittee shall be responsible and held liable for complying with the stormwater permit.
- (d) *Construction activities.*
- (1) *Types of construction activities.* Construction activities are those activities which result in exposure of raw soil on a temporary or permanent basis and may include, but are not necessarily limited to, one or more of the following activities or practices when such activities are done for the purpose(s) of:
- Smoothing,
  - Clearing,
  - Removing trees and vegetation,
  - Configuring or shaping the land surface or subsurface;

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- Modifying drainage, drainage patterns, drainage conveyances, or drainage facilities;
- Removing, destroying, or demolishing existing structures, surfaces or facilities;
- Preparing the land for construction of roads, highways, curbs, gutters, drainage devices, vehicle parking, buildings, structures, walls, roofs, floors, pads, foundations, tanks, basements, pipes, or utilities.

(2) *Construction conduct.*

- a. Any construction at a construction site shall be performed so as to reduce, to the maximum extent practicable, the discharge of sediments and other pollutants from the construction site.
- b. An owner and/or operator of a construction site shall maintain on-site and make available for inspection by the city building official any notice permit or license for construction, and any pollution control plan that may be required by this division or other state or federal regulation.
- c. Application for a stormwater permit shall be submitted to the city building official at least ten working days prior to beginning construction activities of any type, including clearing and leveling activities, for any construction site for which construction activities at the site will disturb in total one acre or more of land surface area.
- d. A stormwater permit, issued by the city building official prior to commencement of construction activities, shall be obtained for any construction site for which construction activities at the site will disturb in total one acre or more of land surface area or is part of a common plan of development that disturbs one or more acres of land.
- e. A stormwater quality plan shall be submitted to, and approved by, the city building official prior to commencement of any construction activity at a construction site for which a stormwater permit is required.
- f. The city building official shall require that a construction site of any size conform to any and all conditions of this division for construction activities if the city building official determines that such requirements are necessary to prevent a significant discharge of pollutants to the city's MS4 or Waters of the U.S., or are necessary because of imminent harm to the public or the environment.

(3) *Closure and final stabilization of construction site.*

- a. *Closure activities.* Construction activities at a site, for the purposes of this division, shall not be complete until proper closure of the site has been accomplished. Until such time proper closure has been achieved, the operator of the site is subject to all applicable requirements for conduct and completion of construction activities at the construction site. Any operator of a construction site shall complete all construction activities at a construction site in compliance with the requirements of this division for proper closure.
- b. *Proper closure.* Proper closure includes, but is not limited to, the following:
  - i. Final stabilization of the site;
  - ii. Removal of all construction surplus and residual materials, supplies, packaging, drums, cans, and containers;
  - iii. Removal of all surplus and residual soaps, cleaners, pastes, mastics, solvents, materials for soil amendment or preparation and similar construction materials;

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- iv. Removal of all excess, surplus, and unused construction vehicle maintenance fluids, including lubricants, fuels, brake fluids, and coolants;
  - v. Removal of all wastes, trash, and debris;
  - vi. Removal of any waste bins, enclosures, drums, or similar containers which are not intended to serve as permanent waste storage containers at the site;
  - vii. Removal of all temporary stormwater pollution control devices, structures, and materials;
  - viii. If not intended for removal in city approved plans or specifications for the site, and to the extent a construction operator or their activities are responsible for the damage or loss of function or capacity of stormwater conveyances and appurtenances:
    - 1) Repair or replacement of damaged stormwater conveyances and appurtenances;
    - 2) Repair or replacement of damaged drainage works and facilities; and
    - 3) Restoration of proper function and capacity of stormwater conveyances.
- (4) *Permit termination and expiration.* A construction sites permit is terminated automatically when all of the requirements listed under proper closure section of this division is met. Permit coverage will automatically terminate two years after the permit issuance date. If continued permit is needed beyond the termination or expiration date, a new permit must be issued.
- (5) *Inactive construction sites.* A construction site for which active and ongoing on-site construction activities have halted for a period of 14 continuous calendar days and for which proper closure actions as required by this division have not been conducted, shall be considered in violation of this division, unless the construction site owner and/or operator has demonstrated to the satisfaction of the city building official that:
- i. Such lack of active and ongoing on-site construction activity is a result of only temporary suspension of activities; and
  - ii. Site conditions are and will be maintained in a condition satisfactory to prevent the discharge of pollutants to the city's MS4 or Waters of the U.S. to the maximum extent possible during the period of temporary suspension of construction activities.
- (e) *Stormwater permit.*
- (1) *General provisions.*
- a. A stormwater permit authorizes a construction owner and/or operator to conduct construction activities. Obtaining a stormwater permit does not relieve an owner and/or operator of complying to any and all applicable requirements of this Ordinance exclusive of those dealing with construction.
  - b. A stormwater permit shall be obtained prior to the start of any construction activity at a site by application to the city building official by the owner and/or operator of the construction site at which construction occurs or is proposed, such application providing such information the city building official may require.
  - c. Application for a stormwater permit shall require the submission of a stormwater quality plan developed in accordance with the guidance document to the city building official for review, such plan shall provide information that will reduce the discharge of pollutants from the site to the maximum extent practicable.

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- d. The stormwater permit must be obtained from the city building official at least two working days prior to commencement of construction. Only that construction activity which is described in the stormwater permit can be undertaken.
  - e. The stormwater permit shall be posted at the construction site, and no construction activity can occur prior to the date of commencement, or after the date of termination, authorized by the stormwater permit.
  - f. Construction must be started no later than 180 calendar days after the issuance of the stormwater permit. Failure to begin construction within the specified time frame will render the stormwater permit void.
  - g. Application for a change in the date of commencement of construction or the date of termination of construction specified in a stormwater permit, must be made at least two (2) working days prior to: (1) the date of the proposed change for commencement; and/or (2) the date of the originally specified termination date or latest previously approved date of extension.
  - h. If for any reason the stormwater permit is suspended, revoked, terminated, or voided, construction activity at the site shall immediately cease.
- (2) *Contents of a stormwater permit.*
- a. Address or other description of location of the construction site;
  - b. Name and address of the construction site owner and/or operator, either property owner or lessee, and name and address of general construction contractor, if different from property owner or lessee;
  - c. Name, address, and business telephone number of the construction site owner and/or operator's on-site representative;
  - d. Earliest date of commencement of construction activity;
  - e. Proposed dates of termination of construction activity, completion of final stabilization activities, and closure of the site;
  - f. Practices to be employed for site stabilization during the course of the construction;
  - g. Description of means by which the site is to be stabilized during suspension of construction activity for periods of 14 or more days and permanently stabilized by the time of completion of construction activities;
  - h. Any other information the city building official may deem necessary, whether or not required of any other owner and/or operator making application for a stormwater permit; and
  - i. Certification by the applicant for the stormwater permit that the information provided on the stormwater permit application is true and accurate.
- (3) *Amendment to stormwater permit.*
- a. 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 division.
  - b. If the application for amendment to a stormwater permit requires a change in the stormwater quality plan in order for the stormwater quality plan to remain true and accurate

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should construction be undertaken in accordance with the amendment, an appropriately modified stormwater quality plan shall also be provided at the time of application for amendment to the city building official.

- (4) *Late filing of amendment to a stormwater permit.*
- a. If application for amendment to a stormwater permit is made less than ten working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and such activities or conditions are not authorized by the stormwater permit prior to application for amendment, the application shall be deemed to be a late filing of stormwater permit amendment.
  - b. A late filing of stormwater permit amendment shall meet all the same conditions and requirements as application submitted more than ten working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and include other such information the city building official may require.
  - c. Construction to be undertaken in accord with a late filing of stormwater permit amendment shall not be undertaken until such amendment is approved by the city building official.
  - d. Approval by the city building official of a late filing of stormwater permit amendment or payment of any fees for such filing shall not relieve the applicant from any or all administrative enforcement remedies, judicial enforcement remedies, enforcement actions, or other remedies allowed by this division.
- (5) *Exemptions.* Exemptions from requirements for a stormwater permit and stormwater quality plan shall apply for the following situations or conditions:
- a. The construction activity undertaken for the sole purpose of yard maintenance, landscaping, gardening or other short term minor ground disturbance activities not normally associated with construction and not requiring a building permit. This exemption does not cover landscaping or other stabilization activities required to properly close a permitted construction site.
  - b. The city building official determines 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 be continued only so long as such imminent harm or endangerment or threat of harm or endangerment exists;
  - c. The city building official may provide a waiver to the requirement for a stormwater permit upon the 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 building official to meet all of the following conditions:
    - i. Will not contribute to a violation of this division or any permit or license the city may hold to discharge stormwater;
    - ii. 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 U.S.;
    - iii. There is a compelling public interest for issuance of a waiver;
    - iv. 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 as they may apply to or affect the owner and/or operator seeking waiver of the permit.

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- (f) *Stormwater quality plan.* A stormwater permit quality plan is required for a city stormwater quality permit. The stormwater quality plan shall be prepared in accordance the guidance document and good pollution control practices. The plan must be prepared and/or approved by professional engineer or a certified professional in erosion and sediment control.

The main objective of the plan is to identify potential sources of pollution, including sediment, which may reasonably be expected to affect the quality of stormwater discharges associated with construction and development. The plan must describe the implementation of best management practices (BMPs), which 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.

(1) *Contents of stormwater quality plan.*

a. *Site description.*

- i. A description of the construction activity;
- ii. A copy of any development plans;
- iii. A proposed construction schedule;
- iv. Total area of the site, and total disturbed area, including off-site staging/storage areas;
- v. An estimate of the runoff coefficient before and after construction activities are completed, and existing data describing the soil and soil erosion potential.
- vi. A description of the existing vegetation at the site, including coverage;
- vii. The location of other sources of pollution, such as vehicle fueling, storage of chemicals, concrete washout areas, etc.; and
- viii. 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).

b. *Best management practices (BMPs).* The plan shall indicate locations for and descriptions of control measures that will be used. The plan should clearly describe the implementation of BMPs relevant to each phase of site development such as:

- i. Before clearing and grading activities begin;
- ii. During all phases of construction; and
- iii. Post-construction/post development.

c. *Control measures.*

- i. *Construction phase.* Construction phase control measures to be described in the stormwater quality plan may 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.



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- 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.
- ii. *Post-construction phase.* Post-construction phase control measures should be incorporated into the stormwater quality plan to preserve pre-development hydrologic regimes. Post-construction phase control measures to be described in the stormwater quality plan may 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.
  - 2) Pre-development peak flow preservation.
    - a) On-site.
      - i) Detention basins/ponds.
      - ii) Constructed wetlands.
      - iii) Bio-retention.
      - iv) Wet basins.
    - b) Off-site.
      - i) In-line detention.
      - ii) Outfall pump systems.
  - 3) Low impact development standards. For construction sites located within watersheds that are considered to be impaired by the Texas Commission for Environmental Quality, or in buffer zones designated by the city, the owner and/or operator of the site, may be required, at the discretion of the city building official, to utilize low impact development standards that include, but are not limited to:

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- a) Minimization of the width or size of:
    - i) Roads/streets.
    - ii) Sidewalks.
    - iii) Culs-de-sac.
    - iv) Parking lots.
  - b) Open-space design.
  - c) Urban forestry.
  - d) Roof drainage control.
- 4) Guidance documents for developers. The city will make available, upon request, a post-construction control measures guidance and low-impact development standards guidance for owners and/or operators, i.e. developers, of new and re-development projects.
- d. *Commitment of long term maintenance of on-site post-construction control measures.* For new and significant redevelopment projects that are determined by the city to require on-site control post-construction control measures such as detention ponds, constructed wetlands, bio-retention systems, or the like, the developer shall be required to make a long term commitment to the city for maintenance of the said control measure(s).
- i. An affidavit (supplied by the city), signed by the developer, or the person or persons who will be responsible for the maintenance of the control measure(s), must be submitted to the city building official no later than two calendar days after the date of termination of construction, and will serve as a legal commitment to the city. The affidavit must include provisions for transferring responsibility to a new party in the event that the property is sold, ownership of the property changes or the listed individual can no longer ensure adequate long term maintenance of the on-site post construction control measure. A copy of the affidavit must be filed with or attached to the deed of record for the subject property. Proof of this filing must be submitted at the time of application for a stormwater permit.
  - ii. Once an affidavit has been submitted to the city building official, the city building official may require that a maintenance bond be issued to ensure the maintenance is performed according to the said legal commitment.
- e. *Good housekeeping.* The plan shall include inspection and maintenance procedures during the entire construction phase to ensure that BMPs are in good and effective operation condition.
- i. Contractor inspections.
    - 1) A contractor's inspection of the entire construction site shall be performed every 14 calendar days and following a rainfall of at least 0.5 inches or every seven days.
    - 2) Complete an inspection report for each inspection performed.
    - 3) Inspection reports shall be retained on-site as part of the stormwater quality plan.
  - ii. Contractor maintenance.
    - 1) Maintenance shall be performed on applicable BMPs as soon as possible in areas identified in the inspection reports.

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- 2) Maintenance shall be performed in accordance with manufacturer's specifications or other sources determined by the city building official to be acceptable.
- f. *Revisions to stormwater quality plan.*
- i. 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 ten working days after the occurrence of conditions or activities requiring such revisions.
  - ii. If the conditions or activities described by a stormwater quality plan revision will result in an increase in the actual or potential discharge of pollutants from the site, such revision must be approved by the city building official prior to implementation of the proposed revision at least ten working days prior to the implementation of activities described by the revision.
  - iii. The city building official shall have ten working days to approve or reject a revision to a stormwater quality plan after submittal of a proposed revision. If the city building official does not issue an approval or rejection of the revision within ten working days, the revision(s) shall be assumed to be not approved.
- (c) *Stormwater pollution prevention plan (SWP3).*
- (1) For a construction site that is five or more acres and that is required by state or federal regulation to have an SWP3, the SWP3 shall be prepared in accordance with applicable state and federal regulations.
  - (2) For a construction site that is one or more acres but less than five acres and that is required by state or federal regulation to have an SWP3, the SWP3 shall be prepared in accordance with applicable state and federal regulations.
  - (3) Any stormwater pollution prevention plan required by federal or state regulation shall be retained on-site during all phases of construction and made available to inspection by the city upon request. Failure to produce such required SWP3s shall be grounds for issuance of a SWO.
  - (4) The city building official shall request and receive at the time of, or after application for a stormwater permit, a copy of any SWP3 required by federal or state regulation for discharge of stormwaters from a construction site. Failure to provide such requested pollution control plan within ten days of request shall be grounds for a SWO.
  - (5) The city building official may require additional information, plans, or specifications are provided in an SWP3 for a construction site if the city building official 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. 2009-14, § VIII, 8-24-09)

**Sec. 106-134. 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 discharging into stormwater, the storm drain system, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such

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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 city building official in person or by phone or facsimile no later than the next working day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city building official within three working days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be retained for at least eight years.

(Ord. No. 2009-14, § IX, 8-24-09)

**Sec. 106-135. Citizen reports of violations.**

- (a) *Report by any person.* Any person shall have the right to report to the city building official or an office designated by the city building official, any spill, release, illicit connection or other instance of anyone (as may be identified by name, title, employing company, legal identity, commonplace name, or other description) discharging into the MS4 or Waters of the United States, and any other violation of this Ordinance of which the person becomes aware.
- (b) *Action upon report.* The city building official or a designated city office shall receive all such reports by telephone, electronic mail transmission, in writing or in person. A written or electronic record of each such report will be maintained and kept on file for a period of at least eight years by the city, and a copy of the city's record of the report will be furnished to the reporting person upon request at no charge. Also upon request, the city building official will inform the person making such report of any action undertaken by the city in response to such report.

(Ord. No. 2009-14, § X, 8-24-09)

**Sec. 106-136. Enforcement.**

- (a) *Warning notices.*
  - (1) When the city building official finds that any person has violated, or continues to violate, any provision of this Ordinance, or any other order issued hereunder, the city building official may serve upon that person a written warning notice specifying the particular violation determined to have occurred and requesting the violator to immediately investigate the violation and initiate preventative or corrective actions to stop the conditions causing, contributing to or resulting in the violation.
  - (2) Investigation or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice.
  - (3) Nothing in this subsection shall limit the authority of the city building official to take any action, including emergency action or any other enforcement action, prior to issuing a warning notice.
- (b) *Notification of violation (NOV).*
  - (1) When the city building official finds that any person has violated, or continues to violate, any provision of this division, or any order issued hereunder, the city building official 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 building official. If the alleged violator denies that any violation occurred, or contends

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that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the city building official within ten calendar days of receipt of the notice.

- (2) Submission of an explanation or plan in no way relieves the alleged violator of liability for any violations of this division or any state or federal regulation occurring before or after receipt of the NOV.
  - (3) Nothing in this section shall limit the authority of the city building official to take any action, including emergency action or any other enforcement action, without first issuing a NOV.
- (c) *Show cause hearing.* The city building official may order any person who has violated, or continues to violate, any provision of this division, or any order issued hereunder, to appear before the zoning board of appeals and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this division.
- (d) *Remediation, abatement and restoration orders.*
- (1) When the city building official finds that any person has violated, or continues to violate, any provision of this division, or any order issued hereunder, and the city building official has reasonable evidence to suspect that such a violation has adversely affected the MS4 or Waters of the U.S., the city building official may issue a remediation, abatement and restoration order to the violator directing said violator to undertake and implement any appropriate action the city building official 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, provided such ordered actions are limited to actions lying within city boundaries. Such remediation, abatement, and restoration actions may include but shall not be limited to:
    - a. Monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, or restoration actions;
    - b. Confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination;
    - c. Prevention, minimization, or mitigation of any damage to the public health or the environment that may result from the violation; and
    - d. Restoration or replacement of city property or natural resources damaged by the violation.
  - (2) 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.
  - (3) The cost for preparation, implementation, construction, and maintenance of any remediation, abatement, or restoration as may be ordered by the city building official shall be borne by the person to whom the city building official has issued such order.
  - (4) An order issued under this subsection does not relieve the violator of liability for any violation, including any continuing violation.
  - (5) 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.

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(e) *Emergency cease and desist orders.*

- (1) When the city building official finds that any person has violated, or continues to violate, any provision of this division, 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 U.S. which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city building official 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:
  - a. Immediately comply with all ordinance requirements;
  - b. Terminate any discharges which the city building official determines to present an imminent or substantial endangerment to persons or to the environment; and
  - c. 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.
- (2) 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 building official may take such action(s) as deemed necessary to prevent or minimize harm to the MS4 or Waters of the U.S. 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; any facility owned, leased or operated all or in part by said person; or any site for which said person is all or in part an owner or lessee.
- (3) The city building official shall allow the person to whom an emergency cease and desist order has been issued to recommence discharges when the city building official determines that the period of endangerment has passed, unless further termination proceedings are initiated against the person to whom the order was issued.
- (4) 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 building official, 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 building official within 14 calendar days of receipt of the emergency order.
- (5) 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. 2009-14, § XI, 8-24-09)

**Sec. 106-137. Rights to reconsiderations, hearing and appeals.**

(a) Reconsideration of and hearing of petitions.

- (1) Any person subject to a stop work order, a remediation, abatement and restoration order; or an emergency cease and desist order may petition in writing the zoning board of appeals to reconsider the basis for the order within 14 calendar days of the original post mark of the affected person's order. The petition must be submitted to the city building official for transmittal to the zoning board of appeals.

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- (2) Failure to submit a written petition for reconsideration within 14 calendar days of the original post mark of the affected person's order shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
  - (3) In its petition for reconsideration, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.
  - (4) The effect of any remediation, abatement, and restoration order shall be stayed, pending the zoning board of appeals consideration of the petition for reconsideration, and any hearing thereon, unless the zoning board of appeals expressly makes a written determination to the contrary. The effectiveness of any emergency cease and desist order shall not be stayed pending the zoning board of appeals reconsideration, or any hearing thereon, unless the city building official or the zoning board of appeals expressly and in writing stays the emergency cease and desist order.
  - (5) Within 14 calendar days of the submittal of a petition for reconsideration, the zoning board of appeals shall either: (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, hold a hearing on the petition.
  - (6) Written notice of any hearing set by the zoning board of appeals as a result of a petition for reconsideration shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.
  - (7) The zoning board of appeals may conduct the hearing and take evidence, or may designate any employee of the city or any specially-designated attorney or engineer to:
    - a. Issue the name of the city notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
    - b. Take and gather evidence; and
    - c. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the zoning board of appeals for action thereon.
  - (8) At any hearing held pursuant to a petition for reconsideration, testimony taken shall be under oath and recorded. Any party is entitled to legal representation and may present his or her case or defense by oral or documentary evidence and may conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.
  - (9) After the zoning board of appeals has reviewed the evidence, the zoning board of appeals shall either: (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The zoning board of appeals may modify the order giving rise to the petition for reconsideration as may be the appropriate based upon the evidence and arguments presented at the hearing and the zoning board of appeal's action on the petition. Further orders and directives as are necessary and appropriate may be issued.
- (b) *Appeal.*
- (1) If a discharger or operator is penalized as a result of a stop work order; a remediation, abatement and restoration order; or an emergency cease and desist order, such discharger or operator may file a written appeal to the district court. The appeal must include evidence

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proving that the discharger or operator did not violate this division. The appeal must be filed within ten working days of the discharger or operator receiving the penalty.

- (2) Failure to submit an appeal within ten working days of the discharger or operator receiving the penalty shall be deemed to be a waiver of further administrative review.

(Ord. No. 2009-14, § XII, 8-24-09)

**Sec. 106-138. Civil and criminal penalties.**

- (a) *Civil remedies.* The city may invoke sections of the Texas Local Government Code and petition the courts of Jefferson County, Texas, through the city attorney or his designee, for injunctive relief or the civil penalties specified in this division, or both the specified injunctive relief and civil penalties.

- (b) *Criminal penalties.*

- (1) Any person who has violated any provision of this division, or any order issued hereunder, shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.

- (2) Any person who has intentionally, knowingly, recklessly, or with criminal negligence made any false statement, representation or certification in any application, record, report, plan, or other documentation filed or required to be maintained pursuant to this Ordinance, or any order issued hereunder, or who has intentionally, knowingly, recklessly, or with criminal negligence falsified, tampered with, or rendered inaccurate any monitoring device or method required under this division shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.

- (c) *Determination of fines.* In determining the amount of any fine imposed hereunder, the municipal court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

- (d) *Civil penalties.* Pursuant to V.T.C.A. Local Government Code, § 54.017, the city may recover a civil penalty of not more than \$1,000.00 per day for each violation of any provision of this division, if the city proves that:

- a. The person was actually notified of the provisions of the ordinance; and

- b. After the person received notice of the ordinance provision, the person committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.

(Ord. No. 2009-14, § XIII, 8-24-09)

**Sec. 106-139. Right of entry.**

The city building official and/or their appointed representative may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction, including the city's municipal court, enter upon any property for examination of the same to ascertain whether a violation of the requirements of this division and shall be exempt from any legal action or liability on account thereof.

(Ord. No. 2009-14, § XIV, 8-24-09)



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**Sec. 106-140. Violators deemed 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 division 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 including a possible lien on the property, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisances may be taken.

(Ord. No. 2009-14, § XV, 8-24-09)

**Sec. 106-141. Remedies not exclusive.**

The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the city building official to seek cumulative remedies.

(Ord. No. 2009-14, § XVI, 8-24-09)

**Sec. 106-142. Fees.**

(a) *Implementation fees.* The city shall adopt fees for reimbursement of costs of implementing this division, 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 building official;
- (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 division;
- (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 division.

(b) *Separation of fees.* The fees described above relate solely to the matters covered by this division and are separate from all other fees, fines, and penalties chargeable by the city.

(c) *Fee summary.*

Item	Minimum Amount, \$	Incremental Amount, \$ for each full or partial acre of a site in excess of 1 acre

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Stormwater permit fees		
On-time application for stormwater permit	\$45.00	\$45.00
Late filing of application for stormwater permit	\$90.00	\$90.00
On-time amendment of stormwater permit (with no net increase in site acreage)	\$45.00	0
On-time amendment of stormwater permit (with net increase in site acreage)- unit rate applies only to the increase in acreage	\$45.00	\$45.00 (for increase in acreage)
Late amendment of stormwater permit (with no net increase in site acreage)	\$90.00	0
Late amendment of stormwater permit (with net increase in site acreage)- unit rate applies only to the increase in acreage	\$90.00	\$90.00 (for increase in acreage)
Lifting of stop work order	\$25.00	\$25.00
Other Fees		
City response to spill	Direct cost + 50% of direct cost	

(Ord. No. 2009-14, § XVII, 8-24-09)

**Secs. 106-143—106-174. Reserved.**

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FOOTNOTE(S):

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**Editor's note**— Ordinance No. 2009-14, §§ I-XVII, adopted August 24, 2009, did not specifically amend the Code. Therefore, such ordinance has been added as amending division 4 to read as herein set out. Formerly, such division pertained to discharge of industrial waste and derived from Ord. No. 265C, §§ 2—29, 1-28-86. [\(Back\)](#)