Chapter 27
STORMWATER

ARTICLE I. IN GENERAL

Sec. 27-1. Acronyms.

BMP means best management practices.

CBZ means a creek buffer zone.

DCDM means the City's Drainage Criteria and Design Manual.

EPA means the federal Environmental Protection Agency.

MS4 means municipal separate storm sewer system.

NEC means no exposure certification.

NOC means notice of change.

NOI means notice of intent.

NOT means notice of termination.

NPDES means National Pollutant Discharge Elimination System

PST means a petroleum storage tank.

SWP3 means a storm water pollution prevention plan.

TCEQ means the Texas Commission on Environmental Quality.

TPDES means Texas Pollutant Discharge Elimination System.

mg/L means milligrams per liter.

Sec. 27-2. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Chapter, will have the meanings hereinafter designated. Additionally, all references to any federal or state regulation or act refer to the current regulation or act and any amendments thereto.

Agricultural stormwater runoff - Any stormwater or tail water runoff from orchards, cultivated crops, pastures, range lands, forest lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 Code of Federal Regulations (C.F.R.) § 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 C.F.R. § 122.24.

Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance or monitoring procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas.

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

City - The City of Temple, Texas, the City Council of Temple, Texas, or its representative, employee, agent, or designee.

City Council – the City's elected governing body.

City Manager – the City's city manager or their designee.

Clean Water Act (CWA) - The Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

Clearing - Any activity that removes the vegetative surface cover. Vegetative cutting and mulching are exempted from this definition.

Creek – A channel having 64 acres or greater of contributing drainage areas.

Creek Buffer Zone (CBZ) – All property located on or adjacent to a natural, vegetated, earthen, or grass lined creek, channel, stream, or channel is hereby deemed to be within a CBZ and must comply with the Drainage Criteria and Design Manual, Section 9, "Storm Water Best Management Practices."

Commencement (or start) of Construction - 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 - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as 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. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline, or utility project that is part of the same "common plan" is not included in the area to be disturbed.

Construction Activity - Includes soil disturbance activities, including clearing, grading, excavating, construction-related activity (e.g., stockpiling of fill material, demolition), and construction support activity. This does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

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

Contaminant - Any substance deleterious to the public health or the quality of the water.

Contamination - The presence of, or entry into a public water supply system, the MS4, or waters in the State of Texas or United States of any substance, including pollutants, which may be deleterious to the public health or the quality of the water.

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

Creek Buffer Zone (CBZ) – All property located on or adjacent to a natural, vegetated, earthen, or grass lined creek, channel, or stream is hereby deemed to be within a CBZ.

Developer – A person who undertakes land disturbance activities.

Discharge – means discharge of stormwater runoff or non-stormwater discharges.

Discharger – (a) any person who causes, allows, permits, or is otherwise responsible for a discharge, including but not limited to any operator of a construction site or industrial facility; or (b) any owner or operator of a facility that is the source of a discharge.

Domestic sewage - Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

Drainage Criteria and Design Manual (DCDM) – A manual containing all approved methods and design criteria for drainage and stormwater control.

Drainage way - Any creek, stream, channel, swale, or low-lying area that conveys surface runoff throughout the site.

Drought-Stricken Area – An area in which the National Oceanic and Atmospheric Administration's U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) "Drought to persist or intensify;" (2) "Drought ongoing, some improvement;" (3) "Drought likely to improve, impacts ease;" or (4) "Drought development likely". See http://www.cpc.ncep.noaa.gov/products/expert_assessment/seasonal_drought.html.

Erosion control is a measure that prevents erosion.

Executive director – The executive director of TCEQ.

Extremely hazardous substance - Any substance listed in the Appendices to 40 C.F.R. Part 355, Emergency Planning and Notification.

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

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

Final Stabilization - A construction site status where any of the following conditions are met:

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

(b) For individual lots in a residential construction site by either:

(1) the homebuilder completing final stabilization as specified in condition (a) above; or

(2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is infeasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization. Fulfillment of this requirement must be documented in the homebuilder's storm water pollution prevention plan (SWP3).

(c) For construction activities on land used for agricultural purposes (such as pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

(d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both following criteria have been met:

(1) temporary erosion control measures (for example, degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator; and

(2) the temporary erosion control measures are selected, designed, and installed to achieve 70% of the native background vegetative coverage within three years.

Garbage - Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Grading - The excavation or fill of material, including the resulting conditions thereof.

Harmful quantity - The amount of hazardous substance the discharge or spill of which is determined to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare by federal or state law.

Hazardous household waste – Any waste generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day recreational areas) by a consumer which, except for the exclusion provided in 40 C.F.R. § 261.4(b)(1), would be classified as a hazardous waste under 40 C.F.R. Part 261.

Hazardous substance - A material where either of the following conditions are met:

(a) the elements, compounds, and hazardous wastes are listed in Table 302.4 of 40 C.F.R. Part 302; or

(b) a solid waste, as defined in 40 C.F.R. § 261.2, which is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), if it exhibits any of the characteristics identified in 40 C.F.R. § 261.20 through § 261.24 (e.g., ignitability, corrosivity, reactivity, or toxicity).

Hazardous waste - Any waste identified or listed as a hazardous waste by the EPA under the Federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., or the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 et seq.

Illicit connection - Any man-made drain or conveyance that allows an illicit discharge to enter into the MS4.

Illicit discharge - Any discharge to the MS4 that is not entirely composed of stormwater, except discharges pursuant to this Chapter and other local, state, or federal laws, regulations, or permits and discharges resulting from firefighting activities.

Industrial activity - Any of the ten (10) categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 Code of Federal Regulations (CFR) §122.26(b)(14)(i)-(ix) and (xi).

Industrial waste - Solid waste from manufacturing portions of industrial activities.

Infeasible - Not technologically possible, or not economically practicable and achievable in light of best industry practices.

Land disturbing activity - Any activity, including but not limited to excavation, clearing, and grading, which disturbs the natural or improved vegetative ground cover so as to expose soil to the erosive forces of rain, stormwater runoff, or wind for residential and non-residential subdivisions and applicable city projects. Land disturbing activity does not include any vegetative cutting and mulching. All installations and maintenance of franchise utilities such as telephone, gas, electric, etc., will be considered land disturbing activities.

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

Large Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the

routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

Maximum extent practicable - The technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges that was established by the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. A discussion of MEP as it applies to the MS4 is found at 40 C.F.R. § 122.34.

Minimize - To reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

Multi-sector general permit - Either the general NPDES permit issued by the EPA under 40 CFR Section 122.28, as amended, or the general TPDES permit issued by TCEQ under Chapter 205, Title 30 of the Texas Administrative Code, as amended, that authorizes stormwater from an industrial facility to be discharged into waters of the United States or state water, including any subsequent modifications or amendments to the permit, any renewals of the permit, and the associated EPA or TCEQ regulations.

Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(a) owned or operated by the U.S., a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the CWA § 208 that discharges to surface water in the state;

(b) that is designed or used for collecting or conveying stormwater;

(c) that is not a combined sewer; and

(d) that is not part of a publicly owned treatment works (POTW) as defined in 40 CFR §122.2.

Non-point source - Any source of any discharge of a pollutant that is not a point source.

No exposure certification (NEC) - A written submission to the executive director from a permit applicant notifying that they intend to obtain a conditional exclusion from permit requirements by certifying that there is no exposure of industrial materials or activities to rain, snow, snowmelt, or stormwater runoff.

Notice of Change (NOC) – A written notification to TCEQ required by EPA or TCEQ regulations or by the terms governing a multi-sector general permit or construction general permit, informing TCEQ of changes to information that was provided in a notice of intent or prior notice of change.

Notice of Intent (NOI) - The notice of intent application form required by EPA or TCEQ regulations or by the terms governing a multi-sector general permit or construction general permit to obtain NPDES or TPDES permit coverage.

Notice of Termination (NOT) - the notice of termination required by EPA or TCEQ regulations or by the terms governing a multi-sector general permit or construction general permit to terminate NPDES or TPDES permit coverage.

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 to an individual, group, or generally on an area-wide basis.

Oil - Oil of any kind 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.

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

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

(1) the person or persons have on-site operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

(2) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan (SWP3) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

Secondary Operator – The person or entity, often the property owner, whose operational control is limited to:

(1) the employment of other operators, such as a general contractor, to perform or supervise construction activities; or

(2) the ability to approve or disapprove changes to construction plans and specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

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

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

Outfall – A point source at the point where stormwater runoff associated with construction activity discharges to surface 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 water of the U.S. and are used to convey waters of the U.S.

Petroleum product - A petroleum substance obtained from distilling and processing crude oil and that is liquid at standard conditions of temperature and pressure and capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including, but not limited to, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

Petroleum storage tank (PST) – (a) Any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by TCEQ; or (b) Any one or combination of underground storage tanks and all connecting underground pipes that contain petroleum products and that are regulated by TCEQ.

Phasing - Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

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

Pollutant - Anything that causes or contributes to pollution. The term includes, but is not limited to, paints, varnishes, and solvents; motor oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; noxious or offensive matter of any kind; biochemical oxygen demand (BOD); sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation); oil and grease; and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; dredged spoil; solid waste; incinerator residue; sewage sludge; filter backwash; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock, sand, and dirt; and industrial, municipal, and agricultural waste discharged into any surface water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland. For this Chapter, the term “pollutant” includes sediment.

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

Post-construction management plan – A comprehensive plan that is used to manage the quality of discharges from a site after the completion of construction activity. This plan describes the use of structural and non-structural stormwater controls and their maintenance as well as other best management practices.

Premises - Any site or facility or building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips, owned or operated by a person from which there has been, is, or may be a discharge.

Release - Any spilling, leaking, pumping, pouring, emitting, emptying, injecting, escaping, leaching, dumping, or disposing of a pollutant or contaminant into the MS4 or waters in the state or of the United States.

Reportable quantity (RQ) - will be as provided by 30 Tex. Admin. Code § 101.1, except as otherwise provided by state or federal law, regulation, or permit.

Responsible party - Any person or legal entity, individual or corporate, including an owner, operator, contractor, or subcontractor, any or all of whom may be engaged in, consent to, or perform a construction project or construction activity.

Rubbish - Non-putrescible solid waste, excluding ashes, that consists of both (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Sediment control - Any measure that prevents eroded sediment from leaving the site.

Separate storm sewer system - A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), designed or used for collecting or conveying stormwater that is not a combined sewer and that is not part of a publicly owned treatment works.

Sewage (or sanitary sewage) - The domestic sewage or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to a publicly-owned treatment works.

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

Small Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

Stabilization - The use of practices that prevent exposed soil from eroding.

Stormwater (or Stormwater Runoff) - Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Stormwater associated with construction activity – Stormwater runoff from a construction activity.

Stormwater discharge associated with industrial activity - Stormwater runoff that exits any system that is used for collecting and conveying stormwater that originates from manufacturing, processing, material storage, or waste material disposal areas (and similar areas where stormwater can contact industrial pollutants related to the industrial activity) at an industrial facility described by an applicable TPDES or NPDES permit.

Stormwater management - The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

Stormwater management facility - Any facility that is built to control stormwater runoff in order to comply with BMPs.

Storm water pollution prevention plan (SWP3). A plan required by a NPDES or TPDES permit that describes and ensures the implementation of BMPs that must be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity at the regulated facility to water in the state and U.S.

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

Surface water in the state - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHWM) out 10.36 miles into the Gulf), and all other bodies of surface

water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

Tail water - The runoff of irrigation water from the lower end of an irrigated field.

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, and other techniques to reduce or eliminate erosion until either permanent stabilization can be achieved or until further construction activities take place.

TPDES permit - A permit issued by the state through TCEQ, or any predecessor or any successor agency, under the authority delegated by EPA pursuant to 33 U.S.C § 1342(b) (Federal Clean Water Act), as amended, and pursuant to the Texas Water Code, as amended, that authorizes the discharge of pollutants to water in the state or of the United States, whether the permit is applicable to a person, group, or generally on an area-wide basis.

Turbidity – A condition of water quality characterized by the presence of suspended solids or organic material.

Unauthorized connection – Any man-made drain or conveyance that connects to the MS4 without City authorization.

Used oil (or used motor oil) - Any oil that has been refined with crude oil, or any synthetic oil, that has been used, and, because of use, is contaminated by physical or chemical impurities.

Vehicle - Includes any vehicle held for personal use including automobiles, trucks, recreational vehicles, motorcycles of any type, and boats or personal watercrafts.

Watercourse – A watercourse includes a drainage path or way or the channel of a stream, to include, without limitation, waters in the state or of the United States, in which water flows within a defined bed and banks, even though the same may be slight, imperceptible or even absent in places, and originates from a definite source or sources. The water need not always be present and may be intermittent if the latter occurs with some degree of regularity, depending on the characteristics of the sources (i.e., water is present or flowing during or after a rainfall event).

Water in the state - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or

partially inside or bordering the state or inside the jurisdiction of the state, except that water in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

Water quality standard - Provisions that consist of a designated use or uses for the water in the state and water quality criteria for such waters based upon such uses. Water quality criteria consist of narrative provisions and numerical criteria deemed by the state to be necessary to protect those uses, as specified in 30 Texas Administrative Code (TAC) Article 307, as amended.

Waters of the United States - Waters of the United States or waters of the U.S. means:

(a) 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;

(b) all interstate waters, including interstate wetlands;

(c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) which are used or could be used for industrial purposes by industries in interstate commerce;

(d) all impoundments of waters otherwise defined as waters of the United States under this definition;

(e) tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) the territorial sea; and

(g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of federal Clean Water Act (CWA), as amended, are not waters of the U.S. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the U.S. (such as disposal area in wetlands) nor resulted from the impoundment of waters of the U.S. Waters of the U.S. do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with the EPA.

Wetlands - Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard waste - Leaves, grass, grass clippings, bushes, shrubs, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

ARTICLE II. STORMWATER COMPLIANCE FOR CONSTRUCTION ACTIVITY

Sec. 27-3. In general.

(a) Purpose.

During the construction process, soil is highly vulnerable to erosion by wind and water. Clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat. Eroded soil endangers water resources by reducing water quality and causes the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of drainage ways, channels, and watercourses.

The purpose of this Article is to safeguard persons, protect property, and prevent damage to the environment in the City. This Article will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any residential and non-residential subdivision development and applicable City projects or other activity that disturb or break the topsoil or result in the movement of earth within the City.

(b) Definition. For the purposes of this Article, the following definition applies:

Discharge means the drainage, release, or disposal of pollutants in stormwater and certain non-stormwater from areas where soil disturbing activities (e.g., clearing, grading, excavation, stockpiling of fill material, and demolition), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck wash out, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

Sec. 27-4. Applicability of Article.

(a) A person engaging in any small or large construction activity as defined by this Chapter within the City limits must comply with the terms of this Article. This Article applies regardless of whether an owner or developer is required to obtain any permit, including a building permit, related to the construction activity.

(b) In determining if a project qualifies as large or small construction activity, the City will consider whether the development is a part of a common plan. A construction activity is a part of a common

plan if it is completed in separate stages, phases, or in combination with other construction activities. Common plans are often, but not solely identified by plats, blueprints, contracts, zoning requests, and building permits. Additionally, common plans may exist and erosion and sedimentation control may be required when there is more than one operator operating in one area which is larger than five acres, even though no single individual project is larger than five acres individually.

(c) This Article does not apply to discharges from stormwater from agricultural activities. Persons discharging stormwater from agricultural activities must follow all applicable state, federal, and local laws, regulations, or permits.

(d) The owner of the property on which the activity occurs, in addition to the person engaging in construction activity, is responsible for violations of this Article. Both the owner and the person engaging in the construction activity are responsible for any erosion of the property or construction site which results in accumulation of sediment in streets, alleys, any channel, other private properties, or drainage facilities stemming from the construction activity. Any accumulation or deposit of soil material beyond the limits of the property or construction site or in city streets, alleys, channels, private properties, or drainage facilities in an amount sufficient to constitute a threat to public safety and comfort or adversely impact stormwater quality as determined by the City is declared a public nuisance and is a violation of this Article.

Sec. 27-5. City of Temple Drainage Criteria and Design Manual.

(a) This Article is cumulative of the regulations found in the City's DCDM. Although the intention of this manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to conduct hydrologic and hydraulic studies if approved by the City and allowed under state and federal laws, regulations, or permits.

(b) Failure to abide by the regulations found in the DCDM is an offense unless approved by the City or otherwise allowed under state or federal laws, regulations, or permits.

Sec. 27-6. Stormwater pollution prevention measures required.

(a) The Texas Commission on Environmental Quality (TCEQ) regulates stormwater discharges from construction sites. Prior to initiating any construction activity, a person must comply with all state and federal requirements. If applicable, an operator of a construction site must obtain a construction general permit or individual permit. An operator of a construction site must comply with all terms and conditions of a construction general permit or an individual permit, whichever is obtained from TCEQ for or applicable to the construction site. Failure to comply with all TCEQ requirements and terms and conditions of a TCEQ issued permit is an offense.

(b) An operator of a construction site regulated under this Chapter must implement best management practices to control and minimize the discharge into the MS4, waters of the United States, and state water of any sediment, silt, earth, soil, or other material from the construction site. Erosion control

elements meeting the criteria for best management practices must be installed before any construction site is established in accordance with an installation schedule as specified in a stormwater pollution prevention plan required by the construction general permit or individual permit. Failure to comply with this Subsection is an offense.

Sec. 27-7. Requirements to post, notify, and make available.

(a) A responsible party for a large or small construction activity must post at the construction site the applicable TCEQ site notice as required by TCEQ and TCEQ issued permits.

(b) A copy of the signed NOI for large construction activity and a copy of the signed and certified construction site notice for large and small construction activity must be provided to the City within two (2) days prior to commencement of construction activities, as applicable, by a responsible party.

(c) A responsible party must make any applicable SWP3 available to the City upon request as soon as reasonably possible.

(d) Failure, refusal, or inability to provide a SWP3 for inspection constitutes a violation of this Section.

(e) It is unlawful for any person to engage in construction activity in violation of the elements of an applicable SWP3.

(f) A responsible party must provide the City a copy of any notice of change (NOC) sent to TCEQ related to a construction activity as required by a TCEQ permit. This copy must be provided to the City within two (2) days after the date it is sent to TCEQ.

(g) A responsible party must provide the City a copy of any notice of termination (NOT), small construction site completed site notice or large construction site secondary operator completed site notice necessary to close out a construction activity regulated by TCEQ. This copy must be provided to the City within two (2) days after the date it is sent to TCEQ.

(h) Where permanent improvements have been constructed, the final inspection by the City will verify whether the final stabilization criteria have been met.

(i) Where no permanent improvements are planned, a responsible party must continue to maintain temporary BMPs until the site has reached final stabilization.

(j) A responsible party for a site must continue to regulate the site and maintain an open, active permit until final stabilization is achieved; and, where applicable, until a NOT or small construction site completed site notice or large construction site secondary operator completed site notice has been filed with TCEQ and a copy provided to the City.

(k) Where the site has met final stabilization requirements, but the controls or measures implemented thereafter fail, each discharge of construction related contamination by the operator constitutes a violation of this Section.

(l) Removal of temporary BMPs will be required after the site achieves final stabilization.

(m) Failure to comply with any provision of this Section is an offense.

Sec. 27-8. Compliance monitoring.

(a) The City may enter any site in which there is construction activity regulated by this Article to ensure compliance with all applicable federal, state, and local laws, regulations, and permits.

(1) The responsible party related to this construction activity must:

(A) allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties;

(B) make available to the City any SWP3 or modifications to SWP3s, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and other records, reports, and documents required by a construction general permit or an individual permit; and

(C) retain and provide to the City, upon request, any annual, semi-annual, or periodic monitoring reports as required by a construction general permit or an individual permit.

(2) If the property owner, operator, manager, or person in charge of this construction activity has security measures in force that require proper identification and clearance before entry into the premises, they must make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City is permitted to enter without delay to inspect as authorized by this Article.

(3) Any temporary or permanent obstruction to safe and easy access to a property that is to be inspected must be promptly removed by the responsible party for this construction activity at the written or verbal request of the City and may not be replaced. The cost of clearing access to the facility must be borne by the obstructor.

(b) The responsible party of construction activity regulated by this Article must notify the City at least two (2) working days before each of the following:

(1) start of construction;

(2) installation of sediment and erosion measures;

(3) installation of facilities related to final stabilization; and

(4) final acceptance of public infrastructure or prior to issuance of certificate of occupancy dependent upon respective development stage.

(c) When phasing is requested, the erosion and sediment controls in each phase must be established, reviewed, and approved by the City prior to the start of any subsequent phase, which will be allowed only when there are no outstanding SWP3 violations for the development for which the request is made.

(d) A person permitted by TCEQ for construction activity, owner, or designated agent must conduct inspections of disturbed areas of the construction site, the site's erosion and sedimentation controls, and any facilities on the site in accordance with the requirements of the construction general permit or the individual permit, whichever is applicable to the site, or if not required by such permits, on a regular basis. All inspection reports must be kept on file available for viewing upon request by the City. Inspectors under this Subsection must direct the person responsible for the site to make any necessary repairs or modifications to bring the site into compliance with this Chapter and all other local, state, and federal laws, rules, and regulations.

(e) A person commits an offense if they:

(1) fail or refuse to allow the City to access the construction site for purposes of inspection, including preventing entry through security measures;

(2) fail, refuse, or are unable to provide information or documents as required by this Section when requested by City;

(3) fail to notify the City at least two working days before any delineated construction phase as provided by Subsection (b), above.

(4) fail to remove any obstructions to City inspections when requested by the City.

Sec. 27-9. Offenses.

(a) Offenses. It will be an offense to this Article for a person performing any construction activity regulated by this Article to:

(1) commence any construction activity without first obtaining a TPDES general construction permit or individual permit if required by state or federal law;

(2) construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this Article;

(3) fail to develop or implement a SWP3 in accordance with TCEQ requirements and this Article for a construction site;

(4) fail to install stormwater pollution prevention devices or to maintain stormwater pollution prevention devices throughout the duration of land disturbing activities in compliance with the SWP3 for the construction site;

(5) fail to remove off-site sedimentation that is a direct result of construction activities;

(6) allow sediment laden water resulting from below ground installations to flow from a site without being treated through an erosion control device;

(7) fail to maintain existing stormwater pollution prevention devices, including replacement of existing grass or sod;

(8) fail to comply with any term of a TPDES general construction permit or individual permit;

(9) discharge construction related contamination due to failure of controls or measures implemented where the site has met final stabilization requirements; each discharge by the responsible party for the site constitutes a separate violation;

(10) engage in any construction activity that results in a measurable volume of sediment, soil, soil material, or other pollutants entering the City's MS4;

(11) engage in construction activity without using BMPs necessary to protect the City's MS4 from runoff or other media capable of transporting sediment, soil, soil material, and pollutants into the City's MS4; and

(12) violate any provision of this Article.

Sec. 27-10. Administrative Enforcement.

(a) Notice of Violation.

(1) Upon observation of an alleged violation or condition the City believes constitutes a violation of this Article, the City may issue a notice of violation letter to a responsible party for the site. The notice of violation may be personally delivered to a responsible party for the site, if such person is available on site; or in the absence of such person, may be posted at the construction site. Notice of violations may also be sent by mail to the responsible party. Notice of violations will provide three (3) 24-hour periods to correct the violation alleged. The first 24-hour period must be used by the responsible party to remediate and remove the offending material, if any, from the City's MS4 or obtain and post permit documents or provide a copy of a complete SWP3 to the City, as applicable. The next two 24-hour periods will follow immediately and must be used by the

responsible party to appropriately install or repair the corrective BMP that was lacking or failed to protect City property.

(2) If correction is not made timely, the City may issue a stop work order.

(3) If a corrective action is not timely accomplished to protect the City's MS4, the City may pursue criminal or civil remedies.

(4) Additional or cumulative enforcement action may be taken as the seriousness of the alleged pollutant encroachment on the MS4 may warrant.

(5) Additional compliance time may be given, if within the judgment and discretion of the City, municipal obligations to environmental health and safety and municipal stormwater compliance obligations to enforcement agencies are not compromised.

(b) Stop work order; revocation of permit. In the event that any person violates the terms of a SWP3 or construction general permit or individual permit, this Chapter, the DCDM, or any other federal, state, or local law, regulation, or permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of the public or be materially detrimental to the public welfare or injurious to other property, the City may suspend or revoke any City issued permit related to this violation or injurious action, including any building or construction permits, or halt the permitted or approved activity until the violation is abated or corrected. The City may also issue a stop work order if the site fails any City inspection.

(1) Failure to comply with a stop work order or a revocation of a permit is an offense.

(2) Issuing a stop work order or revoking a permit is not a bar to, or a prerequisite for, taking any other action against a person.

Sec. 27-11. Reserved.

ARTICLE III. POST-CONSTRUCTION STORMWATER RUNOFF CONTROL

Subchapter A. General Provisions

Sec. 27-12. Purpose.

The purpose of this Article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds within the City. This Article seeks to meet that purpose through the following objectives:

(a) minimize increases in stormwater runoff from any land disturbing activity to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;

(b) minimize increases in non-point source pollution caused by stormwater runoff from land disturbing activity which would otherwise degrade local water quality;

(c) minimize the total annual volume of surface water runoff which flows from any specific site during and following land disturbing activity to not exceed the pre-land disturbing activity hydrologic regime to the maximum extent practicable; and

(d) reduce stormwater runoff rates and volumes, soil erosion, and non-point source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

Sec. 27-13. Compatibility with other permit and ordinance requirements

This Article is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, permit, or other provision of law. The requirements of this Article should be considered minimum requirements, and where any provision of this Article imposes restrictions different from those imposed by any other ordinance, rule or regulation, permit, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for public health or safety or the environment control.

Subchapter B. Post-Construction Best Management Practices.

Sec. 27-14. Compliance with all post-construction standards.

An owner, operator, or manager of a property or their designee must comply with all post-construction (permanent) best management practices of the DCDM as well as other parts of this manual, and all other applicable federal, state, or local laws, regulations, and permits.

Sec. 27-15. Post-construction management plan.

(a) The responsible party for a construction site regulated under this Chapter must submit a post-construction management plan to the City prior to receiving any building or construction permit or when requested by the City. This plan must provide for the use of structural and non-structural stormwater controls and their maintenance to be used and maintained post-construction as well as other post-construction best management practices.

(b) Such plan must comply with all requirements found within the DCDM as well as with all federal, state, and local requirements.

Subchapter C. Maintenance and Repair of Stormwater Management Facilities.

Sec. 27-16. Maintenance and repair plan.

The design and planning of all stormwater management facilities included in a post-construction management plan must provide detailed maintenance and repair procedures to ensure their continued function. These plans must identify the parts or components of a stormwater management facility that need to be maintained and the equipment and skills or training necessary for adequate repair and maintenance. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures, which meet all specifications found in the DCDM, must be provided to the City as part of the responsible party's post-construction management plan.

Sec. 27-17. Records of installation and maintenance activities.

(a) Parties responsible for the operation and maintenance of a stormwater management facility, including a property owner, must make written records of the installation and of all maintenance and repairs, and must retain the records for at least five (5) years. These records must be made available to the City during inspection of the facility and at other reasonable times upon request.

(b) Failure to maintain these records or make them available upon request by the City is an offense.

Subchapter D. Inspection of Stormwater Management Facilities.

Sec. 27-18. Inspection of permanent, post-construction stormwater management facilities.

(a) Inspections of permanent, post-construction, stormwater management facilities must comply with all requirements found within DCDM related to inspections of these facilities as well as with all federal, state, and local laws, regulations, and permits.

(b) For all privately owned and maintained stormwater maintenance facilities, the person responsible for the facility must make regular inspections of all BMPs as required by the DCDM and state and federal laws, regulations, and permits. If the frequency of inspection for a particular stormwater management

facility is not provided by any applicable law, regulation, or permit, then the inspection must be performed no less frequently than once a year or as required by the City.

(1) The purpose of such inspections must be to determine the overall effectiveness of these BMPs and the need for additional control measures.

(2) Repair and maintenance needs may include: removal of silt, litter, and other debris from all catch basins, inlets, and drainage pipes, grass cutting, vegetation removal, and necessary replacement of landscape vegetation.

(3) Any repair or maintenance needs found must be addressed in a timely manner, as determined by the City, and the inspection and maintenance requirements may be increased by the City as deemed necessary to ensure proper functioning of a stormwater management facility.

(4) Results of inspections must be documented in written form. All these inspection reports must be kept on file available for viewing upon request by the City.

(c) The City may inspect a stormwater management facility to ensure compliance with all applicable federal, state, and local laws, regulations, and permits.

(d) A person responsible for a facility commits an offense if they:

(1) fail or refuse to allow the City to access to a stormwater management facility for purposes of inspection, including preventing entry through security measures;

(2) fail to timely inspect a stormwater management facility as required by the DCDM, federal, or state law, regulation, or permit, or as required by the City; or

(3) fail, refuse, or are unable to provide a post-construction management plan or any inspection report when requested by the City.

Subchapter E. Enforcement and Penalties.

Sec. 27-19. Failure to maintain stormwater management facilities.

(a) If a person responsible for a post-construction stormwater management facility fails or refuses to maintain such facility, the City may correct a violation by performing all necessary work to place the facility in proper working condition after providing notice in writing to the person responsible for the facility of the violation. The City may issue a written notice to the person responsible of the facility, if such person is available at the facility; or, in the absence of such a person, by posting the notice at the facility or by mail. The person responsible for the facility will have three (3) days from the date a written notice is provided to perform maintenance or repair of the facility in the manner approved by the City. If the person responsible for the facility fails to correct the violation in a way that is approved by the City, the City may perform

the maintenance or repair the facility and assess the owner of the facility for the cost of the repair work.

(b) If a stormwater management facility poses an imminent danger to public safety or public health, the City, after providing verbal notice to the person responsible for the facility, may perform the maintenance or repair the facility and assess the owner of the facility for the cost of the repair work.

(c) Failure to pay for any of the City's work to repair or maintain a stormwater facility under Subsections (a) or (b), above, may result in a lien levied against the property.

(d) Failure or refusal to comply with a notice to repair or maintain a stormwater facility by the City notice's deadline is an offense.

(e) Failure or refusal to maintain any post-construction stormwater management facility as required by any local, state, or federal law, regulation, or permit is an offense irrespective of whether the violation was timely remedied after City notice.

(f) Providing notice of violation or repairing or performing maintenance on a facility by the City is not a bar to, or a prerequisite for, the City taking any other action against a person.

Article IV. Creek Buffer Zones.

Sec. 27-20. Establishment of Creek Buffer Zones (CBZs).

All property located on or adjacent to a natural, vegetated, earthen or grass lined creek, channel, stream, or channel is hereby deemed to be within a CBZ. When a property is located within a CBZ, the developer, builder, operator, and owner must comply all applicable requirements of the DCDM.

Sec. 27-21. Design Standards.

CBZs must be designed and designated by the requirements and standards found in this Chapter and in the DCDM.

Sec. 27-22. Offense.

A person who fails to comply by any term of this Article commits an offense.

Secs. 27-23 – 27-39. Reserved.

ARTICLE IV. REGULATION OF NON-STORMWATER DISCHARGES

DIVISION I. ILLICIT DISCHARGE PREVENTION

Sec. 27-40. Purpose.

The purpose of this Article is to protect the public health, safety, environment, and general welfare through the regulation of non-stormwater discharges to the City's municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Article establishes methods for controlling the introduction of pollutants into the City's MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit and the Texas Pollutant Discharge Elimination System (TPDES) permit processes. The objectives of this Article are to:

(a) regulate the contribution of pollutants or contaminants to the City's MS4 or waters of the state of Texas or United States by any person;

(b) prohibit illicit discharges and illicit connections to the City's MS4;

(c) prevent non-stormwater discharges, generated because of spills, releases, or inappropriate dumping or disposal, to the City's MS4;

(d) protect and preserve the functionality of watercourses and channels located within the City; and

(e) establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this Article.

Sec. 27-41. Applicability.

The provisions of this Article apply to all water or substances entering the MS4 generated on any developed or undeveloped lands throughout the corporate limits of the City unless specifically exempted by this Article.

Sec. 27-42. Responsibility for administration; authority.

(a) The City may administer, implement, and enforce the provisions of this Article. The City Manager may designate a City employee or department as a TPDES Stormwater Manager or Inspector. Such manager or inspectors have the authority to enforce this Article in its entirety.

(b) The City has the authority to:

(1) prohibit illicit discharges and illicit connections and unauthorized connections;

(2) respond to and contain other releases, control the discharge of spills, and prohibit dumping or disposal of materials other than stormwater into the MS4;

(3) require compliance with conditions in the City's ordinances, permits, contracts, or orders;

(4) require installation, implementation, and maintenance of control measures;

(5) receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;

(6) receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with the City's General Permit to Discharge under the Texas Pollutant Discharge Elimination System, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;

(7) enter and inspect private property including facilities, equipment, practices, or operations related to stormwater discharges to the MS4, as needed;

(8) respond to non-compliance with BMPs required by the MS4 consistent with the City's ordinances or other regulatory mechanisms; and

(9) assess penalties, including monetary, civil, or criminal penalties.

Sec. 27-42. General Prohibitions and Requirements.

(a) A person commits an offense if they discharge or causes to be discharged any water that does not consist entirely of stormwater into a MS4, waters of the United States, or state waters.

(b) It is an affirmative defense to prosecution to discharge the following non-stormwater sources, unless they are determined by the City or TCEQ to be significant contributors of pollutants to the MS4 or they are otherwise prohibited by the City:

(1) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

(2) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;

(3) Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;

(4) Diverted stream flows;

(5) Rising ground waters and springs;

(6) Uncontaminated ground water infiltration;

(7) Uncontaminated pumped ground water;

(8) Foundation and footing drains;

(9) Air conditioning condensation;

(10) Water from crawl space pumps;

(11) Individual residential vehicle washing;

(12) Flows from wetlands and riparian habitats;

(13) Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;

(14) Street wash water excluding street sweeper waste water;

(15) Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);

(16) Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);

(17) Non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;

(18) Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and

(19) Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

(c) The use of BMPs or the presence of pervious cover that filters pollutants or contaminants from a discharge before the discharge reaches the MS4 will be considered an additional affirmative defense if no pollutant or contaminant is present upon the discharge's release into the MS4.

(d) In any civil or criminal action, the discharger has the burden of proving that a discharge in violation of Subsection (a) is uncontaminated or falls within a defense to prosecution under Subsection (b). Prima facie proof that a discharge is uncontaminated must be made in the form of an analysis by a

certified laboratory, using standard methods or procedures prescribed by EPA or TCEQ regulations. A copy of the laboratory analysis must be provided to the City.

(e) Right of entry; inspection and sampling. A discharger must comply with all requirements provided in Section 27-53, below.

Sec. 27-43. Specific Prohibitions and Requirements.

(a) The specific prohibitions and requirements in this Section are not inclusive of all the discharges prohibited by the general prohibitions in Section 27-42, above.

(b) A person commits an offense if he discharges or causes to be discharged into the MS4, waters of the United States, or state water a pollutant or substance that causes or contributes in causing the City to violate a Texas surface water quality standard, the City's NPDES permit or TPDES permit, or state or federal law or regulation.

(c) A person commits an offense if he discharges or allows or permits the discharge of any of the following into the MS4:

(1) used motor oil, antifreeze, or any motor vehicle fluid;

(2) industrial waste;

(3) hazardous substance or hazardous waste, including hazardous household waste;

(4) domestic sewage, septic tank waste, grease trap waste, or grit trap waste;

(5) garbage, rubbish, or yard waste;

(6) wastewater from:

(A) any commercial vehicle washing facility, including any commercial car wash located on the premises of any office building or in any parking garage;

(B) any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility;

(C) any washing, cleaning, or maintenance of any business, commercial, or public service vehicle (including a truck, bus, or heavy equipment) by a business or public entity that operates more than two of such vehicles;

(D) discharge from the washing, cleaning, de-icing, or other maintenance of aircraft;

(E) any mobile power washing operation if the wastewater contains a harmful quantity of any soap, detergent, degreaser, solvent, emulsifier, dispersant, or other cleaning substance or pollutant;

(F) floor, rug, or carpet cleaning;

(G) the washdown or other cleaning of pavement if the wastewater contains a harmful quantity of any soap, detergent, solvent, degreaser, emulsifier, dispersant, or other cleaning substance or pollutant;

(H) the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum product or hazardous substance has occurred, unless all harmful quantities of the released material have been previously removed; or

(I) a portable restroom or other temporary sanitary facility;

(7) effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler, except as allowed under a TPDES permit;

(8) ready-mixed concrete, mortar, ceramic, or asphalt base material, or hydromulch material, or wastewater from the cleaning of vehicles or equipment containing, or used in transporting or applying, such material;

(9) runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;

(10) filter backwash from a swimming pool, fountain, or spa;

(11) swimming pool water that violates Texas Surface Water Quality Standards;

(12) fire protection water containing oil or hazardous substances or materials, unless treatment adequate to remove pollutants and contaminants occurs before discharge, except that this prohibition does not apply to discharges or flow from emergency firefighting (emergency firefighting does not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);

(13) water from a water curtain in a spray room used for painting vehicles or equipment;

(14) substance or material that will damage, block, or clog the MS4;

(15) discharge from a petroleum storage tank (PST) or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of a PST release, unless the discharge satisfies all of the following criteria: (a) is in compliance with all state and federal standards and requirements; (b) does not contain a harmful quantity of any pollutant; and (c) discharge does not contain more than 50 parts per billion of

benzene, 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX), or 15 mg/L of total petroleum hydrocarbons (TPH);

(16) paint, finish, or paint cleaning material, including, but not limited to, auto body paint, latex paint, wood finishing material, texturing product, varnish, paint thinner, or paint solvent of any kind; and

(17) a harmful quantity of dust resulting from sanding, grinding, cutting, sawing, or storage of any materials.

(d) A person commits an offense if they discharge into the MS4 a harmful quantity of sediment, silt, earth, soil, or other material associated with:

(1) clearing, grading, filling, excavating, or other construction activities; or

(2) landfilling or other placement or disposal of soil, rock, or other earth materials in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.

(e) A person commits an offense if they:

(1) discharge motor vehicle fluid, oil, petroleum product, or used oil into the MS4, into a private drainage system that feeds into the MS4, or into any septic tank, surface water, groundwater, or watercourse within the City;

(2) mix or commingle motor vehicle fluid, oil, petroleum product, or used oil with any type of waste that is to be disposed of in a landfill or directly dispose of motor vehicle fluids, oil, petroleum products, or used oil on land or in a landfill; or

(3) apply motor vehicle fluid, oil, petroleum product, or used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces or has the potential to introduce motor vehicle fluids, oil, petroleum products, or used oil into the MS4 or a sewer drainage system, septic tank, surface water, groundwater, or watercourse or any part of the environment.

Sec. 27-44. Regulation of pesticides, herbicides, and fertilizers.

(a) Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer within the City must comply fully with all applicable state and federal statutes and regulations, including, but not limited to:

(1) the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended;

(2) federal regulations promulgated pursuant to FIFRA; and

(3) applicable provisions of Chapters 63 and 76 of the Texas Agriculture Code, as amended, and state regulations promulgated pursuant to those chapters.

(b) A license, permit, registration, certification, or evidence of financial responsibility required by state or federal law for the sale, distribution, application, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must be presented to any City official, including any environmental health officer, Public Works Department employee, City code compliance officer, and any police officer for examination upon request.

(c) No person must, within the City, use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.

(d) No person may, within the City, use, dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer or a pesticide, herbicide, or fertilizer container in a manner that the person knows or reasonably should know is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4, waters of the United States, or state water.

Sec. 27-45. Illicit or unauthorized connections.

(a) Illicit connections. The construction, connection, use, maintenance, or continued existence of any illicit connection, as defined by this Chapter, to the MS4 is prohibited.

(b) Unauthorized Connections. The construction, connection, use, maintenance, or continued existence of any unauthorized connection, as defined by this Chapter, to the MS4 is prohibited.

(c) A person violates this Article if the person connects a line conveying domestic or industrial sewage to the MS4 or allows such a connection to continue.

(d) These prohibitions expressly include, without limitation, currently unauthorized or illicit connections that were made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(e) Unauthorized or illicit connections to the MS4 in violation of this Article must be disconnected and redirected, if necessary, by the discharger to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City at the expense of the discharger.

(f) A person who constructs, connects, maintains, permits, or allows the continued existence of an unauthorized or illicit connection commits an offense.

(g) Any drain or conveyance that has not been documented in plans, maps, or an equivalent, and which may be connected to the MS4, must be located by the owner or operator of a facility within three (3) days following receipt of a written notice of violation (NOV) from the City. Such notice may grant a longer time period, not to exceed sixty (60) days, but must require that the drain or conveyance be identified as a storm sewer, sanitary sewer, or other type of conveyance and that the outfall location

or point of connection to the MS4, sanitary sewer system, or other discharge point be identified. Results of these investigations must be documented and provided to the City to confirm compliance with this Article.

Sec. 27-46. Watercourses.

Watercourse Protection. Every person owning property through which a watercourse passes, or the property's occupant, lessee, tenant, agent, or manager, or the like, must keep and maintain the section of the watercourse within this property free of trash, debris, and other obstacles that may pollute, contaminate, or adversely retard the flow of water through the watercourse. Failure for a person to comply with this Section is an offense.

Sec. 27-47. Notification of release.

(a) A discharger of a reportable quantity of a hazardous or extremely hazardous substance into the MS4, waters of the United States, or state water must telephone and notify the City, TCEQ, and applicable fire department immediately after becoming aware of the discharge. A discharger of a reportable quantity of any of the following substances into the MS4, waters of the United States, or state water must telephone and notify the City and TCEQ concerning the incident within twenty-four (24) hours after its occurrence:

(1) An amount of oil that either:

(A) violates applicable water quality standards; or

(B) causes a film or sheen upon, or discoloration of, the surface of the water or an adjoining shoreline, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline.

(2) A harmful quantity of any other pollutant that is not a hazardous or extremely hazardous substance but has been discharged in a quantity that exceeds surface water quality standards as set forth in Chapter 307, Title 30 of the Texas Administrative Code, as amended.

(b) The notification required by Subsection (a) of this Section must include all the following information:

(1) the identity or chemical name of the substance released and whether the substance is an extremely hazardous substance;

(2) the exact location of the discharge, including any known name of the waters involved or threatened and any other environmental media affected;

(3) the time and duration of the discharge at the moment of notification;

(4) an estimate of the quantity and concentration, if known, of the substance discharged;

(5) the source of the discharge;

(6) any known or anticipated health risks associated with the discharge and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;

(7) precautions that should be taken as a result of the discharge;

(8) steps that have been taken to contain or clean up the discharged substance and related material and to minimize the impact of the discharge; and

(9) the name and telephone number of each person to be contacted for further information.

(c) Within three (3) days after a discharge under this Section, the discharger must, unless expressly waived in writing by the City, submit a written report containing each item of information required by Subsection (b), as well as the following additional information:

(1) the ultimate duration, concentration, and quantity of the discharge;

(2) all actions taken to respond to, contain, and clean up the discharged substances, and all precautions taken to minimize the impact of the discharge;

(3) any known or anticipated acute or chronic health risks associated with the discharge;

(4) where appropriate, advice regarding medical attention necessary for exposed individuals;

(5) the identity of each governmental entity and private sector representative responding to the discharge; and

(6) measures taken or to be taken by the discharger to prevent similar future occurrences.

(d) The notifications required by Subsections (b) and (c) of this Section do not relieve the discharger from any expense, loss, damage, or other liability that may be incurred as a result of the discharge, including any liability for damage to the City, to natural resources, or to any other person or property. The notifications also do not relieve the discharger from any fine, penalty, or other liability that may be imposed under this Chapter or under any other local, state, or federal law, regulation, or permit.

(e) A release report required by a state or federal regulatory authority that contains the information described in Subsections (b) and (c) of this Section meets the reporting requirements of Subsection (c), upon submittal of the report to the City.

(f) The owner or operator of any facility, vehicle, or other source responsible for a discharge described in Subsection (a) of this Section must:

(1) comply with all state, federal, and local laws, regulations, and permits requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the discharge; and

(2) reimburse the City for any costs incurred by the City in responding to the discharge.

(g) A discharger commits an offense if he:

(1) fails or refuses to report the discharge within the time required by Subsection (a) after becoming aware of the discharge;

(2) fails or refuses to submit a written report within the time required by Subsection (c), if this requirement was not expressly waived in writing by the City;

(3) knowingly provides false or incorrect information in a notification or report required under this Section; or

(4) fails or refuses to take the necessary action to clean up pollution or damage to the MS4, waters of the United States, or state water, or to other property, that is caused by the discharge.

DIVISION II. STORMWATER DISCHARGES FOR INDUSTRIAL ACTIVITY

Sec. 27-48. Applicability of Division.

The provisions of this Division apply to discharges from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial facility, which facility is within one of the categories of facilities listed in 40 CFR Section 122.26(b)(14), as amended, or is identified in a multi-sector general permit as being engaged in industrial activity. The term does not include any discharge that is excluded from the EPA's definition of "stormwater discharge associated with industrial activity."

Sec. 27-49. Permits required.

(a) All facilities required by state or federal law must obtain a multi-sector general permit or an individual NPDES or TPDES permit, whichever is applicable for the activity conducted at the industrial facility.

(b) Facilities regulated under the TPDES General Permit TXR050000 may be excluded from permit requirements if there is no exposure of industrial materials or activities from precipitation or runoff. To qualify for a no exposure exclusion from permit requirements, the operator of a facility must comply with all TCEQ's requirements for exclusion. Facilities that qualify for this exclusion and that contribute stormwater discharge to a MS4 must provide copies of the certification that industrial facilities and materials are isolated from stormwater by storm resistant shelters to the City. Failure to provide this certification to the City is an offense.

(c) A person violates this Division if the person discharges, causes to be discharged, or allows to be discharged stormwater associated with industrial activity without first having obtained a multi-sector general permit or an individual NPDES or TPDES permit, as applicable, to do so.

Sec. 27-50. Compliance with permits.

Responsible parties of an industrial facility must comply with all terms and conditions of a multi-sector general permit or an individual NPDES or TPDES permit, whichever is applicable for the activity conducted at the industrial facility. A person who violates a term or condition of an applicable a multi-sector general permit or an individual NPDES or TPDES permit commits an offense.

Sec. 27-51. When SWP3, NOI, NEC, NOC, and NOT are required.

(a) Responsible parties of such facilities must submit a copy of any applicable NOI, NEC, NOC, and NOT to the City within two (2) days after submitting such document to TCEQ.

(b) Responsible parties of an industrial facility required to have a SWP3 under a multi-sector general permit or an individual NPDES or TPDES permit must provide a copy of the SWP3 to the City upon request.

(c) Failure to comply with this Section is an offense.

Sec. 27-52. Best Management Practices (BMPs).

(a) Responsible parties of an industrial facility governed by this Division must use best management practices to control and minimize the discharge into the MS4, waters of the United States, and state water of any material or substance handled, stored, or generated by the industrial facility and any pollutant that may be attributed to those materials or substances. The applicable SWP3 must establish BMPs. Compliance with required BMPs must be at the responsible parties' expense.

(b) Responsible parties of an industrial facility must comply with all BMPs required by the state, federal, or local laws, regulations, and permits.

(c) The City may require a person responsible of an industrial facility to implement, at said person's expense, additional BMPs, in addition to those required by TCEQ or the EPA, to prevent discharge of pollutants or contaminants to the MS4.

Sec. 27-53. Right of entry; inspection and sampling.

(a) The City is authorized to enter the premises of any person who is discharging stormwater into the MS4, waters of the United States, or state water to determine if the discharger is complying with all requirements of this Chapter and of any applicable state or federal discharge permits, limitations, or requirements.

(b) A discharger must:

(1) allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties;

(2) retain records of all monitoring and reporting records, including records of calibration and maintenance, and copies of all records and reports required by a TCEQ permit for a period of three (3) years from the date of the record or sample, measurement, report, application, or certification;

(3) retain any applicable SWP3 for a minimum of one (1) year after a NPDES or TPDES general permit is terminated or allowed to expire without renewal;

(4) make available to the City any SWP3s or modifications to plans, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and other records, reports, and documents required by the NPDES permit or TPDES permit; and

(5) retain and provide to the City, upon request, any annual, semi-annual, or periodic monitoring reports as required by the NPDES or TPDES permit.

(c) A person commits an offense if they fail to comply with any of the requirements provided in Subsection (b), above.

(d) If a discharger has security measures in force that require proper identification and clearance before entry into the premises, the discharger must make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City is permitted to enter without delay for the purpose of performing the City's responsibilities.

(e) The City has the authority to install on the discharger's property, or to require installation of, such devices as are necessary to conduct sampling or metering of the discharger's operations.

(f) The City may require a discharger that contributes, or the City believes may contribute, a harmful quantity of a pollutant to the MS4, waters of the United States, or state water to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges. All such activities must be at the discharger's expense. The City may specify the frequency and parameters of any required monitoring.

(g) The City may require the discharger to install monitoring equipment as necessary at the discharger's expense.

(h) All required sampling and monitoring equipment must be maintained in a safe and proper operating condition by the discharger. The discharger must ensure that each device used to measure stormwater flow and quality is calibrated for accuracy.

(i) Any temporary or permanent obstruction that obstructs safe and easy access to facility that is to be inspected or sampled must be promptly removed by the discharger at the written or verbal request of the City and must not be thereafter replaced. The costs of clearing access to the facility must be borne by the discharger.

(j) Failure for a discharger to comply with any provision of this Section is an offense.

ARTICLE V. ENFORCEMENT

Sec. 27-54. Administrative Enforcement Remedies.

(a) Generally. Unless otherwise provided in this Chapter, nothing in this Chapter limits the authority of the City to take any action, including emergency action and filing a civil suit or criminal charges, without first issuing any other type of notice or order provided under this Article. Compliance with any notice issued hereunder in no way relieves the alleged violator of liability for any violations occurring before or after receipt of any notice or order.

(b) Notification of Violation (NOV). Except as otherwise provided by this Chapter, when the City finds that any person has violated, or continues to violate, any provision of this Chapter, the City may serve upon that person a written NOV in person or by mail. Notice of violations may order a violator to perform, within a prescribed period, any or all of the following actions:

(1) provide the City an explanation of the violation;

(2) provide the City a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions and timelines for completion, which will be subject to City approval;

(3) correct the violation and make any remediation necessary within a period prescribed by the City; and

(4) perform any other action deemed necessary by the City to ensure the public's health, safety, and welfare and prevent property damage.

(c) If the person denies that any violation occurred or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention must be submitted to the City by a date specified in the Notice of Violation.

(d) Failure to take timely or proper action as required by Subsection (b) or reply to the City by a specified date as required by Subsection (c) is an offense.

(e) All plans submitted to the City under Subsection (b)(2), above, must be approved by the City. If the City disapproves of a plan, the City may require a submitter to modify a plan.

(1) Failure to comply with a plan approved by the City or failure to obtain City approval for a plan under this Subsection is an offense.

(f) The City may issue a stop work order if the City does not accept a person's denial of a violation or contention that corrective action is not needed submitted under Subsection (c).

(g) Stop Work Orders. When the City finds that any person has violated, continues to violate, or threatens to violate any provision of this Chapter, or any order issued by the City hereunder, the City may issue a stop work order, which will: (1) suspend or revoke any City issued permits or approvals associated with the regulated activity, facility, or site in question; or (2) halt the permitted or approved activity or facility until the violation is abated or corrected.

(h) If a violator fails to timely correct a violation or make required remediation or there is an imminent danger to the public health, safety, or welfare, the City may perform any action deemed necessary by the City to ensure the public's health, safety, and welfare. The City may charge the owner of the property for any worked performed by the City under this Subsection. Failure to pay the City for this work may result in the City filing a lien against the property.

Sec. 27-55. Criminal and Civil Enforcement.

(a) The commission of any act that is prohibited by this Chapter or the failure to perform any act that is required by this Chapter is a violation.

(b) Penalties for violations.

(1) Criminal.

(A) A person who knowingly, intentionally, recklessly, or with criminal negligence violates any provision of this Chapter commits an offense.

(B) A person who violates any provision of this Chapter commits a Class C misdemeanor. A person convicted of a violation of this Chapter must be fined a minimum amount of not less than two hundred fifty dollars ($250.00) for the first violation, five hundred dollars ($500.00) for the second violation, and a thousand dollars ($1000.00) for the third violation and each violation thereafter. The maximum fined amount for any violation of this Chapter may not be more than two thousand dollars ($2,000.00) per violation.

(C) A person is criminally responsible for a violation of this Chapter if the person:

i. commits or assists in the commission of the violation or causes or permits another person to commit the violation;

ii. owns, operates, or manages a site or facility determined to be the cause of the violation.

(D) Each violation of this Article constitutes a separate offense, and each day or portion of a day an offense continues will be considered a new violation for purposes of enforcing this Article.

(E) Filing criminal charges will not be a bar against, or a prerequisite for, taking any other action against a person.

(2) Civil.

(A) The City has the authority to pursue all legal and equitable remedies to enforce provisions of this Chapter, including, but not limited to, civil penalties of up to $5000.00 a day or a portion of a day for each violation of this Article, injunctive relief, and all other available relief.

(B) The City has the authority to recover expenses and loss or damage to City property.

(C) Filing a suit for civil penalties will not be a bar against, or a prerequisite for, taking any other action against a person.

(c) Remedies Nonexclusive. The remedies provided for in this Section are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant person.

ARTICLE VI. MISC. PROVISIONS.

Sec. 27-56. Authority to enter agreements to enforce provisions of this Chapter.

The City has the authority to enter any interagency or interlocal agreements or other maintenance agreements, as necessary, to comply with the requirements of any state, federal, or local law or regulation or to enforce the terms of this Chapter.

Sec. 27-57. Severability.

The provisions and sections of this ordinance must be deemed to be severable, and the invalidity of any portion of this ordinance must not affect the validity of the remainder.