Ordinances Governing

STORM WATER POLLUTION CONTROL

in the

CITY OF ARLINGTON

TEXAS

Amended by Ordinance No. 14-063

(October 28, 2014)

(Chapter Designator: STORM WATER)

ORDINANCE HISTORY

Number	Date of Adoption	Comments
96-163	12/17/96	Adoption of the **"Storm Water Pollution Control"** Chapter of the Code of the City of Arlington, Texas, 1987.
01-089	08/14/01	Adoption of a new "**Storm Water Pollution Control"** Chapter, to provide for transfer of some of the requirements in the Chapter from federal to Texas regulatory control, updating the Chapter to match current state and federal requirements, and clarifying and amending pollution control requirements.
06-085	08/22/06	Amend **Article VI**, Compliance Monitoring, **Section 6.02**, Inspection or Search Warrants, relative to updating the reference to the Community Services Department.
07-004	02/13/07	Amend **Article I**, General Provisions, **Section 1.02**, Administration, relative to changing the name of the department to Environmental Services; **Section 1.03**, Abbreviations, relative to changing the name of the Texas Natural Resource Conservation Commission; **Section 1.04**, Definitions, relative to the amendment of the definitions of "Director", "NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit", "No Exposure Certification", "Texas Natural Resource Conservation Commission", "TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity", and "Waters of the United States", the addition of the definitions of "TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit", "TPDES permit", "TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities", and "Surface Water in the State", and the deletion of the definition of "Water in the State"; amend **Article II**, General Prohibition, **Section 2.01(B)** relative to the addition of an

ORDINANCE HISTORY

Number	Date of Adoption	Comments
		affirmative defense for four discharges; amend **Article III**, Specific Prohibitions and Requirements, **Subsection 3.01(B)**, relative to changing NPDES to TPDES; **Subsection 3.01(C)(6)**, relative to the deletion of non-pressurized; **Subsection 3.01(C)(15),** relative to dechlorination; by the addition of **Subsection 3.02(I)**, relative to adding reference to Subdivision Rules; amend **Article IV**, Storm Water Discharges from Construction Activities, **Section 4.01**, relative to the addition of the requirement to comply with the Design Criteria Manual; **Subsection 4.02(A)**, relative to changing the reference from waters of the United States to surface water of the State; **Subsection 4.02(B)**, relative to the addition of the requirement to perform maintenance and to maintain documentation; **Section 4.03**, Management Plan Submittal and Review for Disturbances of Less than Five Acres, relative to changing the title of the section; **Subsection 4.03(A)**, relative to changing from five acres to one acre; **Subsection 4.03(B)**, relative to allowing more than a Professional Engineer to certify a Storm Water Pollution Prevention Plan; **Subsection 4.03(E)**, relative to clarification of pollutants; **Section 4.04**, relative to changing the title of the section and changing from five acres to one acre; amend **Article V**, Storm Water Discharges Associated with Industrial Activity, **Subsection 5.01(B)**, relative to changing NOC to NOI; **Subsection 5.01(E)**, relative to changing TNRCC to TCEQ; **Subsection 5.04(C)**, relative to changing TNRCC to TCEQ; **Section 5.07**, relative to formatting of table; amend **Article VI**, Compliance Monitoring, **Section 6.02**, relative to changing department names; amend **Article VII**, Reports of Violations, **Subsections 7.01(B)**, **7.01(D)(2)** and **Subsection 7.01(E)**, relative to changing department name from Engineering Services to Environmental Services.

ORDINANCE HISTORY

Number	Date of Adoption	Comments
07-053	07/24/07	Add **Article XIII**, Municipal Storm Water (Drainage) Utility System, relating to the municipal storm water (drainage) utility system; restating findings; definitions; calculating storm water charges and monthly fees; providing for billing, payment, exemptions, penalties and remedies for failure to pay fees; restating the storm water utility system fund.
07-100	12/18/07	Amend **Article XIII**, Municipal Storm Water (Drainage) Utility System, **Section 13.06**, Exemptions, by the addition of **Subsection (D)**, relative to the addition of public school districts to exemptions from storm water fee assessed by the municipal storm water (drainage) utility system.
10-019	01/12/10	Amend **Article IV**, Storm Water Discharges from Construction Activities, **Section 4.03**, Management Plan Submittal and Review for Disturbances of Less Than One Acre, **Subsection (B)(2)**, and **Section 4.04**, One Acre or Greater Disturbances, by the addition of **Subsection (T)**, relative to a requirement that final plans or other documents that will be archived must be submitted in electronic format; amend **Article X**, Judicial Enforcement Remedies, **Section 10.02**, Criminal Penalties, relative to updated penalty provisions.
14-063	10/28/14	Amend **Article XIII**, Municipal Storm Water (Drainage) Utility System, **Section 13.03**, Storm Water Utility Schedule of Charges, **Subsection (B)**, amending storm water (drainage) utility fees.

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ARTICLE I

GENERAL PROVISIONS

Section 1.01 Purposes

The purposes and objectives of this Chapter are as follows:

A. To maintain and improve the quality of surface water and groundwater within the City of Arlington, the North Central Texas Region, and the State of Texas.

B. To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Arlington.

C. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers and natural waters of the City.

D. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.

E. To facilitate compliance with state and federal water quality standards, limitations, and permits by owners and operators of industrial activities and construction sites within the City.

F. To enable the City to comply with all federal and state laws and regulations applicable to storm water discharges.

Section 1.02 Administration

The Director of Environmental Services shall implement and enforce the provisions of this Chapter, except for public works construction projects and municipal operations which are administered or controlled by another City department. For public works construction projects that are administered, performed, contracted, or funded (in whole or

in part) by the City, the Director of the City department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this Chapter. The Director of each City department shall also implement and enforce the provisions of this chapter for all municipal operations under his/her direction. Any powers granted to or duties imposed in this Chapter upon the Director of Environmental Services or the Director of another City department may be delegated by him/her to other City personnel. (Amend Ord 07-004, 2/13/07)

Section 1.03 <u>Abbreviations</u>

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

BMP	-	Best Management Practices
BOD5	-	Five Day Biological Oxygen Demand
CFR	-	Code of Federal Regulations
COD	-	Chemical Oxygen Demand
CSCE	-	Comprehensive Site Compliance Evaluation
EPA	-	U.S. Environmental Protection Agency
HHW	-	Household Hazardous Waste
LPE	-	Licensed Professional Engineer
mg/l	-	Milligrams per liter
MS4	-	Municipal Separate Storm Sewer System
MSGP	-	Multi-Sector General Permit
NOC	-	Notice of Change
NOI	-	Notice of Intent
NOT	-	Notice of Termination
NPDES	-	National Pollutant Discharge Elimination System
pH	-	Measure of Acidity or Alkalinity
POTW	-	Publicly Owned Treatment Works
PST	-	Petroleum Storage Tank
SWPPP	-	Storm Water Pollution Prevention Plan
TCEQ	-	Texas Commission on Environmental Quality
TPDES	-	Texas Pollutant Discharge Elimination System
TSS	-	Total Suspended Solids
USC	-	United States Code (Amend Ord 07-004, 2/13/07)

Section 1.04 <u>Definitions</u>

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

"Agricultural Storm Water Runoff" shall mean any storm water runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

"Best Management Practices" or "BMP" shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Chapter" shall mean a major subdivision of the Code of Ordinances of the City of Arlington.

"City" shall mean the City of Arlington, Texas, or the City Council of Arlington.

"Coal Pile Runoff" shall mean the rainfall runoff from or through any coal storage pile.

"Commencement of Construction" shall mean the initial disturbance of soils associated with clearing, grading, excavating, landfilling, and other construction activities.

"Commercial" shall mean pertaining to any business, trade, industry, or other activity engaged in for profit.

"Common Plan of Development" shall mean a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

"Construction" shall mean any human activity that involves clearing, grading, excavation, landfilling, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

"Contaminated" shall mean containing a harmful quantity of any substance.

"Director" shall mean the Director of Environmental Services for the City of Arlington, or his/her duly authorized

representative, except in the case of public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City. In the case of such City public works projects, the term "Director" shall mean the Director of the City Department that is administering, performing, or contracting for the construction project, or his/her duly authorized representative. (Amend Ord 07-004, 2/13/07)

"Discharge" shall mean any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

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

"Domestic Sewage" shall mean human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

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

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

"Fertilizer" shall mean a solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

"Final Stabilization" shall mean the status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures have been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. (Note: The pervious area shall be uniformly vegetated such that randomly chosen areas, as would be enclosed by a hula hoop, each have a vegetation density at least 70%.)

"Fire Department" shall mean the Fire Department of the City of Arlington, or any duly authorized representative thereof.

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

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

"Harmful Quantity" shall mean the amount of any substance that will cause pollution of water in the State.

"Hazardous Material" shall mean any substance or materials determined to be hazardous by the Secretary of Transportation according to 49 CFR Part 171.8.

"Hazardous Substance" shall mean any substance listed in Table 302.4 of 40 CFR Part 302.

"Hazardous Waste" shall mean any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

"Hazardous Waste Treatment, Disposal, and Recovery Facility" shall mean all contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

"Herbicide" shall mean a substance or mixture of substances used to destroy a plant or to inhibit plant growth.

"Household Hazardous Waste" or "HHW" shall mean any material generated in a household (including single and multiple

residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

"Industrial Waste" shall mean any byproduct that results from any process of industry, manufacturing, mining, production, trade, business, or facility identified as engaging in an industrial activity under 40 CFR Part 122.26.

"Landfilling" shall mean the deposition of soil and other inert materials on the land to raise its grade and/or smooth its features.

"Licensed Professional Engineer" or "LPE" shall mean a person who has been duly licensed (and registered if practicing as an individual) by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

"Motor Vehicle Fluid" shall mean any vehicle crankcase oil, antifreeze, transmission fluid, hydraulic fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

"Municipal Landfill" shall mean an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Natural Resource Conservation Commission).

"Municipal Operations" shall mean the day to day operation and maintenance activities that have the potential for contributing pollutant runoff to the MS4.

"Municipal Separate Storm Sewer System" or "MS4" shall mean the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water.

"Municipal Solid Waste" shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals,

abandoned automobiles, and other solid waste other than industrial waste.

"NPDES General Permit for Storm Water Discharges Associated with Industrial Activity" or "Baseline Industrial General Permit" shall mean the Baseline Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

"NPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit" shall mean the Construction General Permit issued by EPA on June 24, 1998, and published in Volume 63 of the Federal Register at page 36485 on July 6, 1998, and any subsequent modifications or amendments thereto.

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

"NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit" shall mean General Permit No. TXG110000 published by EPA in Volume 65 of the Federal Register at page 2165 on January 13, 2000, and any subsequent modifications or amendments thereto, that has been assumed and is now administered by the TCEQ. (Amend Ord 07-004, 2/13/07)

"No Exposure" shall mean that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, run-on and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products not intended to be used outdoors, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"No Exposure Certification" shall mean receipt of an NPDES Form 3510-11 or an equivalent form issued by TCEQ related to the TPDES General Permit. (Amend Ord 07-004, 2/13/07)

"No Exposure Exclusion" shall mean that all industrial facilities that meet the criteria listed in 40 CFR 122.26(b)(14) (except construction) may be excluded from industrial storm water discharge permitting requirements on a conditional basis if certification that a condition of "no exposure" can be made for the facility.

"Nonpoint Source" shall mean any source of any discharge of a pollutant that is not a "point source."

"Notice of Change" or "NOC" shall mean the notice of change that is required by the TPDES General Permit related to storm water discharges associated with industrial activity.

"Notice of Intent" or "NOI" shall mean the Notice of Intent that is required by the Construction General Permit, the Multi-Sector General Permit, or other General Permit for the discharge of storm water.

"Notice of Termination" or "NOT" shall mean the Notice of Termination that is required by either the Construction General Permit, the TPDES General Permit for industrial activity, or other General Permit for the discharge of storm water.

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

"Operator" shall mean the person or persons who, either individually or taken together, meet either of the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); or (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

"Owner" shall mean the person who owns a facility or part of a facility.

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

"Pesticide" shall mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code).

"Petroleum Product" shall mean a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and # 1 and #2 diesel.

"Petroleum Storage Tank" or "PST" shall mean any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

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

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

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

"Public Works Construction Project" shall mean any construction performed or funded in whole or part by the City of Arlington.

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

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the municipal separate storm sewer system (MS4) or the waters of the United States.

"Rubbish" shall mean non-putrescible solid wastes that consist of (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 do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

"Sanitary Sewer (or Sewer)" shall mean the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant utilized by the City (and to which storm water, surface water, and groundwater are not intentionally admitted).

"Septic Tank Waste" shall mean any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Service Station" shall mean any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

"Sewage" or "Sanitary Sewage" shall mean the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant utilized by the City for treatment.

"Site" shall mean the land or water area where any facility or activity is physically located or conducted, including

adjacent land used in connection with the facility or activity.

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

"State" shall mean the State of Texas.

"Storm Water" shall mean storm water runoff, snowmelt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" shall mean the release of storm water runoff from any conveyance which is used for collecting and conveying storm water that drains from manufacturing, processing, maintenance, materials storage, or waste storage areas at a facility that meets the criteria listed in 40 CFR § 122.26(b)(14).

"Storm Water Pollution Prevention Plan" or "SWPPP" shall mean a plan required by either the Construction General Permit, the Baseline Industrial General Permit, or the Multi-Sector General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.

"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 nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or 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. (Amend Ord 07-004, 2/13/07)

"Texas Commission on Environmental Quality" or "TCEQ" shall mean the State of Texas agency by that name, the regional offices thereof, any state department, agency, or commission that may succeed to the authority of the TCEQ, and any duly authorized official of TCEQ or such successor agency. (Amend Ord 07-004, 2/13/07)

"TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities" shall mean General Permit No. TXG110000 published by the TCEQ and as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions. (Amend Ord 07-004, 2/13/07)

"TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit" shall mean the Construction General Permit issued by TCEQ on March 5, 2003 as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions. (Amend Ord 07-004, 2/13/07)

"TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity" shall mean TPDES General Permit No. TXR050000 issued by the TCEQ in 2001 as authorized under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions. (Amend Ord 07-004, 2/13/07)

"TPDES permit" shall mean a permit issued by the TCEQ that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to an individual, group, or general area-wide basis. (Amend Ord 07-004, 2/13/07)

"Uncontaminated" shall mean not containing a harmful quantity of any substance.

"Used Oil" or "Used Motor Oil" shall mean any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

"Wastewater" shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.

"Water Quality Standard" shall mean the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

"Waters of the United States" - (from title 40, part122, section 2 of the Code of Federal Regulations) 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 CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States 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 Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. (Amend Ord 07-004, 2/13/07)

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

"Yard Waste" shall mean leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations. (Amend Ord 01-089, 8/14/01)

ARTICLE II

GENERAL PROHIBITION

Section 2.01 General Prohibition

A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of storm water.

B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section, upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges and is not damaging the environment:

1. A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);

2. A discharge or flow resulting from fire fighting by the Fire Department;

3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;

4. Agricultural storm water runoff;

5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;

6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;

7. A discharge or flow from a diverted stream flow or natural spring;

8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

9. Uncontaminated groundwater infiltration (as defined in 40 CFR §35.2005(20)) to the MS4;

10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

12. A discharge or flow from individual residential car washing (external surfaces only);

13. A discharge or flow from a riparian habitat or wetland.

14. Dechlorinated swimming pool water (not filter backwash from a swimming pool or hot tub) that: contains no harmful quantities of chlorine or other chemicals, and has a pH of 6.0 to 9.0, and the flow does not cause flooding or property damage.

15. Air conditioning condensate that is not contaminated.

16. A discharge or flow from cold water (or hot water with prior permission of the director) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance or substance being removed from the surface being cleaned.

17. Other similar occasional incidental non-storm water discharges.

(Amend Ord 07-004, 2/13/07)

C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the Director to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and

the discharge has occurred more than 15 calendar days beyond such notice. The correctness of the Director's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

D. The burden of proof that a discharge was composed entirely of one or more of the categories in Subsection B and that it was not a source of a pollutant or pollutants to waters of the United States or to the MS4 is upon the person or entity responsible for the discharge. (Amend Ord 01-089, 8/14/01)

ARTICLE III

SPECIFIC PROHIBITIONS AND REQUIREMENTS

Section 3.01 Specific Prohibitions

A. The specific prohibitions in this section are not inclusive of all the discharges prohibited by the general prohibition in Article II.

B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's TPDES permit, or any state-issued discharge permit for discharges from its MS4. (Amend Ord 07-004, 2/13/07)

C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:

1. Any used motor oil, antifreeze, hydraulic fluid, or other motor vehicle fluid;

2. Any industrial waste;

3. Any hazardous waste, including household hazardous waste;

4. Any garbage, domestic sewage or septic tank waste, cooking oil, grease trap waste, or grit trap waste;

5. Any trash, rubbish, yard waste, or other floatable material;

6. Any wastewater from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, with the exception that the exterior of new or used automobiles for sale at a dealership may be rinsed with non-heated potable waters as long as no

pollutants (including but not limited to detergent, surfactants, emulsifiers, etc.) enter the MS4; (Amend Ord 07-004, 2/13/07)

7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;

8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior or exterior mechanical equipment that contains any soap, detergent, degreaser, solvent, other cleaning substance, or a pollutant from the item that is being cleaned, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating;

9. Any wastewater from commercial floor, rug, or carpet cleaning;

10. Any wastewater from the washdown or cleaning of parking lots, streets, or other pavement that contains soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other cleaning substance, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating; or any wastewater from the washing or cleaning of parking lots, streets, or other pavement where any spill, leak, or other release of hazardous material, hazardous substance, hazardous waste or other pollutant has occurred;

11. Any effluent, overflow or blowdown, from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or boiler;

12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or any wastewater or substance from the cleaning of any vehicle or equipment containing, or used in transporting or applying, such material;

13. Any runoff or washdown water from an animal pen, kennel, or foul or livestock containment area;

14. Any filter backwash from a swimming pool;

15. Any swimming pool or hot tub water that has not been dechlorinated, has a pH of less than 6 or greater than 9, causes flooding, property damage, or damage to the environment; (Amend Ord 07-004, 2/13/07)

16. Any discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;

17. Any fire protection water containing oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. This prohibition does not apply to discharges or flow from fire fighting by the Fire Department;

18. Any wastewater from a water curtain in a spray room used for painting vehicles or equipment;

19. Any contaminated or unpermitted storm water discharge associated with an industrial activity;

20. Any substance or material that will damage, block, or clog the MS4;

21. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release.

22. Any rubble, debris, rubbish, tile, concrete, brick, asphalt, or other building material resulting from demolition.

D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other construction activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.

E. No person shall connect an interior drain or any other source of wastewater, domestic or industrial, to the MS4 or allow such a connection to continue.

F. Regulation of Pesticides, Herbicides, and Fertilizers

1. No person shall use or cause to be used any pesticide, herbicide, or fertilizer contrary to any directions for use on any labeling required by state or federal statute or regulation.

2. No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

3. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

4. If provided with a display notice containing the provisions of this Subsection, pertaining to the regulation of pesticides, herbicides, and fertilizers (or a reasonable description thereof), and the information that any user of the product may obtain further information from the Director, any person selling pesticides, herbicides, or fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.

G. Used Oil Regulation

1. No person shall:

a. Pour, spill, leak, pump, empty, leach, dispose, or otherwise discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;

b. Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill;

c. Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

2. All businesses that change motor oil for the public, municipal waste landfills, and fire stations are encouraged to serve as public used oil collection centers as provided by state statute in Section 371.024 of the Texas Health & Safety Code.

3. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the City or by the state informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the state used oil information center. If a sign is provided by the City, it shall also prominently display the City telephone number where information concerning the proper disposal of used oil may be obtained.

H. No person shall introduce or cause to be introduced into the sanitary sewer system any discharge of storm water, polluted or unpolluted, or any discharge that causes or contributes to causing the City of Arlington to violate a water quality standard, its agreements associated with the regional sewage treatment plants, or any state issued permit.

I. Any person that causes a spill, release, or other discharge of a prohibited substance or other pollutant to the MS4 is solely responsible for the cleanup and removal of the substance from the MS4 or any area adjacent to the MS4 that is exposed to storm water runoff. Where the person that caused the spill, release, or discharge to the MS4 is unknown, the owner of the property on which the spill, release, or discharge occurred is responsible for the cleanup or removal of the substance from the MS4 or any area adjacent to the MS4.

Section 3.02 <u>Requirements</u>

A. Sanitary sewer overflows shall be prevented. All sanitary sewer overflows shall be reported to the City of Arlington as soon as the owner, occupant, or person otherwise having control of the sanitary sewer becomes aware of the overflow and to the appropriate federal and state agencies within 24 hours. If a sanitary sewer overflow enters the MS4, the owner, occupant, or person otherwise having control of the sanitary sewer shall remove all sewage and sewage contaminated water from the MS4.

B. Items that are segregated for separate collection, disposal, recycling or reuse shall be stored in a manner that prevents pollutants from entering the MS4. Drums shall be closed, not leaking, and in good condition.

C. Spills and leaks of hazardous materials, hazardous substances, and hazardous wastes or harmful quantity of a pollutant, including motor vehicle fluids, shall be cleaned up immediately after the spill occurs or the leak is detected. Any absorbent used must be picked up before the next rainfall. If wash water is used to clean the spill or leak, the wash water must be collected for appropriate disposal and not allowed to flow into the MS4. Surface soil contaminated by the spill or leak must be removed or otherwise protected from contact with storm water.

D. Drip pans, absorbent mats, or equivalent controls shall be used to collect and properly dispose of leaking fluids from motor vehicles that are parked outside during maintenance and repairs or while awaiting repairs at commercial repair facilities. Used engines, transmissions, radiators, and other vehicle components that have automotive fluids in or on them shall be stored in a manner that prevents pollutants from entering the MS4.

E. Wash water, detergents, and solvents used for washing parts and equipment shall be collected for disposal in accordance with the appropriate federal and state regulations. Vats of solvents or wash bins used outside shall be covered when not in use to prevent rainfall from filling the vat or bin and causing an overflow.

F. Parking lot storm drain inlets shall be maintained free of trash, litter, garbage, rubbish, grass clippings, leaves, and other debris. Such material removed from the inlets shall be disposed of in a trash receptacle and shall NOT be allowed to enter the MS4.

G. Trash and litter on any parcel of land shall be collected for appropriate disposal prior to mowing.

H. Refer to Articles IV and V for the requirements associated with construction and industrial activities, respectively. (Amend Ord 01-089, 8/14/01)

I. Post construction BMP's as required by the Subdivision Rules and Regulations and the Design Criteria Manual. (Amend Ord 07-004, 2/13/07)

ARTICLE IV

STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

Section 4.01 Goal for Erosion and Sediment Control

The goal for erosion and sediment control at sites disturbed by construction is achievement of at least the minimum site rating of 0.70 using the site rating system and the implementation of the design standards specified in the Integrated Storm Water Management (iSWM) Design Manual for Construction, North Central Texas Council of Governments, Arlington, Texas, December 2003 or adopted revisions and compliance with the City of Arlington Design Criteria Manual. (Amend Ord 07-004, 2/13/07)

Section 4.02 General Requirements

A. All operators of construction sites shall use best management practices (BMP) to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with demolition, clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES Construction General Permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control. They shall be restored to serve their post-construction function before development or redevelopment activities are completed.

The best management practices used at construction sites may include, but not be limited to, the following measures:

1. Ensuring that existing vegetation is preserved by minimizing the disturbance of areas (using temporary fencing to protect areas if necessary)

adjacent to construction areas by equipment parking or material storage.

2. Stabilizing disturbed areas of the site as soon as practicable in those portions where construction activities have temporarily or permanently ceased.

3. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;

4. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;

5. Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or surface water in the State;

6. Measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;

7. Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;

8. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and

9. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention

structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated. (Amend Ord 07-004, 2/13/07)

B. Qualified personnel (provided by the operator of the construction site) shall conduct inspections, perform maintenance of controls, and maintain documentation for disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable. (Amend Ord 07-004, 2/13/07)

C. Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in this Section 4.02.

D. Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

Section 4.03 Management Plan Submittal and Review for Disturbances of Less than One Acre

A. The requirements of this Section 4.03 shall not apply to any of the following activities:

1. Any construction activity that results in the disturbance of one or more acres of total land area, or that is part of a common plan of development or sale within which one or more acres of total land area are disturbed, and any other construction activity for which an NPDES or TPDES permit is required for storm water discharges associated with that construction activity. (In such circumstances, the requirements of Section 4.04 apply in lieu of this Section.)

2. Any public works construction project disturbing less than one acre that is administered, performed, contracted, or funded (in whole or in part) by the City.

3. Any construction activity, not a part of a larger plan of development of one acre or more, related to the construction, alteration, or addition to a single-family, duplex or four-plex residential structure, or an accessory use to any such structure, where one primary structure is constructed per legal lot and the construction activity does not result in the disturbance of more than 12,000 square feet of total land area.

4. Any construction incident to repair or maintenance of a utility line (such as for telecommunications, electricity, water, sewer, and natural gas). Construction incident to the laying of new utility lines or replacement of existing lines is not exempted from Section 4.03 by this paragraph.

5. Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building.

6. Construction of a fence, but no exemption is granted by this subparagraph for construction of a retaining wall or a fence that may significantly obstruct or change the direction of flow of water.

7. Any construction activity that the Director expressly finds not to cause, or threaten to cause, any discharge of any harmful quantity of any material associated with construction activity into the MS4 or any other water in the state. (Amend Ord 07-004, 2/13/07)

B. Unless within one or more of the exceptions specified in Section 4.03(A) above, all operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, shall prepare and submit the following documents to the Director at least fifteen calendar days prior to the commencement of construction activities (unless, pursuant to Section 4.03(C) below, the Director expressly allows construction to be commenced within a shorter period of time following the document submittal):

1. An identifying notice on a form approved by the Director and to be posted at the site entrance containing the following information:

   a. The name, address, and telephone number of each operator of the construction activity;

   b. The name, address, and telephone number of each owner of the construction site;

   c. The location of the construction site, by street address and legal description; and

   d. A description of the nature of the construction project.

2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site, except in instances of land clearing or landfilling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site. Final plans or other

documents that will be archived must be submitted in an electronic format specified by the Director of Community Development and Planning ("CDP Director") as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The City may provide an electronic conversion service for a fee in the amount set forth by City Council resolution. The CDP Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary to implement an electronic archiving program. (Amend Ord 10-019, 1/12/10)

C. The Director may allow construction to be commenced within fewer than fifteen calendar days following submittal of the documents required by Section 4.03(B) above if he/she expressly determines that:

1. The required identifying notice and management plans and specifications are complete and satisfactory;

2. The Director has been afforded adequate time and opportunity to review the management plans and specifications; and

3. The management practices described in the plans and observed upon any site inspection conducted are adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

D. If, upon the Director's review of the management plans and specifications required by Section 4.03(B) above (or any modified plans required by Section 4.03(F) below) and any site inspection that the Director may conduct, the Director determines that the management practices described in the plans or observed upon the site inspection are not adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Any order issued by the Director under the authority of this Paragraph may be in the form of a Compliance Order

under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

E. The City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the Director are determined not to control and reduce the discharge of pollutants to include but not limited to sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable. (Amend Ord 07-004, 2/13/07)

F. Whenever the management practices at a construction site are modified (as a result of change in the construction project, in order to implement more effective management practices, in response to an order or request from the City, or for any other reason), a written description of such modifications of the management practices shall be submitted to the Director as soon as possible, but in no case later than seven calendar days following the change in the management practices.

Section 4.04 <u>One Acre or Greater Disturbances</u>

All operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, that result in the disturbance of one or more acres of total land area, or that are part of a common plan of development or sale within which one or more acres of total land area are disturbed, or who are required to obtain a TPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in Section 4.02.):

A. Any operator who intends to obtain coverage for storm water discharges from a construction site under the TPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") but not an individual permit shall:

For sites five acres and more submit a signed copy of its NOI to the Director of Environmental Services, and

to any other responsible City departmental Director, at least two calendar days prior to the commencement of construction activities, or

For sites one acre or more but less than five acres submit a copy of the Site Posting required by the TPDES General Permit.

For storm water discharges from construction sites where the operator changes, a revised Site Posting or NOI as appropriate for the site shall be submitted at least two calendar days prior to when the new operator commences work at the site.

B. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented prior to the beginning of construction activities in accordance with the requirements of the Construction General Permit or any individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter and any other city ordinance.

C. The SWPPP shall be prepared and certified by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site. The signature, date and seal of the Licensed Professional Engineer or other appropriate certification for the professional certifying the plan shall constitute his/her attestation to the best of his/her knowledge that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter. The SWPPP shall contain the name, title, and business address of the professional signing the SWPPP, and the date that he/she did so.

D. The SWPPP shall be updated and modified as appropriate and as required by the NPDES or TPDES permit and this Chapter. Any update or modification to the SWPPP that results in a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States shall be prepared, signed, dated, and sealed by a Licensed Professional

Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site.

E. The SWPPP shall be prepared and submitted to the Director at least fifteen calendar days prior to the commencement of construction activities.

F. A copy of any SWPPP that is required by Section 4.04(B) shall be submitted to the City in conjunction with any application for a building permit, demolition permit, early grading release, site development plan approval, and any other City approval necessary to commence or continue construction at the site.

G. If, upon the Director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the Director may conduct, the Director determines that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the Director may similarly issue an order prohibiting the continuation of any construction activity at the site. Any order issued by the Director under the authority of this paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

H. Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter. Also, if at any time the City determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, early grading release, or any

other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

I. All owners/developers, contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

J. The SWPPP, with the Licensed Professional Engineer's signature, seal, and date affixed, and the certifications of owners, developers, contractors and subcontractors required by Section 4.04(I), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

K. The operator shall make a copy of the SWPPP and any modification thereto available to the Director and any other authorized City inspector at the construction site upon request (as well as to EPA and state inspectors).

L. The Director may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual NPDES or TPDES permit issued for storm water discharges

from the construction site, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested modifications have been made.

M. The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be modified to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP. All modifications to the SWPPP shall be signed, dated, and sealed by a Licensed Professional Engineer or other professional, approved by the Director of Environmental Services, certified in a discipline that includes erosion and sediment control principles appropriate for the site, then submitted to the Director within seven calendar days of a change, determination of ineffectiveness (self or City inspection), or effective date of changes in contractor and/or subcontractor.

N. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within twenty-four hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage

system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

O. Based on the results of the inspections required by Section 4.04(N), the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection. All modifications to the SWPPP shall be submitted to the Director within seven calendar days of the date of inspection.

P. A written report summarizing the scope of any inspection required by Section 4.04(N), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section 4.04(O) above shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES or TPDES permit, and this Chapter. The report shall be certified and signed by the person responsible for making the report and consistent with the signing requirements of the permit.

Q. The operator shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES or TPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

R. Where a site has been finally stabilized and all storm water discharges from construction activities that are

authorized by this Chapter and by the NPDES or TPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the Director of Environmental Services, and to any other responsible City departmental Director, a NOT that includes the information required for Notices of Termination by Part VIII of the Construction General Permit.

S. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit to the responsible Director written certification that the site has been finally stabilized. (See definition of final stabilization in this Chapter.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the responsible Director has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed. (Amend Ord 07-004, 2/13/07)

T. Final plans or other documents that will be archived must be submitted in an electronic format specified by the Director of Community Development and Planning ("CDP Director") as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The City may provide an electronic conversion service for a fee in the amount set forth by City Council resolution. The CDP Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary to implement an electronic archiving program. (Amend Ord 10-019, 1/12/10)

ARTICLE V

STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

Section 5.01 General Requirements

A. All owners or operators of facilities that have or will have storm water discharges associated with industrial activity (except for construction activities) shall submit one of the following:

1. A copy of the facility's signed NOI for a TPDES General Permit relating to storm water discharges associated with industrial activity to the Director not less than two calendar days prior to commencement of industrial activity at the facility.

2. A copy of the facility's No Exposure Certification to the Director not less than two calendar days prior to commencement of industrial activity at the facility.

3. A copy of the facility's NPDES or TPDES application for an individual permit to discharge storm water not less than thirty calendar days prior to commencement of industrial activity at the facility.

4. A copy of the facility's signed NOI for an NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Products Plants and Their Associated Facilities in Texas to the Director not less than thirty calendar days prior to commencement of industrial activity at the facility.

B. If the owner or operator of a facility becomes aware of a failure to submit relevant facts or that incorrect information has been submitted, a copy of the signed revised NOI shall be submitted to the Director within fourteen calendar days of the discovery. If relevant information on the NOI or No Exposure Certification changes, a copy of the signed revised NOI shall be submitted within fourteen calendar days of the discovery. (Amend Ord 07-004, 2/13/07)

C. When the owner or operator of a facility changes or the facility moves to a new location or the industrial activity at the facility ceases operations, a copy of the signed NOT for the TPDES or NPDES General Permit or No Exposure Exclusion shall be submitted to the Director within fourteen calendar days of the change.

D. Any owner of a facility with a storm water discharge associated with industrial activity to which Section 5.01(A) applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with this ordinance.

E. Upon request by the Director, all owners and operators of any facility that is in non-compliance with the requirements of this Chapter, the NPDES or TPDES General Permit, the No Exposure Exclusion, or any applicable individual NPDES or TPDES permit issued for storm water discharges from the industrial facility, shall consult with the Director, any other representative of the City, or any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the TCEQ, and/or the City may itself undertake any enforcement action authorized by Articles VIII, X, or XI of this Chapter. Exercise of the City's option for consultation under this Section 5.01(E) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility. (Amend Ord 07-004, 2/13/07)

Section 5.02 <u>Facilities Operating with a TPDES or NPDES General Permit</u>

A. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the appropriate NPDES or TPDES General Permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under this Chapter, and any other City ordinance.

B. The SWPPP shall include all elements, activities, and items required by the appropriate NPDES or TPDES General Permit and any additional requirements of this Chapter or any other city ordinances.

C. The SWPPP shall be completed prior to the submittal of the NOI to the Director. The SWPPP shall be updated and modified as appropriate and as required by the facility's NPDES or TPDES General Permit and this Chapter.

D. The Director may require any operator to submit the SWPPP, and any modifications thereto, to the Director for review. Such submittal and review of the SWPPP may be required by the Director prior to commencement of or during industrial activity at the facility or prior to the approval of an application for any city permit.

E. Upon the Director's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any application for a permit or any other City approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the appropriate NPDES or TPDES General Permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under this Chapter or other City ordinances. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any application for a permit or other City approval necessary to commence or continue operation of the industrial facility.

F. The SWPPP, with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all storm water discharges associated with industrial activity at the facility are eliminated and the required NOT has been submitted in accordance with the appropriate NPDES General Permit.

G. The SWPPP and any modifications made thereto shall be available to the Director upon request (as well as to federal and state inspectors).

H. The Director may notify the operator or owner at any time that the SWPPP does not meet the requirements of the appropriate NPDES or TPDES General Permit or any additional requirement imposed by or under this Chapter or other City ordinances. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify

which provisions of the SWPPP require modifications in order to meet such requirements. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made.

I. The SWPPP shall be amended by the owner or operator whenever there is a change in design, construction, operation, or maintenance of the facility which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with industrial activity.

J. Employee training as required by appropriate NPDES or TPDES General Permit or this chapter shall be documented, and the documentation shall be retained at the industrial facility and made available to the Director upon request.

K. Qualified personnel (provided by the operator) shall inspect equipment, processes, and areas of the facility at least monthly to assess effectiveness of Good Housekeeping measures, spill prevention and response procedures, maintenance programs, BMPs, and other items specified in the SWPPP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained at the facility and made available to the Director upon request.

L. A grab sample from each outfall identified in the SWPPP shall be visually examined each quarter for color, clarity, floating solids, settled solids, suspended solids, foam, sheen, odor, and other indicators of pollution. The examination and documentation shall be accomplished in accordance with requirements of the NPDES or TPDES General Permit. Documentation shall be maintained at the facility and made available to the Director upon request.

M. Qualified personnel (provided by the operator) shall conduct a Comprehensive Site Compliance Evaluation (CSCE) as required by the appropriate NPDES or TPDES General Permit at intervals of no less than once per year. The SWPPP shall be revised by the owner or operator to include and address the findings of the evaluation within fourteen calendar days following completion of the evaluation.

N. A report summarizing the scope of the CSCE shall be made in accordance with the appropriate NPDES or TPDES General Permit. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES or TPDES permit, and this Chapter. Any incidents of non-compliance shall be corrected and the corrections documented as soon as practicable but no later than twelve weeks after the evaluation. The report shall be maintained at the facility and made available to the Director upon request.

O. If the industrial facility is required by the appropriate NPDES or TPDES General Permit to conduct analytical monitoring, records of the monitoring results shall be retained at the facility and made available to the Director upon request.

P. The operator shall retain the SWPPP until at least one year after storm water discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and a NOT in compliance with the appropriate TPDES or NPDES General Permit has been submitted. The operator shall retain all records of all monitoring information, copies of all required reports, and records of all data used to complete the NOI, until at least one year after all storm water discharges associated with industrial activity at the facility are eliminated, or the operator ceases to operate that facility, and the required NOT has been submitted.

Section 5.03 <u>Facilities Operating with a No Exposure Exclusion</u>

A. The owner or operator of a facility operating with a No Exposure Exclusion shall not allow the following

materials, equipment, processes, and areas to be exposed to precipitation or storm water runoff:

1. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain;

2. Materials or residuals on the ground or in storm water inlets from spills or leaks;

3. Materials or products from past industrial activities;

4. Material handling equipment, except non-leaking, maintained vehicles intended for outside use;

5. Materials or products during loading, unloading, or transporting activities;

6. Materials or products stored outdoors, except for final products that are intended for outside use and do not release a pollutant;

7. Materials contained in open, deteriorated, or leaking storage drums, barrels, bins, tanks or similar containers.

8. Materials or products handled or stored on roads or railways owned or maintained by the owner or operator of the facility;

9. Waste material;

10. Application or disposal of process wastewater unless otherwise permitted;

11. Particulate matter or visible deposits of residuals from roof stacks, vents, or air handling and control devices that are not authorized by an air quality control permit.

B. Upon inspection of the facility, the Director may at any time notify the operator or owner that the facility does not meet the requirements of no exposure necessary to operate under a No Exposure Exclusion or any additional requirements imposed by or under this Chapter or other City ordinances. Such notification shall identify the non-compliant conditions at the

facility and the changes necessary to attain a condition of no exposure. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall correct the non-compliant conditions and submit to the Director a written certification that the changes have been implemented, or the operator or owner shall prepare a Storm Water Pollution Prevention Plan and submit a NOI in accordance with Sections 5.01 and 5.02 of this Chapter.

Section 5.04 <u>Facilities Operating with a TPDES or NPDES Individual Permit</u>

A. The facility shall operate in accordance with all requirements of the appropriate TPDES or NPDES Individual Permit.

B. Upon inspection of the facility, the Director may notify the operator or owner at any time that facility operations do not meet the requirements of the appropriate TPDES or NPDES Individual Permit or any additional requirements imposed by or under this Chapter or other City ordinances. Such notification shall identify those provisions of the permit or Ordinance that are not being met and identify the changes necessary to meet such requirements. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall make the required changes and submit to the Director a written certification that the changes have been implemented.

C. Copies of all sampling data and analyses reports required by the appropriate TPDES or NPDES Individual Permit shall be submitted to the Director at the same time that such reports are submitted to the EPA or TCEQ, unless otherwise notified in writing by the Director. (Amend Ord 07-004, 2/13/07)

Section 5.05 <u>Analytical Monitoring</u>

A. By written notice, the Director may require any industrial facility identified in accordance with this Section V to implement a monitoring program at its expense that includes the submission of quantitative data on the following constituents:

1. Any pollutants limited in effluent guideline subcategories;

2. any pollutant listed in an existing NPDES or TPDES permit for the facility;

3. oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen; and

4. information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

   The Director may require written reports of any such monitoring to be submitted to him/her.

B. By written notice, the Director may require any industrial facility identified in this Article V to conduct semi-annual or annual monitoring of storm water discharges, or the Director may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. The Director may require written reports of any such additional monitoring to be submitted to him/her.

Section 5.06 <u>Coal Pile Runoff</u>

A. Upon the effective date of this chapter, any discharge composed of coal pile runoff shall comply with the following limitations:

   1. No discharge shall exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor shall such runoff be diluted with storm water or other flows in order to meet this limitation;

   2. The pH of such discharges shall be within the range of 6.0-9.0.

B. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids.

Section 5.07 Discharge Prohibitions

A. Upon the effective date of this chapter, no discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum concentrations (in mg/l) of each of the hazardous metals listed below:

Metal	Monthly Average	Daily Composite	Daily Maximum
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

(Amend Ord 07-004, 2/13/07)

B. Samples for the monthly average, daily composite, and daily maximum shall be obtained according to the methods specified in the appropriate NPDES or TPDES general or individual permit. (Amend Ord 01-089, 8/14/01)

ARTICLE VI

COMPLIANCE MONITORING

Section 6.01 Right of Entry: Inspection and Sampling

The Director, or his/her authorized representative, shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this Chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the Director, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with this Chapter and with any state or federal discharge permit.

A. Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director or his authorized representative(s) will be permitted to enter without delay for the purposes of performing his/her responsibilities.

B. The Director shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

C. The Director may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.

D. The Director may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe

and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

F. Unreasonable delays in allowing the Director access to the discharger's premises shall be a violation of this Chapter.

Section 6.02 <u>Inspection or Search Warrants</u>

If the Director, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Community Services, the Director of Environmental Services, the Director of Utilities, the Director of Public Works and Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05. (Amend Ord 07-004, 2/13/07)

ARTICLE VII

REPORTS OF VIOLATIONS

Section 7.01 Reports of Violations

A. All citizens are encouraged to report any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this Chapter of which they become aware, to the Director, his/her delegate, or any person designated by the City Manager to receive such citizen reports.

B. Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the City will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the Director of Environmental Services or other responsible City official will inform the reporting citizen of any action undertaken by the City in response to the citizen's report. (Amend Ord 07-004, 2/13/07)

C. The Operator and the Owner of any commercial or industrial activity shall report any spills, releases, illicit connections, or other instances where pollutants are discharged into the MS4 or waters of the United States and any other violation of this chapter for which they are responsible to the Director, his/her delegate, or any person designated by the City Manager to receive such reports.

D. The Operator and the Owner of any commercial or industrial activity shall report all incidents enumerated in Section 7.01(C) in accordance with the following:

1. A hazardous and/or toxic material spill or release shall be immediately reported to the Arlington Fire Department.

2. Other instances where pollutants are discharged into the MS4 or waters of the United States by spill, release, illicit connections or other means shall be reported to the Department of

Environmental Services/Environmental Management. (Amend Ord 07-004, 2/13/07)

E. Both the Operator and the Owner of any commercial or industrial activity which has resulted in a spill or release of hazardous/toxic materials or a substance of a polluting nature is responsible for proper notification of the incident to the appropriate county, state, and federal agency. The reporting of a spill/release to the City of Arlington does not release the Owner or Operator from reporting to appropriate county, state and federal officials.

Thus, dependent on the type of release and the nature of the emergency caused thereby (i.e., life threatening or not), the following agencies, in addition to the Department of Environmental Services/Environmental Management, are specified to be notified:

1. Hazardous Materials Response Team, City of Arlington Fire Department;

2. City of Arlington Police Department;

3. City of Arlington Department of Transportation/Streets Division;

4. Texas Commission on Environmental Quality;

5. U.S. Environmental Protection Agency; and

6. National Response Center. (Amend Ord 07-004, 2/13/07)

ARTICLE VIII

ADMINISTRATIVE ENFORCEMENT REMEDIES

Section 8.01 Warning Notice

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall require the Director to issue a Warning Notice prior to taking any action, including emergency action or any other enforcement action.

Section 8.02 Notification of Violation

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Notice of Violation. Within seven calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the Director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the Director within seven calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this subsection shall require the Director to issue a Notice of Violation prior to taking any action, including emergency action or any other enforcement action.

Section 8.03 Consent Orders

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents

establishing an agreement with any person responsible for noncompliance with any provision in this Chapter or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8.05, 8.06 and 8.07 of this Chapter and shall be judicially enforceable.

Section 8.04 <u>Show Cause Hearing</u>

The Director may order any person who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the Director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in Section 9.01(G) of this Chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

Section 8.05 <u>Compliance Orders</u>

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, the Director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of

a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.06 Remediation, Abatement, and Restoration Orders

When the Director finds that a person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the United States, the Director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the United States, and/or to restore any part of the MS4, or the waters of the United States. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

Section 8.07 Emergency Cease and Desist Orders

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) , or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director may issue an order to the violator directing it

immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all requirements of this Chapter; and

2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director within ten calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.08 <u>Stop Work Orders</u>

Whenever the Director finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of Article IV of this Chapter, or any order issued hereunder, the Director may issue a Stop Work Order to the operator, and require that a copy of the Stop Work Order be posted at the construction site and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the Director, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the City associated with a building permit, early grading release, or

any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a Stop Work Order shall not be a bar against, or a prerequisite for, taking any other action against the violator. (Amend Ord 01-089, 8/14/01)

ARTICLE IX

RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

Section 9.01 Reconsideration and Hearing

A. Any person subject to a Compliance Order under Section 8.05, a Remediation, Abatement, or Restoration Order under Section 8.06, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08 of this Chapter may petition the Director to reconsider the basis for his/her order within fifteen calendar days of the affected person's notice of issuance of such an order.

B. Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

C. In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

D. The effect of any Compliance Order under Section 8.05, Remediation, Abatement, or Restoration Order under Section 8.06, and any Stop Work Order under Section 8.08 shall be stayed pending the Director's reconsideration of the petition, and any hearing thereon, unless the Director expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Section 8.07 shall <u>not</u> be stayed pending the Director's reconsideration, or any hearing thereon, unless the Director expressly and in writing stays his/her emergency order.

E. Within thirty calendar days of the submittal of a petition for reconsideration, the Director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

F. Written notice of any hearing set by the Director pursuant to Section 9.01(E) above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

G. The Director may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:

1. issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;

2. take evidence;

3. transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Director for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

H. After the Director has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The Director may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

Section 9.02 <u>Appeal</u>

Any person whose petition for reconsideration by the Director has not been granted in its entirety and who

remains adversely affected by the Director's order, or who is subject to an order of the Director issued following a Show Cause Hearing under Section 8.04, may challenge the final action of the Director in an appropriate court of competent jurisdiction. (Amend Ord 01-089, 8/14/01)

ARTICLE X

JUDICIAL ENFORCEMENT REMEDIES

Section 10.01 Civil Remedies

A. Whenever it appears that a person has violated, or continues to violate, any provision of this Chapter that relates to:

1. the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;

2. the preservation of public health or to the fire safety of a building or other structure or improvement;

3. the establishment of criteria for land subdivision or construction of buildings, including street design;

4. dangerously damaged or deteriorated structures or improvements;

5. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

6. point source effluent limitations or the discharge of a pollutant, other than from a nonpoint source, into the MS4,

The City may invoke Sections 54.011 - 54.017 of the Texas Local Government Code and petition the state district court or the county court at law of Tarrant County, through the City Attorney, for either the injunctive relief specified in Section 10.01(B) or the civil penalties specified in Section 10.01(C) below, or both the specified injunctive relief and civil penalties.

B. Pursuant to Section 54.016 of the Texas Local Government Code, the City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:

1. prohibits any conduct that violates any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above; or

2. compels the specific performance of any action that is necessary for compliance with any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above.

C. Pursuant to Section 54.017 of the Texas Local Government Code, the City may recover a civil penalty of not more than $1,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(5) above, and a civil penalty of not more than $5,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(6) above, if the City proves that:

1. the defendant was actually notified of the provisions of the Chapter; and

2. after the defendant received notice of the Chapter provisions, the defendant committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter.

Section 10.02 <u>Criminal Penalties</u>

A. A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor; each day the violation continues shall be a separate offense.

1. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents ($500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

2. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

B. A person commits an offense by knowingly making any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, or any order issued hereunder, or by falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required under this Chapter.

C. In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires. (Amend Ord 10-019, 1/12/10)

Section 10.03 <u>Remedies Nonexclusive</u>

The remedies provided for in this Chapter are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently. (Amend Ord 01-089, 8/14/01)

ARTICLE XI

SUPPLEMENTAL ENFORCEMENT ACTION

Section 11.01 Performance and Maintenance Bonds

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Chapter, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The City may deny approval of any building permit, early grading release, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

Section 11.02 Liability Insurance

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the Director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

Section 11.03 Public Nuisances

A. A violation of any provision of this Chapter, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated.

B. Any person(s) creating a public nuisance shall institute and complete all actions necessary to remedy the effects of such nuisance. If the person(s) responsible for creating the public nuisance fails to correct or abate the nuisance, the City may correct or abate the nuisance and the person(s) creating the nuisance shall be jointly and severally liable for the

cost of such correction or abatement in accordance with state and local law.

C. It shall be the duty of the owner(s), occupant(s) or person(s) otherwise having supervision and control of any lot, tract or parcel of land to correct or abate any public nuisance existing in or on his/her property. If such nuisance is not corrected or abated, the City may correct or abate the nuisance and the owner(s), occupant(s) or person(s) otherwise having supervision and control of any lot, tract or parcel of land shall be jointly and severally liable for the cost of such correction or abatement in accordance with state and local law. (Amend Ord 01-089, 8/14/01)

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01 Charges and Fees

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

A. Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;

B. Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and

C. Other fees as the City may deem necessary to carry out the requirements contained in this Chapter. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

Section 12.02 Severability

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 12.03 Effective Date

This Chapter shall be in full force and effect immediately following its passage, approval, and publication, as provided by law. (Amend Ord 01-089, 8/14/01)

ARTICLE XIII

MUNICIPAL STORM WATER (DRAINAGE) UTILITY SYSTEM

Section 13.01 Findings and Definitions

A. Findings Restated.

1. The City will establish a schedule of drainage charges against all real property in the City subject to charges under TEXAS LOCAL GOV'T CODE CHAPTER 402, SUBCHAPTER C. MUNICIPAL DRAINAGE UTILITY SYSTEMS, §402.041 et.seq.

2. The City will provide drainage for all real property in the City upon payment of drainage charges, except real property that is exempt from such charges.

3. The City will offer drainage service on nondiscriminatory, reasonable, and equitable terms. (Ord. 90-81, Section 1, August 14, 1990)

B. Definitions. The following definitions apply to the operation of the storm water utility system.

1. **Act**: means TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, and as it may be amended hereafter.

2. **Allocated Portion of a Parcel:** means that portion of a parcel which has been allocated to an owner or customer based on the area utilized by the owner or customer compared to the total area of a parcel.

3. **Benefitted Property:** means an improved parcel, lot or tract to which storm water service is made available. Publicly maintained streets shall not be included in benefitted property.

4. **Customer:** means the person(s) or entity(ies) that is shown as the customer or user of utility services for a parcel as recorded in the records of the City's utility billing system (UBS).

5. **Director:** means the Director of Public Works and Transportation of the City or his designated representative.

6. **Dwelling Unit:** means one or more rooms, including kitchen and bathroom facilities, arranged or used as separate living quarters for an individual family. Hotels and motels are excluded from this definition.

7. **Equivalent Residential Unit (ERU):** is a unit of measurement of impervious surface area determined from the average house structure, garage, driveway and other impervious area upon residential parcels within the City, to-wit: 2800 square feet.

8. **Impervious:** means a surface that has been compacted or covered with a layer of material so that it is resistant to infiltration by water. Impervious areas include, but are not limited to, compacted soils with a surface treatment, gravel or crushed stone surfaces, asphalt or concrete pavement, parking lots, driveways, sidewalks, buildings and other man made structure or surface that is built or laid on the natural surface of the land and has the effect of increasing, concentrating or otherwise altering storm water runoff.

9. **Improved Parcel**: means a lot or parcel that has been changed from its natural state by construction of a structure or other improvement on it that causes an impervious coverage of the soil.

10. **Multi-Family Parcel:** means any benefitted property or buildings with five (5) or more dwelling units.

11. **Non-residential Parcel:** means all benefitted property that is not defined as residential by this ordinance, including commercial, industrial, institutional, multi-family and governmental property.

12. **Owner:** means the person(s) or entity(ies) that is shown as the owner of a parcel as recorded in the records of the Tarrant County Appraisal. The owner of a parcel may also be recorded as the owner or customer receiving other utility services in the utility billing system.

13. **Parcel:** means one or more lots or tracts, or portions of lots or tracts.

14. **Residential Parcel:** means any benefitted property platted, zoned or used for residential development including single family, duplex, triplex, quadraplex, townhomes, manufactured homes or other improved parcel upon which buildings contain less than five (5) dwelling units.

15. **Service Area:** means the municipal boundaries.

16. **Storm Water:** includes the definition of "drainage" as found in the Act.

17. **Storm Water Infrastructure or Facilities:** means the property, real, personal or mixed, that is used to provide drainage and included in the storm water utility system, including bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

18. **Storm Water Utility System:** means the storm water utility system owned or controlled, in whole or in part by the City, including the City's existing storm water facilities, materials, and supplies and any storm water facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefitted property, and including provision for additions, extensions, and improvements thereto and replacements thereof, and to be funded, in whole or in part, by the storm water utility fee.

19. **Wholly Sufficient and Privately Owned Storm Water System:** means land owned and operated by a person other than the City and from which the storm water does not discharge under any storm frequency event or conditions into a creek, river, slough, culvert, channel or other infrastructure that is part of the City's storm water utility system.

Section 13.02 Continuation of Storm Water Utility

A. **Declaration of public utility restated.** The City having adopted the provisions of TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, by this ordinance continues the operation of the storm water utility system to serve the area within the boundaries of the City. The City Council restates the declaration of the storm water system of the City to be a public utility. (Ord. 90-81, August 14, 1990)

B. **Director**. The Director shall administer the storm water utility system. The Director shall keep an accurate record of properties benefitted or served by the storm water utility system and the storm water utility fee charged for each parcel or portion of a parcel.

C. **Program Implementation**. The City Council retains full discretion in establishing the time and quantitative priorities in expending funds on a reasonable basis as the same become available to meet the storm water needs of the City. The passage of this Ordinance shall not be construed to relieve private land owners, developers or other individuals or entities from providing storm water improvements pursuant to the ordinances of the City and the laws of this state which relate to storm water or storm water improvements. The Ordinance does not warrant, guarantee or provide any assurance that a benefitted property will be free from flooding or erosion, and does not create additional duties nor waive any immunities on the part of the City.

Section 13.03 Storm Water Utility Schedule of Charges

A. **Storm Water Utility Rate Categories**. A storm water utility fee shall be imposed on each benefitted property within the City. The fee for all properties is computed using the same formula, in relation to an equivalent residential unit (ERU). For purposes of imposing the storm water utility fee, all parcels are classified into the following categories:

1. Residential

2. Non Residential

B. **Storm Water Fee.** The monthly fee is $4.75 per ERU beginning November 1, 2014. The monthly fee will be $5.25 per ERU beginning October 1, 2015. The monthly fee is $5.75 per ERU beginning October 1**,** 2016. The monthly fee is $6.25 per ERU beginning October 1, 2017. The monthly fee is $6.75 per ERU beginning October 1, 2018. The monthly fee is $7.25 per ERU beginning October 1, 2019. The monthly fee is $7.50 per ERU beginning October 1, 2020. (Amend Ord 14-063, 10/28/14)

C. **Fee Calculation.**

1. Residential. One (1) ERU per dwelling unit.

2. Non residential. An ERU will be individually calculated for each parcel by dividing the impervious surface area by 2,800 square feet. The result shall be a minimum of 1.0 ERU.

D. **Revision of Rates.** The storm water utility fee shall be adopted and may be revised by the City Council in the form of a resolution.

E. **Credit Availability.** Any non-residential property on which mitigation measures have been taken may be eligible for a credit to the storm water fee. The Director shall adjust the fee for such properties according to the actual mitigative effect of the measures taken. Best Management Practices (BMPs) that were required as part of development plan approval will not be eligible for such credits.

Section 13.04 Responsibility for Storm Water Utility Fee

A. **Responsible Party**. The storm water utility fee shall be billed with the monthly water, sewer or solid waste billing as provided in Article III, of the Water and Sewer Chapter of the Code of Ordinances.

1. The Customer has primary responsibility for payment of the fee. Nevertheless, the Owner of benefitted property shall remain responsible for the payment of the fee. Failure of the Customer to pay the fee shall not relieve the Owner of this obligation.

2. For any improved parcel that does not receive water, sewer or solid waste service, the Director is hereby authorized to establish a "storm water only account" and to bill the storm water utility fee to either the owner or customer as appropriate.

3. Where an improved parcel is not occupied by a customer that might use water, sewer, solid waste or other utility service and considered by the City to be vacant, either on a temporary or permanent basis, the City may bill the owner of the parcel for the storm water utility service.

4. In the case of multiple accounts for a parcel, the fee shall be calculated for the entire parcel and may be allocated among the separate accounts in relation to the impervious area used by the customer assigned a particular account, or the fee for the entire parcel may be placed on one master metered account, provided the customer provides adequate assurance for payment. In either event, the minimum fee for each account shall be the rate established for one ERU.

B. **Storm Water Service Deposit.** A deposit will not be charged for initiation or continuation of storm water utility service.

C. **Terms of Payment.** All terms of payment, delinquency, terms of service and service charges shall be consistent with the Water and Sewer Chapter of the City Code of Ordinances and the Customer Service policies and procedures established by the utility billing department with regard to all utility services provided by the City.

D. **Non Payment.** Any charge due hereunder which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided at law or in this Ordinance, failure of a user of the storm water utility system to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the City.

E. **Administrative Review.** An administrative review of the Director's decision on applicable storm water fees shall be consistent with the Water Utilities Customer Service policies and procedures with regard to all utility services provided by the City.

Section 13.05 Storm Water Utility Fund

The Chief Financial Officer shall maintain a storm water utility fund which may consist of one or more accounts. The income of the storm water utility shall be segregated and completely identifiable in the City accounts. Funds and revenues in the storm water utility fund may be paid over and transferred to the City's general fund as allowed by law.

Section 13.06 Exemptions

A. A governmental entity listed below, and a parcel in which the governmental entity holds a freehold interest, is exempt from this ordinance:

1. the state of Texas

2. a state agency.

B. A public or private institution of higher education is exempt from payment of the fees established by this ordinance.

C. The owner of property described below, is exempt from this ordinance:

1. Property with proper construction and maintenance of a wholly sufficient and privately owned storm water system is exempt from this ordinance. The Owner shall be responsible to submit information to the Director adequate to establish this exemption. Director shall have the right to inspect such system at any reasonable time to determine if it is in compliance with the approved design and continues to function properly. If the facility fails to meet the proper operating and maintenance standards, such that storm water discharges into the city's storm water utility system, the Owner shall pay the monthly storm water utility fee at the normal rate, without benefit of reduction, until such time that the facility is wholly sufficient.

2. Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure, if any, constructed has been accepted by the City for maintenance.

3. A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued, or the municipality has taken another official action to release the property for occupancy.

(Amend Ord 07-053, 7/24/07)

D. A public school district is exempt from payment of the fees established by this ordinance. This exemption shall be effective as of October 1, 2007. (Amend Ord 07-100, 12/18/07)

ORDINANCE NO. 96-163

AN ORDINANCE ADOPTING THE **"STORM WATER POLLUTION CONTROL"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987; PROVIDING FOR A FINE OF UP TO $2000 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Storm Water"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby approved and adopted, and such chapter shall hereafter be and read as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01 Purposes

The purposes and objectives of this Chapter are as follows:

A. To maintain and improve the quality of surface water and groundwater within the City of Arlington, the North Central Texas Region, and the State of Texas.

B. To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Arlington.

C. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other

contaminants into the storm sewers and natural waters of the City.

D. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.

E. To facilitate compliance with state and federal water quality standards, limitations, and permits by owners and operators of industrial and construction sites within the City.

F. To enable the City to comply with all federal and state laws and regulations applicable to storm water discharges.

Section 1.02 <u>Administration</u>

Except for public works construction projects, as provided herein, the Director of Engineering Services shall implement, and enforce the provisions of this Chapter. For public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City, the Director of the City department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed in this Chapter upon the Director of Engineering Services or the Director of another City department may be delegated by him/her to other City personnel.

Section 1.03 <u>Abbreviations</u>

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

BMP - Best Management Practices
BOD5 - Five Day Biological Oxygen Demand
CFR - Code of Federal Regulations
COD - Chemical Oxygen Demand
EPA - U.S. Environmental Protection Agency
HHW - Household Hazardous Waste
mg/l - Milligrams per liter
MS4 - Municipal Separate Storm Sewer System
NOI - Notice of Intent
NOT - Notice of Termination
NPDES - National Pollutant Discharge Elimination System

pH	-	Measure of Acidity or Alkalinity
POTW	-	Publicly Owned Treatment Works
PST	-	Petroleum Storage Tank
RPE	-	Registered Professional Engineer
SWPPP	-	Storm Water Pollution Prevention Plan
TSS	-	Total Suspended Solids
USC	-	United States Code

Section 1.04 <u>Definitions</u>

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

"Agricultural Storm Water Runoff" shall mean any storm water runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

"Best Management Practices" or "BMP" shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Chapter" shall mean a major subdivision of the Code of Ordinances of the City of Arlington.

"City" shall mean the City of Arlington, Texas, or the City Council of Arlington.

"Coal Pile Runoff" shall mean the rainfall runoff from or through any coal storage pile.

"Commencement of Construction" shall mean the initial disturbance of soils associated with clearing, grading, excavating, landfilling, and other construction activities.

"Commercial" shall mean pertaining to any business, trade, industry, or other activity engaged in for profit.

"Common Plan of Development" shall mean a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

"Construction" shall mean any human activity that involves clearing, grading, excavation, landfilling, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

"Contaminated" shall mean containing a harmful quantity of any substance.

"Director" shall mean the Director of Engineering Services for the City of Arlington, or his/her duly authorized representative, except in the case of public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City. In the case of such City public works projects, the term "Director" shall mean the Director of the City Department that is administering, performing, or contracting for the construction project, or his/her duly authorized representative.

"Discharge" shall mean any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

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

"Domestic Sewage" shall mean human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

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

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

"Fertilizer" shall mean a solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

"Final Stabilization" shall mean the status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures have been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

"Fire Department" shall mean the Fire Department of the City of Arlington, or any duly authorized representative thereof.

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

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

"Harmful Quantity" shall mean the amount of any substance that will cause pollution of water in the State.

"Household Hazardous Waste" or "HHW" shall mean any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

"Hazardous Substance" shall mean any substance listed in Table 302.4 of 40 CFR Part 302.

"Hazardous Waste" shall mean any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

"Hazardous Waste Treatment, Disposal, and Recovery Facility" shall mean all contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

"Herbicide" shall mean a substance or mixture of substances used to destroy a plant or to inhibit plant growth.

"Industrial Waste" shall mean any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

"Landfilling" shall mean the deposition of soil and other inert materials on the land to raise its grade and/or smooth its features.

"Motor Vehicle Fluid" shall mean any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

"Municipal Landfill" shall mean an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Natural Resource Conservation Commission).

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

"Municipal Solid Waste" shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

"NPDES General Permit for Storm Water Discharges Associated with Industrial Activity" or "Baseline Industrial General

Permit" shall mean the Baseline Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

"NPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit" shall mean the Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.

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

"NPDES Storm Water Multi-Sector General Permit for Industrial Activities" or "Multi-Sector General Permit" shall mean the Multi-Sector General Permit for storm water discharges associated with specified industrial activities published by EPA in Volume 60 of the Federal Register at page 51109 on September 29, 1995, and any subsequent modifications or amendments thereto.

"Nonpoint Source" shall mean any source of any discharge of a pollutant that is not a "point source."

"Notice of Intent" or "NOI" shall mean the Notice of Intent that is required by either the Baseline Industrial General Permit, the Construction General Permit or the Multi-Sector General Permit.

"Notice of Termination" or "NOT" shall mean the Notice of Termination that is required by either the Baseline Industrial General Permit, the Construction General Permit or the Multi-Sector General Permit.

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

"Operator" shall mean the person or persons who, either individually or taken together, meet either of the following two criteria: (1) they have operational control over the

facility specifications (including the ability to make modifications in specifications); or (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

"Owner" shall mean the person who owns a facility or part of a facility.

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

"Pesticide" shall mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code).

"Petroleum Product" shall mean a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol;, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and # 1 and #2 diesel.

"Petroleum Storage Tank" or "PST" shall mean any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

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

"Pollutant" shall mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural

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

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

"Public Works Construction Project" shall mean any construction performed or funded in whole or part, separately or collectively, by the federal, state, county, or local government, including the City of Arlington.

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

"Registered Professional Engineer" or "RPE" shall mean a person who has been duly licensed and registered by the State Board of Registration for Professional Engineers to engage in the practice of engineering in the State of Texas.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the municipal separate storm sewer system (MS4) or the waters of the United States.

"Rubbish" shall mean nonputrescible solid wastes that consist of (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 do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

"Sanitary Sewer (or Sewer)" shall mean the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial

buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant utilized by the City (and to which storm water, surface water, and groundwater are not intentionally admitted).

"Septic Tank Waste" shall mean any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Service Station" shall mean any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

"Sewage" or "Sanitary Sewage" shall mean the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant utilized by the City for treatment.

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

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

"State" shall mean the State of Texas.

"Storm Water" shall mean storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" shall mean the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR § 122.26(b)(14), and which is not excluded from EPA's definition of the same term.

"Storm Water Pollution Prevention Plan" or "SWPPP" shall mean a plan required by either the Construction General

Permit, the Baseline Industrial General Permit, or the Multi-Sector General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.

"Uncontaminated" shall mean not containing a harmful quantity of any substance.

"Used Oil" or "Used Motor Oil" shall mean any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with State and federal law.

"Water in the State" shall mean any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

"Wastewater" shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.

"Water Quality Standard" shall mean the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by the State to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

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

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

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

"Yard Waste" shall mean leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

ARTICLE II

GENERAL PROHIBITION

Section 2.01 General Prohibition

A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of storm water.

B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section, upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges:

1. A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);

2. A discharge or flow resulting from fire fighting by the Fire Department;

3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment

adequate to remove harmful quantities of pollutants must have occurred prior to discharge;

4. Agricultural storm water runoff;

5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;

6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;

7. A discharge or flow from a diverted stream flow or natural spring;

8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

9. Uncontaminated groundwater infiltration (as defined in 40 CFR § 35.2005(20)) to the MS4;

10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

12. A discharge or flow from individual residential car washing (external surfaces only);

13. A discharge or flow from a riparian habitat or wetland;

14. A discharge or flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance, and the temperature of which has not been elevated by induced heating;

C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the Director to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such

determination has been provided to the discharger, and the discharge has occurred more than 15 calendar days beyond such notice. The correctness of the Director's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

D. The burden of proof that a discharge was composed entirely of one or more of the categories in Subsection B and that it was not a source of a pollutant or pollutants to waters of the United States or to the MS4 is upon the person or entity responsible for the discharge.

ARTICLE III

SPECIFIC PROHIBITIONS AND REQUIREMENTS

Section 3.01 Specific Prohibitions and Requirements

A. The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Article II.

B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from its MS4.

C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:

1. Any used motor oil, antifreeze, or any other motor vehicle fluid;

2. Any industrial waste;

3. Any hazardous waste, including household hazardous waste;

4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;

5. Any garbage, rubbish, yard waste, or other floatable material;

6. Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment;

7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;

8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance, or that is at a temperature that has been elevated by induced heating;

9. Any wastewater from commercial floor, rug, or carpet cleaning;

10. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance, or that is at a temperature that has been elevated by induced heating; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;

11. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;

12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or any wastewater or substance from the cleaning of any vehicle or equipment containing, or used in transporting or applying, such material;

13. Any runoff or washdown water from any animal pen, kennel, or foul or livestock containment area;

14. Any filter backwash from a swimming pool;

15. Any swimming pool water;

16. Any discharge from water line disinfection by superchlorination or other means if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;

17. Any fire protection water containing oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. This prohibition does not apply to discharges or flow from fire fighting by the Fire Department;

18. Any wastewater from a water curtain in a spray room used for painting vehicles or equipment;

19. Any contaminated runoff from a vehicle salvage yard or any other facility classified as Standard Industrial Classification 5015 or 5093;

20. Any substance or material that will damage, block, or clog the MS4;

21. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release.

D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other construction activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.

E. No person shall connect an interior floor drain or any other source of wastewater, domestic or industrial, to the MS4, or allow such a connection to continue.

F. Regulation of Pesticides, Herbicides, and Fertilizers

1. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.

2. No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

3. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

4. If provided with a display notice containing the provisions of this Subsection, pertaining to the regulation of pesticides, herbicides, and fertilizers (or a reasonable description thereof), and the information that any user of the product may obtain further information from the Director, any person selling pesticides, herbicides, or fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.

G. Used Oil Regulation

1. No person shall:

(a) Discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;

(b) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a

landfill or knowingly directly dispose of used oil on land or in a landfill;

(c) Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

2. All businesses that change motor oil for the public, municipal waste landfills, and fire stations are encouraged to serve as public used oil collection centers as provided by state statute in Section 371.024 of the Texas Health & Safety Code.

3. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the City or by the state informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll- free telephone number of the state used oil information center. If a sign is provided by the City, it shall also prominently display the City telephone number where information concerning the proper disposal of used oil may be obtained.

H. No person shall introduce or cause to be introduced into the sanitary sewer system any discharge of storm water, polluted or unpolluted, or any discharge that causes or contributes to causing the City of Arlington to violate a water quality standard, its agreements associated with the regional sewage treatment plants or any state issued permit.

ARTICLE IV

STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

Section 4.01 Goal for Erosion and Sediment Control

The goal for erosion and sediment control at sites over one acre disturbed by construction is achievement of at least the minimum site rating of 0.70 using the site rating system as presented in Section 3 of the Storm Water Quality Best Management Practices for Construction Activities -

North Central Texas, North Central Texas Council of Governments, Arlington, Texas, February, 1993.

Section 4.02 General Requirements

A. All operators of construction sites shall use best management practices to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. The best management practices used at construction sites may include, but not be limited to, the following measures:

1. Ensuring that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased.

2. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;

3. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;

4. Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or waters of the United States;

5. Measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;

6. Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;

7. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and

8. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

B. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4.

Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.

C. Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in this Section 4.02.

D. Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

Section 4.03 <u>Management Plan Submittal and Review</u>

A. Unless within one or more of the exceptions specified in Section 4.03(F) below, all operators of sites of construction activity, including clearing, grading, excavation, and landfilling activities, shall prepare and submit the following documents to the Director at least fifteen (15) calendar days prior to the commencement of construction activities (unless, pursuant to Section 4.03(B) below, the Director expressly allows construction to be commenced within a shorter period of time following the document submittal):

1. An identifying notice containing the following information:

   a. The name, address, and telephone number of each operator of the construction activity;

   b. The name, address, and telephone number of each owner of the construction site;

   c. The location of the construction site, by street address and legal description; and

   d. A description of the nature of the construction project.

2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Registered Professional Engineer, except in instances of landclearing or landfilling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site.

B. The Director may allow construction to be commenced within fewer than fifteen (15) calendar days following submittal of the documents required by Section 4.03(A) above if he/she expressly determines that:

1. The required identifying notice and management plans and specifications are complete and satisfactory;

2. The Director has been afforded adequate time and opportunity to review the management plans and specifications; and

3. The management practices described in the plans and observed upon any site inspection conducted are adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

C. If, upon the Director's review of the management plans and specifications required by Section 4.03(A) above (or any modified plans required by Section 4.03(E) below) and any site inspection that the Director may conduct, the Director determines that the management practices described in the plans or observed upon the site inspection are not adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Any order issued by the Director under the authority of this Paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

D. The City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the Director are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

E. Whenever the management practices at a construction site are modified (as a result of change in the construction project, in order to implement more effective management practices, in response to an order or request from the City, or for any other reason), a written description of such modifications of the management practices shall be submitted to the Director as soon as possible, but in no case later than seven (7) calendar days following the change in the management practices.

F. The requirements of this Section 4.03 shall not apply to any of the following activities:

1. Any construction activity that results in the disturbance of five or more acres of total land area, or that is part of a common plan of development or sale within which five or more acres of total land area are disturbed, and any other construction activity for which an NPDES permit is required for storm water discharges associated with that construction activity. (In such circumstances, the requirements of Section 4.04 apply in lieu of this Section.)

2. Any public works construction project that is administered, performed, contracted, or funded (in whole or in part) by the City.

3. Any construction activity, not a part of a larger plan of development of five acres or more, related to the construction, alteration, or addition to a single-family, duplex or four-plex residential structure, or an accessory use to any such structure, where one (1) primary structure is constructed per legal lot and the construction activity does not result in the disturbance of more than 12,000 square feet of total land area.

4. Any construction incident to repair or maintenance of a utility line (such as for telecommunications, electricity, water, sewer, and natural gas). (Construction incident to the laying of new utility lines or replacement of existing lines is not exempted from Section 4.03 by this paragraph.)

5. Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building.

6. Construction of a fence, but no exemption is granted by this subparagraph for construction of a retaining wall or a fence that may significantly obstruct or change the direction of flow of water.

7. Any construction activity that the Director expressly finds not to cause, or threaten to cause, any discharge of any harmful quantity of any material associated with construction activity into the MS4 or any other water in the State.

Section 4.04 Five-Acre Disturbances

All operators of sites of construction activity, including clearing, grading, excavation, and landfilling activities, that result in the disturbance of five or more acres of total land area, or that are part of a common plan of development or sale within which five or more acres of total land area are disturbed, or who are required to obtain an NPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in Section 4.02.):

A. Any operator who intends to obtain coverage for storm water discharges from a construction site under the NPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the Director of Engineering Services, and to any other responsible City departmental Director, at least fifteen (15) calendar days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this Chapter, the NOI shall be submitted within thirty (30) calendar days. For storm water discharges from construction sites where the operator changes, an NOI shall be submitted at least

two (2) calendar days prior to when the new operator commences work at the site.

B. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented prior to the beginning of construction activities in accordance with the requirements of the Construction General Permit or any individual NPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter and any other city ordinance.

C. The SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer. The signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual NPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter. The SWPPP shall contain the name, title, and business address of the Registered Professional Engineer signing it, and the date that he/she did so.

D. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and this Chapter. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.

E. The SWPPP shall be prepared and submitted to the Director at least fifteen (15) calendar days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this Chapter, the SWPPP shall be submitted within thirty (30) calendar days.

F. A copy of any SWPPP that is required by Section 4.04(B). shall be submitted to the City in conjunction with any application for a building permit, grading permit, site development plan approval, and any other City approval necessary to commence or continue construction at the site.

G. If, upon the Director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the Director may conduct, the Director determines that the SWPPP does not comply with the requirements of the

Construction General Permit, any individual NPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the Director may similarly issue an order prohibiting the continuation of any construction activity at the site. Any order issued by the Director under the authority of this paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

H. Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter. Also, if at any time the City determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

I. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

> I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the

address (or other identifying description) of the site; and the date the certification is made.

J. The SWPPP, with the Registered Professional Engineer's signature, seal, and date affixed, and the certifications of contractors and subcontractors required by Section 4.04(I), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

K. The operator shall make a copy of the SWPPP and any modification thereto available to the Director and any other authorized City inspector at the construction site upon request (as well as to EPA and State inspectors).

L. The Director may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual NPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested modifications have been made.

M. The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be modified to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP. All modifications to the SWPPP shall be submitted to the Director within seven (7) calendar

days of a change, determination of ineffectiveness (self or City inspection), or effective date of changes in contractor and/or subcontractor.

N. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven (7) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

O. Based on the results of the inspections required by Section 4.04(N), the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven (7) calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven (7) calendar days following the inspection. All modifications to the SWPPP shall be submitted to the Director within seven (7) calendar days of the date of inspection.

P. A report summarizing the scope of any inspection required by Section 4.04(N), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section 4.04(O) above shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a

certification that the facility is in compliance with the SWPPP, the facility's NPDES permit, and this Chapter. The report shall be certified and signed by the person responsible for making it.

Q. The operator shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

R. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this Chapter and by the NPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the Director of Engineering Services, and to any other responsible City departmental Director, a Notice of Termination (NOT) that includes the information required for Notices of Termination by Part VIII of the Construction General Permit.

S. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit to the responsible Director written certification by a Registered Professional Engineer that the site has been finally stabilized. (See definition of final stabilization in this Chapter.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the responsible Director has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

ARTICLE V

STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

Section 5.01 Storm Water Discharges Associated With Industrial Activity

A. All operators of (1) municipal landfills; (2) hazardous waste treatment, disposal, and recovery facilities; (3) industrial facilities that are subject to Section 313

of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023; and (4) industrial facilities that the Director determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity, shall comply with the following requirements:

1. Any operator who intends to obtain coverage for storm water discharge associated with industrial activity under the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity ("the Baseline Industrial General Permit") or the NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("the Multi-Sector General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the Director at least 2 calendar days prior to the commencement of the industrial activity at the facility. If industrial activity requiring an NPDES storm water permit is already underway upon the effective date of this Chapter, a copy of the permit assignment notice or the NOI shall be submitted within thirty (30) calendar days. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by an NPDES General Permit changes, the new operator of the facility shall submit an NOI at least two (2) calendar days prior to the change. (Note: Reference within Article V to an "NPDES General Permit" or to the "appropriate NPDES General Permit" shall be deemed to refer to either the Baseline Industrial General Permit or the Multi-Sector General Permit.)

2. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the appropriate NPDES General Permit or any individual NPDES permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under this Chapter, and any other City ordinance.

3. The SWPPP shall be completed prior to the submittal of the NOI to the Director and, for a new industrial operation, prior to the commencement of the industrial activity at the facility. The SWPPP shall be updated and modified

as appropriate and as required by the appropriate NPDES General Permit and this Chapter.

4. A copy of any NOI that is required by Section 5.01(A)(1) shall be submitted to the City in conjunction with any application for a permit or any other City approval necessary to commence or continue operation of the industrial facility.

5. The Director may require any operator who is required by Section 5.01(A)(2) to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the Director for review. Such submittal and review of the SWPPP may be required by the Director prior to commencement of or during industrial activity at the facility.

6. Upon the Director's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any application for a permit or any other City approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the appropriate NPDES General Permit or any individual NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under this Chapter or other City ordinances. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any application for a permit or other City approval necessary to commence or continue operation of the industrial facility.

7. The SWPPP, with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all storm water discharges associated with industrial activity at the facility are eliminated and the required Notice of Termination (NOT) has been submitted in accordance with the appropriate NPDES General Permit.

8. The operator shall make the SWPPP and any modification thereto available to the Director upon request (as well as to EPA and State inspectors).

9. The Director may notify the operator at any time that the SWPPP does not meet the requirements of the appropriate NPDES General Permit, any applicable individual NPDES permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under this Chapter or other City ordinances. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within thirty (30) calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made.

10. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with industrial activity.

11. Qualified personnel (provided by the operator) shall inspect equipment and areas of the facility specified in the SWPPP at appropriate intervals. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained and made available to the Director upon request.

12. Qualified personnel (provided by the operator) shall conduct comprehensive site compliance evaluations as required by the appropriate NPDES General Permit at intervals of no less than once per year. Based on the results of the compliance evaluation, the description of potential pollutant sources and the pollution prevention measures and controls that are identified in the SWPPP shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of

any changes to the SWPPP in a timely manner, but in no case more than twelve weeks after the compliance evaluation.

13. A report summarizing the scope of the comprehensive site compliance evaluation required by the appropriate NPDES General Permit, personnel making the compliance inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with necessary and appropriate plan revisions shall be made and retained as part of the SWPPP for at least one year after all storm water discharges from the facility are eliminated and the required NOT has been submitted. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES permit, and this Chapter. The report shall be signed by the individual responsible for the comprehensive site compliance evaluation, and it shall be submitted to the Director within ten calendar days of its completion.

14. If the industrial facility is required by the appropriate NPDES General Permit to conduct monitoring, records of the monitoring results shall be retained at the facility and made available to the Director upon request.

15. By written notice, the Director may require any industrial facility identified in accordance with this Section V to implement a monitoring program at its expense that includes the submission of quantitative data on the following constituents:

    (a) any pollutants limited in effluent guidelines subcategories;

    (b) any pollutant listed in an existing NPDES permit for the facility;

    (c) oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen; and

(d) information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

The Director may require written reports of any such monitoring to be submitted to him/her.

16. By written notice, the Director may require any industrial facility identified in this Article V to conduct semi-annual or annual monitoring of storm water discharges, or the Director may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. The Director may require written reports of any such additional monitoring to be submitted to him/her.

17. The operator shall retain the SWPPP until at least one year after storm water discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and a Notice of Termination (NOT) in compliance with the appropriate NPDES General Permit has been submitted. The operator shall retain all records of all monitoring information, copies of all required reports, and records of all data used to complete the NOI, until at least one year after all storm water discharges associated with industrial activity at the facility are eliminated, or the operator ceases to operate that facility, and the required Notice of Termination (NOT) has been submitted.

18. For discharges subject to monitoring requirements of the appropriate NPDES General Permit, in addition to the records-retention requirements of the paragraph above, operators shall retain records of all monitoring information collected for the period of time required by the appropriate NPDES General Permit. Operators must submit such monitoring results, and/or a summary thereof, to the Director upon his/her request.

19. Upon the effective date of this chapter, any discharge composed of coal pile runoff shall comply with the following limitations:

    (a) no discharge shall exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor shall such runoff be

diluted with storm water or other flows in order to meet this limitation;

(b) the pH of such discharges shall be within the range of 6.0-9.0.

Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids.

20. Upon the effective date of this chapter, no discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum concentrations (in mg/l) of each of the hazardous metals listed below:

Metal	Average	Daily Composite	Grab Sample
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

21. Where all storm water discharges associated with industrial activity that are authorized by this Chapter, and by the NPDES permit for those discharges from industrial activities, are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the Director a Notice of Termination (NOT) that includes the information required for Notices of Termination by the appropriate NPDES General Permit.

B. Any owner of a facility with a storm water discharge associated with industrial activity to which Subsection

A applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with the best management practices (BMP) measures required in the SWPPP for the facility and for compliance with the effluent limitations for coal pile runoff and hazardous metals specified in Sections 5.01(A)(19) and (20) above.

C. Upon request by the Director, all owners and operators of any facility that experience a problem complying with the requirements of this Chapter, the Industrial General Permit, or any applicable individual or group NPDES permit issued for storm water discharges from the industrial facility, shall consult with the Director, any other representative of the City, and any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the State, and/or the City may itself undertake any enforcement action authorized by Articles VIII, X, or XI of this Chapter. Exercise of the City's option for consultation under this Section 5.01(C). shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

ARTICLE VI

COMPLIANCE MONITORING

Section 6.01 Right of Entry: Inspection and Sampling

The Director, or his/her authorized representative, shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this Chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the Director, upon request, any SWPPP's, modifications thereto, self- inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records,

reports, and other documents related to compliance with this Chapter and with any state or federal discharge permit.

A. Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director or his authorized representative(s) will be permitted to enter without delay for the purposes of performing his/her responsibilities.

B. The Director shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

C. The Director may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.

D. The Director may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

F. Unreasonable delays in allowing the Director access to the discharger's premises shall be a violation of this Chapter.

Section 6.02 <u>Search Warrants</u>

If the Director, or his/her authorized representative, has been refused access to any part of the premises from

which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Community Development, the Director of Engineering Services, the Director of Utilities, the Director of Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

ARTICLE VII

REPORTS OF VIOLATIONS

Section 7.01 Reports of Violations

A. All citizens are encouraged to report any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this Chapter of which they become aware, to the Director, his/her delegate, or any person designated by the City Manager to receive such citizen reports.

B. Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the City will be prepared and kept on file for a period of three (3) years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the Director of Engineering Services or other responsible City official will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

C. The Operator and the Owner of any commercial or industrial activity shall report any spills, releases, illicit connections, or other instances where pollutants are discharged into the MS4 or waters of the

United States and any other violation of this chapter for which they are responsible to the Director, his/her delegate, or any person designated by the City Manager to receive such reports.

D. The Operator and the Owner of any commercial or industrial activity shall report all incidents enumerated in Section 7.01(C) in accordance with the following:

1. A hazardous and/or toxic material spill or release shall be immediately reported to the Arlington Fire Department.

2. Other instances where pollutants are discharged into the MS4 or waters of the United States by spill, release, illicit connections or other means shall be reported to the Pollution Control Officer within the Department of Engineering Services/ Environmental Management.

E. Both the Operator and the Owner of any commercial or industrial activity which has resulted in a spill or release of hazardous/toxic materials or a substance of a polluting nature is responsible for proper notification of the incident to the appropriate county, state, and federal agency. The reporting of a spill/release to the City of Arlington does not release the Owner or Operator from reporting to appropriate County, State and Federal officials.

Thus, dependent on the type of release and the nature of the emergency caused thereby (i.e., life threatening or not), the following agencies, in addition to the Pollution Control Officer within the Department of Engineering Services, are specified to be notified:

1. Hazardous Materials Response Team, City of Arlington Fire Department;

2. City of Arlington Police Department;

3. City of Arlington Department of Transportation/Streets Division;

4. Texas Natural Resource Conservation Commission; and

5. U.S. Environmental Protection Agency.

ARTICLE VIII

ADMINISTRATIVE ENFORCEMENT REMEDIES

Section 8.01 Warning Notice

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the Director to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

Section 8.02 Notification of Violation

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Notice of Violation. Within ten (10) calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the Director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the Director within ten (10) calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.

Section 8.03 Consent Orders

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this Chapter or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8.05, 8.06 and 8.07 of this Chapter and shall be judicially enforceable.

Section 8.04 Show Cause Hearing

The Director may order any person who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the Director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in Section 9.01(G) of this Chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

Section 8.05 Compliance Orders

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, the Director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to

the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.06 <u>Remediation, Abatement, and Restoration Orders</u>

When the Director finds that a person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the United States, the Director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the United States, and/or to restore any part of the MS4, or the waters of the United States. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

Section 8.07 <u>Emergency Cease and Desist Orders</u>

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the

person's violation(s) , or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all requirements of this Chapter; and

2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director within ten (10) calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.08 <u>Stop Work Orders</u>

Whenever the Director finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of Article IV of this Chapter, or any order issued hereunder, the Director may issue a Stop Work Order to the operator, and require that a copy of the Stop Work Order be posted at the construction

site and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the Director, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a Stop Work Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

ARTICLE IX

RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

Section 9.01 Reconsideration and Hearing

A. Any person subject to a Compliance Order under Section 8.05, a Remediation, Abatement, or Restoration Order under Section 8.06, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08 of this Chapter may petition the Director to reconsider the basis for his/her order within fifteen (15) calendar days of the affected person's notice of issuance of such an order.

B. Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

C. In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

D. The effect of any Compliance Order under Section 8.05, Remediation, Abatement, or Restoration Order under Section 8.06, and any Stop Work Order under Section 8.08 shall be stayed pending the Director's reconsideration of the petition, and any hearing thereon, unless the Director expressly makes a written

determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Section 8.07 shall not be stayed pending the Director's reconsideration, or any hearing thereon, unless the Director expressly and in writing stays his/her emergency order.

E. Within thirty (30) calendar days of the submittal of a petition for reconsideration, the Director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

F. Written notice of any hearing set by the Director pursuant to Section 9.01(E) above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

G. The Director may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:

1. issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;

2. take evidence;

3. transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Director for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

H. After the Director has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The Director may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

Section 9.02 Appeal

Any person whose petition for reconsideration by the Director has not been granted in its entirety and who remains adversely affected by the Director's order, or who is subject to an order of the Director issued following a Show Cause Hearing under Section 8.04, may challenge the final action of the Director in an appropriate court of competent jurisdiction.

ARTICLE X

JUDICIAL ENFORCEMENT REMEDIES

Section 10.01 Civil Remedies

A. Whenever it appears that a person has violated, or continues to violate, any provision of this Chapter that relates to:

1. the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;

2. the preservation of public health or to the fire safety of a building or other structure or improvement;

3. the establishment of criteria for land subdivision or construction of buildings, including street design;

4. dangerously damaged or deteriorated structures or improvements;

5. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

6. point source effluent limitations or the discharge of a pollutant, other than from a nonpoint source, into the MS4,

the City may invoke Sections 54.011 - 54.017 of the Texas Local Government Code and petition the State district court or the county court at law of Tarrant County, through the City Attorney, for either the injunctive relief specified in Section 10.01(B) or the civil penalties specified in Section 10.01(C) below, or both the specified injunctive relief and civil penalties.

B. Pursuant to Section 54.016 of the Texas Local Government Code, the City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:

1. prohibits any conduct that violates any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above; or

2. compels the specific performance of any action that is necessary for compliance with any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above.

C. Pursuant to Section 54.017 of the Texas Local Government Code, the City may recover a civil penalty of not more than $1,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(5) above, and a civil penalty of not more than $5,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(6) above, if the City proves that:

1. the defendant was actually notified of the provisions of the Chapter; and

2. after the defendant received notice of the Chapter provisions, the defendant committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter.

Section 10.02 <u>Criminal Penalties</u>

A. Any person who has violated any provision of this Chapter, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than $2000 per violation, per day.

B. Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be subject to a fine of not more than $2000 per violation, per day.

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

Section 10.03 <u>Civil Suit Under the Texas Water Code</u>

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Natural Resource Conservation Commission, has occurred or is occurring within the jurisdiction of the City of Arlington, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the Texas Natural Resource Conservation Commission, may have a suit instituted in a state district court through its City Attorney for the injunctive relief or civil penalties or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code. In any suit brought by the City under this Section 10.03, the Texas Natural Resource

Conservation Commission is a necessary and indispensable party.

Section 10.04 Remedies Nonexclusive

The remedies provided for in this Chapter are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

ARTICLE XI

SUPPLEMENTAL ENFORCEMENT ACTION

Section 11.01 Performance and Maintenance Bonds

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Chapter, any order issued hereunder, any required Best Management Practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The City may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

Section 11.02 Liability Insurance

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the Director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

Section 11.03 Public Nuisances

A violation of any provision of this Chapter, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director. Any person(s) creating a public nuisance shall be subject to the provisions of the Nuisance Chapter of the Code of the City of Arlington, including requirements to reimburse the City for any costs incurred in removing, abating, or remedying said nuisance.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01 Charges and Fees

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

A. Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;

B. Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and

C. Other fees as the City may deem necessary to carry out the requirements contained in this Chapter. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

Section 12.02 Severability

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 12.03 <u>Effective Date</u>

This Chapter shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand and No/100 Dollars ($2,000)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 10th day of December, **1996**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 17th day of December, **1996**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

_____
RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 01-089

AN ORDINANCE REPEALING THE EXISTING **"STORM WATER POLLUTION CONTROL"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE ADOPTION OF A NEW "STORM WATER POLLUTION CONTROL" CHAPTER, WHICH WAS REVISED RELATIVE TO TRANSFERRING SOME OF THE REQUIREMENTS IN THE CHAPTER FROM FEDERAL TO TEXAS REGULATORY CONTROL, UPDATING THE CHAPTER TO MATCH CURRENT STATE AND FEDERAL REQUIREMENTS, AND CLARIFYING AND AMENDING POLLUTION CONTROL REQUIREMENTS; PROVIDING FOR A FINE OF UP TO $2000 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Storm Water Pollution Control"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the repeal of the existing Chapter and the adoption of a new Chapter, so that hereafter said Chapter shall be and read as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01 <u>Purposes</u>

The purposes and objectives of this Chapter are as follows:

A. To maintain and improve the quality of surface water and groundwater within the City of Arlington, the North Central Texas Region, and the State of Texas.

B. To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Arlington.

C. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers and natural waters of the City.

D. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.

E. To facilitate compliance with state and federal water quality standards, limitations, and permits by owners and operators of industrial activities and construction sites within the City.

F. To enable the City to comply with all federal and state laws and regulations applicable to storm water discharges.

Section 1.02 <u>Administration</u>

The Director of Engineering Services shall implement and enforce the provisions of this Chapter, except for public works construction projects and municipal operations which are administered or controlled by another City department. For public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City, the Director of the City department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this Chapter. The Director of each City department shall also implement and enforce the provisions of this chapter for all municipal operations under his/her direction. Any powers granted to or duties imposed in this Chapter upon the Director of Engineering Services or the Director of another City department may be delegated by him/her to other City personnel.

Section 1.03 <u>Abbreviations</u>

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

BMP	-	Best Management Practices
BOD5	-	Five Day Biological Oxygen Demand
CFR	-	Code of Federal Regulations
COD	-	Chemical Oxygen Demand
CSCE	-	Comprehensive Site Compliance Evaluation
EPA	-	U.S. Environmental Protection Agency
HHW	-	Household Hazardous Waste
LPE	-	Licensed Professional Engineer
mg/l	-	Milligrams per liter
MS4	-	Municipal Separate Storm Sewer System
MSGP	-	Multi-Sector General Permit
NOC	-	Notice of Change
NOI	-	Notice of Intent
NOT	-	Notice of Termination
NPDES	-	National Pollutant Discharge Elimination System
pH	-	Measure of Acidity or Alkalinity
POTW	-	Publicly Owned Treatment Works
PST	-	Petroleum Storage Tank
SWPPP	-	Storm Water Pollution Prevention Plan
TNRCC	-	Texas Natural Resource Conservation Commission
TPDES	-	Texas Pollutant Discharge Elimination System

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TSS	-	Total Suspended Solids
USC	-	United States Code

Section 1.04 <u>Definitions</u>

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

"Agricultural Storm Water Runoff" shall mean any storm water runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

"Best Management Practices" or "BMP" shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Chapter" shall mean a major subdivision of the Code of Ordinances of the City of Arlington.

"City" shall mean the City of Arlington, Texas, or the City Council of Arlington.

"Coal Pile Runoff" shall mean the rainfall runoff from or through any coal storage pile.

"Commencement of Construction" shall mean the initial disturbance of soils associated with clearing, grading, excavating, landfilling, and other construction activities.

"Commercial" shall mean pertaining to any business, trade, industry, or other activity engaged in for profit.

"Common Plan of Development" shall mean a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

"Construction" shall mean any human activity that involves clearing, grading, excavation, landfilling, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

"Contaminated" shall mean containing a harmful quantity of any substance.

"Director" shall mean the Director of Engineering Services for the City of Arlington, or his/her duly authorized representative, except in the case of public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City. In the case of such City public works projects, the term "Director" shall mean the Director of the City Department that is administering, performing, or contracting for the construction project, or his/her duly authorized representative.

"Discharge" shall mean any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

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

"Domestic Sewage" shall mean human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

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

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

"Fertilizer" shall mean a solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

"Final Stabilization" shall mean the status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures have been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. (Note: The pervious area shall be uniformly vegetated such that randomly chosen areas, as would be enclosed by a hula hoop, each have a vegetation density at least 70%.)

"Fire Department" shall mean the Fire Department of the City of Arlington, or any duly authorized representative thereof.

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

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

"Harmful Quantity" shall mean the amount of any substance that will cause pollution of water in the State.

"Hazardous Material" shall mean any substance or materials determined to be hazardous by the Secretary of Transportation according to 49 CFR Part 171.8.

"Hazardous Substance" shall mean any substance listed in Table 302.4 of 40 CFR Part 302.

"Hazardous Waste" shall mean any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

"Hazardous Waste Treatment, Disposal, and Recovery Facility" shall mean all contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

"Herbicide" shall mean a substance or mixture of substances used to destroy a plant or to inhibit plant growth.

"Household Hazardous Waste" or "HHW" shall mean any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

"Industrial Waste" shall mean any byproduct that results from any process of industry, manufacturing, mining, production, trade, business, or facility identified as engaging in an industrial activity under 40 CFR Part 122.26

"Landfilling" shall mean the deposition of soil and other inert materials on the land to raise its grade and/or smooth its features.

"Licensed Professional Engineer" or "LPE" shall mean a person who has been duly licensed (and registered if practicing as an individual) by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

"Motor Vehicle Fluid" shall mean any vehicle crankcase oil, antifreeze, transmission fluid, hydraulic fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

"Municipal Landfill" shall mean an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Natural Resource Conservation Commission).

"Municipal Operations" shall mean the day to day operation and maintenance activities that have the potential for contributing pollutant runoff to the MS4.

"Municipal Separate Storm Sewer System" or "MS4" shall mean the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water.

"Municipal Solid Waste" shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

"NPDES General Permit for Storm Water Discharges Associated with Industrial Activity" or "Baseline Industrial General Permit" shall mean the Baseline Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

"NPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit" shall mean the Construction General Permit issued by EPA on June 24, 1998, and published in Volume 63 of the Federal Register at page 36485 on July 6, 1998, and any subsequent modifications or amendments thereto.

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

"NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit" shall mean General Permit No. TXG110000 published by EPA in Volume 65 of the Federal Register at page 2165 on January 13, 2000, and any subsequent modifications or amendments thereto, that has been assumed and is now administered by the TNRCC.

"No Exposure" shall mean that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, run-on and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products not intended to be used outdoors, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"No Exposure Certification" shall mean receipt of an NPDES Form 3510-11 or an equivalent form issued by TNRCC related to the TPDES General Permit.

"No Exposure Exclusion" shall mean that all industrial facilities that meet the criteria listed in 40 CFR 122.26(b)(14) (except construction) may be excluded from industrial storm water discharge permitting requirements on a conditional basis if certification that a condition of "no exposure" can be made for the facility.

"Nonpoint Source" shall mean any source of any discharge of a pollutant that is not a "point source."

"Notice of Change" or "NOC" shall mean the notice of change that is required by the TPDES General Permit related to storm water discharges associated with industrial activity.

"Notice of Intent" or "NOI" shall mean the Notice of Intent that is required by the Construction General Permit, the Multi-Sector General Permit, or other General Permit for the discharge of storm water.

"Notice of Termination" or "NOT" shall mean the Notice of Termination that is required by either the Construction General Permit, the TPDES General Permit for industrial activity, or other General Permit for the discharge of storm water.

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

"Operator" shall mean the person or persons who, either individually or taken together, meet either of the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); or (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

"Owner" shall mean the person who owns a facility or part of a facility.

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

"Pesticide" shall mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code).

"Petroleum Product" shall mean a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and # 1 and #2 diesel.

"Petroleum Storage Tank" or "PST" shall mean any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

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

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

"Pollution" shall mean the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public

health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"Public Works Construction Project" shall mean any construction performed or funded in whole or part by the City of Arlington.

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

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the municipal separate storm sewer system (MS4) or the waters of the United States.

"Rubbish" shall mean non-putrescible solid wastes that consist of (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 do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

"Sanitary Sewer (or Sewer)" shall mean the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant utilized by the City (and to which storm water, surface water, and groundwater are not intentionally admitted).

"Septic Tank Waste" shall mean any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Service Station" shall mean any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

"Sewage" or "Sanitary Sewage" shall mean the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant utilized by the City for treatment.

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

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

"State" shall mean the State of Texas.

"Storm Water" shall mean storm water runoff, snowmelt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" shall mean the release of storm water runoff from any conveyance which is used for collecting and conveying storm water that drains from manufacturing, processing, maintenance, materials storage, or waste storage areas at a facility that meets the criteria listed in 40 CFR § 122.26(b)(14).

"Storm Water Pollution Prevention Plan" or "SWPPP" shall mean a plan required by either the Construction General Permit, the Baseline Industrial General Permit, or the Multi-Sector General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.

"Texas Natural Resource Conservation Commission" or "TNRCC" shall mean the State of Texas agency by that name, the regional offices thereof, any state department, agency, or commission that may succeed to the authority of the TNRCC, and any duly authorized official of TNRCC or such successor agency.

"TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity" shall mean TPDES General Permit No. TXR050000 issued by the TNRCC in 2001 as authorized under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code.

"Uncontaminated" shall mean not containing a harmful quantity of any substance.

"Used Oil" or "Used Motor Oil" shall mean any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

"Water in the State" shall mean any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

"Wastewater" shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.

"Water Quality Standard" shall mean the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

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

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

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

"Yard Waste" shall mean leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

ARTICLE II

GENERAL PROHIBITION

Section 2.01 General Prohibition

A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of storm water.

B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section, upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges:

1. A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);

2. A discharge or flow resulting from fire fighting by the Fire Department;

3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;

4. Agricultural storm water runoff;

5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;

6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;

7. A discharge or flow from a diverted stream flow or natural spring;

8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

9. Uncontaminated groundwater infiltration (as defined in 40 CFR § 35.2005(20)) to the MS4;

10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

12. A discharge or flow from individual residential car washing (external surfaces only);

13. A discharge or flow from a riparian habitat or wetland.

C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the Director to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than 15 calendar days beyond such notice. The correctness of the Director's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

D. The burden of proof that a discharge was composed entirely of one or more of the categories in Subsection B and that it was not a source of a pollutant or pollutants to waters of the United States or to the MS4 is upon the person or entity responsible for the discharge.

ARTICLE III

SPECIFIC PROHIBITIONS AND REQUIREMENTS

Section 3.01 Specific Prohibitions

A. The specific prohibitions in this section are not inclusive of all the discharges prohibited by the general prohibition in Article II.

B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from its MS4.

C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:

1. Any used motor oil, antifreeze, hydraulic fluid, or other motor vehicle fluid;

2. Any industrial waste;

3. Any hazardous waste, including household hazardous waste;

4. Any garbage, domestic sewage or septic tank waste, cooking oil, grease trap waste, or grit trap waste;

5. Any trash, rubbish, yard waste, or other floatable material;

6. Any wastewater from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, with the exception that the exterior of new or used automobiles for sale at a dealership may be rinsed with non-pressurized, non-heated potable waters as long as no pollutants enter the MS4;

7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;

8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior or exterior mechanical equipment that contains any soap, detergent, degreaser, solvent, other cleaning substance, or a pollutant from the item that is being cleaned, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating;

9. Any wastewater from commercial floor, rug, or carpet cleaning;

10. Any wastewater from the washdown or cleaning of parking lots, streets, or other pavement that contains soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other cleaning substance, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating; or any wastewater from the washing or cleaning of parking lots, streets, or other pavement where any spill, leak, or other release of hazardous material, hazardous substance, hazardous waste or other pollutant has occurred;

11. Any effluent, overflow or blowdown, from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or boiler;

12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or any wastewater or substance from the cleaning of any vehicle or equipment containing, or used in transporting or applying, such material;

13. Any runoff or washdown water from an animal pen, kennel, or foul or livestock containment area;

14. Any filter backwash from a swimming pool;

15. Any swimming pool or hot tub water;

16. Any discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;

17. Any fire protection water containing oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. This prohibition does not apply to discharges or flow from fire fighting by the Fire Department;

18. Any wastewater from a water curtain in a spray room used for painting vehicles or equipment;

19. Any contaminated or unpermitted storm water discharge associated with an industrial activity;

20. Any substance or material that will damage, block, or clog the MS4;

21. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release.

22. Any rubble, debris, rubbish, tile, concrete, brick, asphalt, or other building material resulting from demolition.

D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other construction activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.

E. No person shall connect an interior drain or any other source of wastewater, domestic or industrial, to the MS4 or allow such a connection to continue.

F. <u>Regulation of Pesticides, Herbicides, and Fertilizers</u>

1. No person shall use or cause to be used any pesticide, herbicide, or fertilizer contrary to any directions for use on any labeling required by state or federal statute or regulation.

2. No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

3. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

4. If provided with a display notice containing the provisions of this Subsection, pertaining to the regulation of pesticides, herbicides, and fertilizers (or a reasonable description thereof), and the information that any user of the product may obtain further information from the Director, any person selling pesticides, herbicides, or fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.

G. Used Oil Regulation

1. No person shall:

a. Pour, spill, leak, pump, empty, leach, dispose, or otherwise discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;

b. Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill;

c. Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

2. All businesses that change motor oil for the public, municipal waste landfills, and fire stations are encouraged to serve as public used oil collection centers as provided by state statute in Section 371.024 of the Texas Health & Safety Code.

3. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the City or by the state informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the state used oil information center. If a sign is provided by the City, it shall also prominently display the City telephone number where information concerning the proper disposal of used oil may be obtained.

H. No person shall introduce or cause to be introduced into the sanitary sewer system any discharge of storm water, polluted or unpolluted, or any discharge that causes or contributes to causing the City of Arlington to violate a water quality standard, its agreements associated with the regional sewage treatment plants, or any state issued permit.

I. Any person that causes a spill, release, or other discharge of a prohibited substance or other pollutant to the MS4 is solely responsible for the cleanup and removal of the substance from the MS4 or any area adjacent to the MS4 that is exposed to storm water runoff. Where the person that caused the spill, release, or discharge to the MS4 is unknown, the owner of the property on which the spill, release, or discharge occurred is responsible for the cleanup or removal of the substance from the MS4 or any area adjacent to the MS4.

Section 3.02 <u>Requirements</u>

A. Sanitary sewer overflows shall be prevented. All sanitary sewer overflows shall be reported to the City of Arlington as soon as the owner, occupant, or person otherwise having control of the sanitary sewer becomes aware of the overflow and to the appropriate federal and state agencies within 24 hours. If a sanitary sewer overflow enters the MS4, the owner, occupant, or person otherwise having control of the sanitary sewer shall remove all sewage and sewage contaminated water from the MS4.

B. Items that are segregated for separate collection, disposal, recycling or reuse shall be stored in a manner that prevents pollutants from entering the MS4. Drums shall be closed, not leaking, and in good condition.

C. Spills and leaks of hazardous materials, hazardous substances, and hazardous wastes or harmful quantity of a pollutant, including motor vehicle fluids, shall be cleaned up immediately after the spill occurs or the leak is detected. Any absorbent used must be picked up before the next rainfall. If wash water is used to clean the spill or leak, the wash water must be collected for appropriate disposal and not allowed to flow into the MS4. Surface soil contaminated by the spill or leak must be removed or otherwise protected from contact with storm water.

D. Drip pans, absorbent mats, or equivalent controls shall be used to collect and properly dispose of leaking fluids from motor vehicles that are parked outside during maintenance and repairs or while awaiting repairs at commercial repair facilities. Used engines, transmissions, radiators, and other vehicle components that have automotive fluids in or on them shall be stored in a manner that prevents pollutants from entering the MS4.

E. Wash water, detergents, and solvents used for washing parts and equipment shall be collected for disposal in accordance with the appropriate federal and state regulations. Vats of solvents or wash bins used outside shall be covered when not in use to prevent rainfall from filling the vat or bin and causing an overflow.

F. Parking lot storm drain inlets shall be maintained free of trash, litter, garbage, rubbish, grass clippings, leaves, and other debris. Such material removed from the inlets shall be disposed of in a trash receptacle and shall NOT be allowed to enter the MS4.

G. Trash and litter on any parcel of land shall be collected for appropriate disposal prior to mowing.

H. Refer to Articles IV and V for the requirements associated with construction and industrial activities, respectively.

ARTICLE IV

STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

Section 4.01 Goal for Erosion and Sediment Control

The goal for erosion and sediment control at sites disturbed by construction is achievement of at least the minimum site rating of 0.70 using the site rating system as presented in Section 3 of the Storm Water Quality Best Management Practices for Construction Activities - North Central Texas, Second Edition, North Central Texas Council of Governments, Arlington, Texas, June, 1999 or adopted revisions.

Section 4.02 General Requirements

A. All operators of construction sites shall use best management practices (BMP) to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES Construction General Permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control. They shall be restored to serve their post-construction function before development or redevelopment activities are completed.

The best management practices used at construction sites may include, but not be limited to, the following measures:

1. Ensuring that existing vegetation is preserved by minimizing the disturbance of areas (using temporary fencing to protect areas if necessary) adjacent to construction areas by equipment parking or material storage.

2. Stabilizing disturbed areas of the site as soon as practicable in those portions where construction activities have temporarily or permanently ceased.

3. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;

4. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;

5. Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or waters of the United States;

6. Measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;

7. Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;

8. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and

9. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

B. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.

C. Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in this Section 4.02.

D. Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and

severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

Section 4.03 <u>Management Plan Submittal and Review for Disturbances of Less than Five Acres</u>

A. The requirements of this Section 4.03 shall not apply to any of the following activities:

1. Any construction activity that results in the disturbance of five or more acres of total land area, or that is part of a common plan of development or sale within which five or more acres of total land area are disturbed, and any other construction activity for which an NPDES or TPDES permit is required for storm water discharges associated with that construction activity. (In such circumstances, the requirements of Section 4.04 apply in lieu of this Section.)

2. Any public works construction project disturbing less than five acres that is administered, performed, contracted, or funded (in whole or in part) by the City.

3. Any construction activity, not a part of a larger plan of development of five acres or more, related to the construction, alteration, or addition to a single-family, duplex or four-plex residential structure, or an accessory use to any such structure, where one primary structure is constructed per legal lot and the construction activity does not result in the disturbance of more than 12,000 square feet of total land area.

4. Any construction incident to repair or maintenance of a utility line (such as for telecommunications, electricity, water, sewer, and natural gas). Construction incident to the laying of <u>new</u> utility lines or <u>replacement</u> of existing lines is not exempted from Section 4.03 by this paragraph.

5. Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building.

6. Construction of a fence, but no exemption is granted by this subparagraph for construction of a retaining wall or a fence that may significantly obstruct or change the direction of flow of water.

7. Any construction activity that the Director expressly finds not to cause, or threaten to cause, any discharge of any harmful quantity of any material associated with construction activity into the MS4 or any other water in the state.

B. Unless within one or more of the exceptions specified in Section 4.03(A) above, all operators of sites of construction activity, including clearing, grading, excavation, and landfilling activities, shall prepare and submit the following documents to the Director at least fifteen calendar days prior to the commencement of construction activities (unless, pursuant to Section 4.03(C) below, the Director expressly allows construction to be commenced within a shorter period of time following the document submittal):

1. An identifying notice containing the following information:

a. The name, address, and telephone number of each operator of the construction activity;

b. The name, address, and telephone number of each owner of the construction site;

c. The location of the construction site, by street address and legal description; and

d. A description of the nature of the construction project.

2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Licensed Professional Engineer, except in instances of land clearing or land filling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site.

C. The Director may allow construction to be commenced within fewer than fifteen calendar days following submittal of the documents required by Section 4.03(B) above if he/she expressly determines that:

1. The required identifying notice and management plans and specifications are complete and satisfactory;

2. The Director has been afforded adequate time and opportunity to review the management plans and specifications; and

3. The management practices described in the plans and observed upon any site inspection conducted are adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

D. If, upon the Director's review of the management plans and specifications required by Section 4.03(B) above (or any modified plans required by Section 4.03(F) below) and any site inspection that the Director may conduct, the Director determines that the management practices described in the plans or observed upon the site inspection are not adequate to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Any order issued by the Director under the authority of this Paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

E. The City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the Director are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

F. Whenever the management practices at a construction site are modified (as a result of change in the construction project, in order to implement more effective management practices, in response to an order or request from the City, or for any other reason), a written description of such modifications of the management practices shall be submitted to the Director as soon as possible, but in no case later than seven calendar days following the change in the management practices.

Section 4.04 <u>Five-Acre Disturbances</u>

All operators of sites of construction activity, including clearing, grading, excavation, and landfilling activities, that result in the disturbance of five or more acres of total land area, or that are part of a common plan of development or sale within which five or more acres of total land area are disturbed, or who are required to obtain an NPDES or TPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in Section 4.02.):

A. Any operator who intends to obtain coverage for storm water discharges from a construction site under the NPDES or TPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") shall submit a signed copy of its NOI to the Director of Engineering Services, and to any other responsible City departmental Director, at least two calendar days prior to the commencement of construction activities. For storm water discharges from construction sites where the operator changes, an NOI shall be submitted at least two calendar days prior to when the new operator commences work at the site.

B. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented prior to the beginning of construction activities in accordance with the requirements of the Construction General Permit or any individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter and any other city ordinance.

C. The SWPPP shall be prepared, signed, and sealed by a Licensed Professional Engineer. The signature and seal of the Licensed Professional Engineer shall constitute his/her attestation to the best of his/her knowledge that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter. The SWPPP shall contain the name, title, and business address of the Licensed Professional Engineer signing it, and the date that he/she did so.

D. The SWPPP shall be updated and modified as appropriate and as required by the NPDES Construction General Permit or TPDES permit and this Chapter. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Licensed Professional Engineer.

E. The SWPPP shall be prepared and submitted to the Director at least fifteen calendar days prior to the commencement of construction activities.

F. A copy of any SWPPP that is required by Section 4.04(B) shall be submitted to the City in conjunction with any application for a building permit, early grading release, site development plan approval, and any other City approval necessary to commence or continue construction at the site.

G. If, upon the Director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the Director may conduct, the Director determines that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the Director may similarly issue an order prohibiting the continuation of any construction activity at the site. Any order issued by the Director under the authority of this paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

H. Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter. Also, if at any time the City determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

I. All owners/developers, contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

J. The SWPPP, with the Licensed Professional Engineer's signature, seal, and date affixed, and the certifications of owners, developers, contractors and subcontractors required by Section 4.04(I), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

K. The operator shall make a copy of the SWPPP and any modification thereto available to the Director and any other authorized City inspector at the construction site upon request (as well as to EPA and state inspectors).

L. The Director may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested modifications have been made.

M. The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be modified to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP. All modifications to the SWPPP shall be submitted to the Director within seven calendar days of a change, determination of ineffectiveness (self or City inspection), or effective date of changes in contractor and/or subcontractor.

N. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within twenty-four hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

O. Based on the results of the inspections required by Section 4.04(N), the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven calendar days

following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection. All modifications to the SWPPP shall be submitted to the Director within seven calendar days of the date of inspection.

P. A report summarizing the scope of any inspection required by Section 4.04(N), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section 4.04(O) above shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES or TPDES permit, and this Chapter. The report shall be certified and signed by the person responsible for making it.

Q. The operator shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES or TPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

R. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this Chapter and by the NPDES or TPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the Director of Engineering Services, and to any other responsible City departmental Director, a NOT that includes the information required for Notices of Termination by Part VIII of the Construction General Permit.

S. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit to the responsible Director written certification that the site has been finally stabilized. (See definition of final stabilization in this Chapter.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the responsible Director has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

ARTICLE V

STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

Section 5.01 General Requirements

A. All owners or operators of facilities that have or will have storm water discharges associated with industrial activity (except for construction activities) shall submit one of the following:

1. A copy of the facility's signed NOI for a TPDES General Permit relating to storm water discharges associated with industrial activity to the Director not less than two calendar days prior to commencement of industrial activity at the facility.

2. A copy of the facility's No Exposure Certification to the Director not less than two calendar days prior to commencement of industrial activity at the facility.

3. A copy of the facility's NPDES or TPDES application for an individual permit to discharge storm water not less than thirty calendar days prior to commencement of industrial activity at the facility.

4. A copy of the facility's signed NOI for an NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Products Plants and Their Associated Facilities in Texas to the Director not less than thirty calendar days prior to commencement of industrial activity at the facility.

B. If the owner or operator of a facility becomes aware of a failure to submit relevant facts or that incorrect information has been submitted, a copy of the signed NOC shall be submitted to the Director within fourteen calendar days of the discovery. If relevant information on the NOI or No Exposure Certification changes, a copy of the signed NOC shall be submitted within fourteen calendar days of the discovery.

C. When the owner or operator of a facility changes or the facility moves to a new location or the industrial activity at the facility ceases operations, a copy of the signed NOT for the TPDES or NPDES General Permit or No Exposure Exclusion shall be submitted to the Director within fourteen calendar days of the change.

D. Any owner of a facility with a storm water discharge associated with industrial activity to which Section 5.01(A) applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with this ordinance.

E. Upon request by the Director, all owners and operators of any facility that is in non-compliance with the requirements of this Chapter, the NPDES or TPDES General Permit, the No Exposure Exclusion, or any applicable individual NPDES or TPDES permit issued for storm water discharges from the industrial facility, shall consult with the Director, any other representative of the City, or any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the TNRCC, and/or the City may itself undertake any enforcement action authorized by Articles VIII, X, or XI of this Chapter. Exercise of the City's option for consultation under this Section 5.01(E) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

Section 5.02 <u>Facilities Operating with a TPDES or NPDES General Permit</u>

A. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the appropriate NPDES or

TPDES General Permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under this Chapter, and any other City ordinance.

B. The SWPPP shall include all elements, activities, and items required by the appropriate NPDES or TPDES General Permit and any additional requirements of this Chapter or any other city ordinances.

C. The SWPPP shall be completed prior to the submittal of the NOI to the Director. The SWPPP shall be updated and modified as appropriate and as required by the facility's NPDES or TPDES General Permit and this Chapter.

D. The Director may require any operator to submit the SWPPP, and any modifications thereto, to the Director for review. Such submittal and review of the SWPPP may be required by the Director prior to commencement of or during industrial activity at the facility or prior to the approval of an application for any city permit.

E. Upon the Director's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any application for a permit or any other City approval necessary to commence or continue operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the appropriate NPDES or TPDES General Permit issued for storm water discharges from the industrial facility, or any additional requirement imposed by or under this Chapter or other City ordinances. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any application for a permit or other City approval necessary to commence or continue operation of the industrial facility.

F. The SWPPP, with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all storm water discharges associated with industrial activity at the facility are eliminated and the required NOT has been submitted in accordance with the appropriate NPDES General Permit.

G. The SWPPP and any modifications made thereto shall be available to the Director upon request (as well as to federal and state inspectors).

H. The Director may notify the operator or owner at any time that the SWPPP does not meet the requirements of the appropriate NPDES or TPDES General Permit or any additional requirement imposed by or under this Chapter or other City ordinances. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made.

I. The SWPPP shall be amended by the owner or operator whenever there is a change in design, construction, operation, or maintenance of the facility which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWPPP proves to be ineffective in

eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with industrial activity.

J. Employee training as required by appropriate NPDES or TPDES General Permit or this chapter shall be documented, and the documentation shall be retained at the industrial facility and made available to the Director upon request.

K. Qualified personnel (provided by the operator) shall inspect equipment, processes, and areas of the facility at least monthly to assess effectiveness of Good Housekeeping measures, spill prevention and response procedures, maintenance programs, BMPs, and other items specified in the SWPPP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained at the facility and made available to the Director upon request.

L. A grab sample from each outfall identified in the SWPPP shall be visually examined each quarter for color, clarity, floating solids, settled solids, suspended solids, foam, sheen, odor, and other indicators of pollution. The examination and documentation shall be accomplished in accordance with requirements of the NPDES or TPDES General Permit. Documentation shall be maintained at the facility and made available to the Director upon request.

M. Qualified personnel (provided by the operator) shall conduct a Comprehensive Site Compliance Evaluation (CSCE) as required by the appropriate NPDES or TPDES General Permit at intervals of no less than once per year. The SWPPP shall be revised by the owner or operator to include and address the findings of the evaluation within fourteen calendar days following completion of the evaluation.

N. A report summarizing the scope of the CSCE shall be made in accordance with the appropriate NPDES or TPDES General Permit. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES or TPDES permit, and this Chapter. Any incidents of non-compliance shall be corrected and the corrections documented as soon as practicable but no later than twelve weeks after the evaluation. The report shall be maintained at the facility and made available to the Director upon request.

O. If the industrial facility is required by the appropriate NPDES or TPDES General Permit to conduct analytical monitoring, records of the monitoring results shall be retained at the facility and made available to the Director upon request.

P. The operator shall retain the SWPPP until at least one year after storm water discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and a NOT in compliance with the appropriate TPDES or NPDES General Permit has been submitted. The operator shall retain all records of all monitoring information, copies of all required reports, and records of all data used to complete the NOI, until at least one year after all storm water discharges associated with industrial activity at the facility are eliminated, or the operator ceases to operate that facility, and the required NOT has been submitted.

Section 5.03 <u>Facilities Operating with a No Exposure Exclusion</u>

A. The owner or operator of a facility operating with a No Exposure Exclusion shall not allow the following materials, equipment, processes, and areas to be exposed to precipitation or storm water runoff:

1. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain;

2. Materials or residuals on the ground or in storm water inlets from spills or leaks;

3. Materials or products from past industrial activities;

4. Material handling equipment, except non-leaking, maintained vehicles intended for outside use;

5. Materials or products during loading, unloading, or transporting activities;

6. Materials or products stored outdoors, except for final products that are intended for outside use and do not release a pollutant;

7. Materials contained in open, deteriorated, or leaking storage drums, barrels, bins, tanks or similar containers.

8. Materials or products handled or stored on roads or railways owned or maintained by the owner or operator of the facility;

9. Waste material;

10. Application or disposal of process wastewater unless otherwise permitted;

11. Particulate matter or visible deposits of residuals from roof stacks, vents, or air handling and control devices that are not authorized by an air quality control permit.

B. Upon inspection of the facility, the Director may at any time notify the operator or owner that the facility does not meet the requirements of no exposure necessary to operate under a No Exposure Exclusion or any additional requirements imposed by or under this Chapter or other City ordinances. Such notification shall identify the non-compliant conditions at the facility and the changes necessary to attain a condition of no exposure. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall correct the non-compliant conditions and submit to the Director a written certification that the changes have been implemented, or the operator or owner shall prepare a Storm Water Pollution Prevention Plan and submit a NOI in accordance with Sections 5.01 and 5.02 of this Chapter.

Section 5.04 Facilities Operating with a TPDES or NPDES Individual Permit

A. The facility shall operate in accordance with all requirements of the appropriate TPDES or NPDES Individual Permit.

B. Upon inspection of the facility, the Director may notify the operator or owner at any time that facility operations do not meet the requirements of the appropriate TPDES or NPDES Individual Permit or any additional requirements imposed by or under this Chapter or other City ordinances. Such notification shall identify those provisions of the permit or Ordinance that are not being met and identify the changes necessary to meet such requirements. Within thirty calendar days of such notification from the Director (or as otherwise provided by the Director), the operator or owner shall make the required changes and submit to the Director a written certification that the changes have been implemented.

C. Copies of all sampling data and analyses reports required by the appropriate TPDES or NPDES Individual Permit shall be submitted to the Director at the same time that such reports are submitted to the EPA or TNRCC, unless otherwise notified in writing by the Director.

Section 5.05 Analytical Monitoring

A. By written notice, the Director may require any industrial facility identified in accordance with this Section V to implement a monitoring program at its expense that includes the submission of quantitative data on the following constituents:

1. Any pollutants limited in effluent guideline subcategories;

2. any pollutant listed in an existing NPDES or TPDES permit for the facility;

3. oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen; and

4. information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

The Director may require written reports of any such monitoring to be submitted to him/her.

B. By written notice, the Director may require any industrial facility identified in this Article V to conduct semi-annual or annual monitoring of storm water discharges, or the Director may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. The Director may require written reports of any such additional monitoring to be submitted to him/her.

Section 5.06 Coal Pile Runoff

A. Upon the effective date of this chapter, any discharge composed of coal pile runoff shall comply with the following limitations:

1. No discharge shall exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor shall such runoff be diluted with storm water or other flows in order to meet this limitation;

2. The pH of such discharges shall be within the range of 6.0-9.0.

B. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids.

Section 5.07 Discharge Prohibitions

A. Upon the effective date of this chapter, no discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum concentrations (in mg/l) of each of the hazardous metals listed below:

Metal	Monthly Average	Daily Composite	Daily Maximum
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

B. Samples for the monthly average, daily composite, and daily maximum shall be obtained according to the methods specified in the appropriate NPDES or TPDES general or individual permit.

ARTICLE VI

COMPLIANCE MONITORING

Section 6.01 Right of Entry: Inspection and Sampling

The Director, or his/her authorized representative, shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this Chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make

available to the Director, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with this Chapter and with any state or federal discharge permit.

A. Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director or his authorized representative(s) will be permitted to enter without delay for the purposes of performing his/her responsibilities.

B. The Director shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

C. The Director may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.

D. The Director may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

F. Unreasonable delays in allowing the Director access to the discharger's premises shall be a violation of this Chapter.

Section 6.02 <u>Inspection or Search Warrants</u>

If the Director, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Neighborhood Services, the Director of Engineering Services, the Director of Utilities, the Director of Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

ARTICLE VII

REPORTS OF VIOLATIONS

Section 7.01 Reports of Violations

A. All citizens are encouraged to report any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this Chapter of which they become aware, to the Director, his/her delegate, or any person designated by the City Manager to receive such citizen reports.

B. Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the City will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the Director of Engineering Services or other responsible City official will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

C. The Operator and the Owner of any commercial or industrial activity shall report any spills, releases, illicit connections, or other instances where pollutants are discharged into the MS4 or waters of the United States and any other violation of this chapter for which they are responsible to the Director, his/her delegate, or any person designated by the City Manager to receive such reports.

D. The Operator and the Owner of any commercial or industrial activity shall report all incidents enumerated in Section 7.01(C) in accordance with the following:

1. A hazardous and/or toxic material spill or release shall be immediately reported to the Arlington Fire Department.

2. Other instances where pollutants are discharged into the MS4 or waters of the United States by spill, release, illicit connections or other means shall be reported to the Department of Engineering Services/Environmental Management.

E. Both the Operator and the Owner of any commercial or industrial activity which has resulted in a spill or release of hazardous/toxic materials or a substance of a polluting nature is responsible for proper notification of the incident to the appropriate county, state, and federal agency. The reporting of a spill/release to the City of Arlington does not release the Owner or Operator from reporting to appropriate county, state and federal officials.

Thus, dependent on the type of release and the nature of the emergency caused thereby (i.e., life threatening or not), the following agencies, in addition to the Department of Engineering Services/Environmental Management, are specified to be notified:

1. Hazardous Materials Response Team, City of Arlington Fire Department;

2. City of Arlington Police Department;

3. City of Arlington Department of Transportation/Streets Division;

4. Texas Natural Resource Conservation Commission;

5. U.S. Environmental Protection Agency; and

6. National Response Center.

ARTICLE VIII

ADMINISTRATIVE ENFORCEMENT REMEDIES

Section 8.01 Warning Notice

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall require the Director to issue a Warning Notice prior to taking any action, including emergency action or any other enforcement action.

Section 8.02 Notification of Violation

When the Director finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the Director may serve upon that person a written Notice of Violation. Within seven calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the Director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the Director within seven calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this subsection shall require the Director to issue a Notice of Violation prior to taking any action, including emergency action or any other enforcement action.

Section 8.03 Consent Orders

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this Chapter or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8.05, 8.06 and 8.07 of this Chapter and shall be judicially enforceable.

Section 8.04 <u>Show Cause Hearing</u>

The Director may order any person who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the Director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in Section 9.01(G) of this Chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

Section 8.05 <u>Compliance Orders</u>

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, the Director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.06 <u>Remediation, Abatement, and Restoration Orders</u>

When the Director finds that a person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the United States, the Director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the United States, and/or to restore any part of the MS4, or the waters of the United States. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under

this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

Section 8.07 <u>Emergency Cease and Desist Orders</u>

When the Director finds that any person has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) , or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all requirements of this Chapter; and

2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director within ten calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Section 8.08 <u>Stop Work Orders</u>

Whenever the Director finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of Article IV of this Chapter, or any order issued hereunder, the Director may issue a Stop Work Order to the operator, and require that a copy of the Stop Work Order be posted at the construction site and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the Director, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the City associated with a building permit, early grading release, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a Stop Work Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

ARTICLE IX

RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

Section 9.01 Reconsideration and Hearing

A. Any person subject to a Compliance Order under Section 8.05, a Remediation, Abatement, or Restoration Order under Section 8.06, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08 of this Chapter may petition the Director to reconsider the basis for his/her order within fifteen calendar days of the affected person's notice of issuance of such an order.

B. Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

C. In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

D. The effect of any Compliance Order under Section 8.05, Remediation, Abatement, or Restoration Order under Section 8.06, and any Stop Work Order under Section 8.08 shall be stayed pending the Director's reconsideration of the petition, and any hearing thereon, unless the Director expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Section 8.07 shall <u>not</u> be stayed pending the Director's reconsideration, or any hearing thereon, unless the Director expressly and in writing stays his/her emergency order.

E. Within thirty calendar days of the submittal of a petition for reconsideration, the Director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

F. Written notice of any hearing set by the Director pursuant to Section 9.01(E) above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

G. The Director may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:

1. issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;

2. take evidence;

3. transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Director for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

H. After the Director has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The Director may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

Section 9.02 <u>Appeal</u>

Any person whose petition for reconsideration by the Director has not been granted in its entirety and who remains adversely affected by the Director's order, or who is subject to an order of the Director issued following a Show Cause Hearing under Section 8.04, may challenge the final action of the Director in an appropriate court of competent jurisdiction.

ARTICLE X

JUDICIAL ENFORCEMENT REMEDIES

Section 10.01 <u>Civil Remedies</u>

A. Whenever it appears that a person has violated, or continues to violate, any provision of this Chapter that relates to:

1. the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;

2. the preservation of public health or to the fire safety of a building or other structure or improvement;

3. the establishment of criteria for land subdivision or construction of buildings, including street design;

4. dangerously damaged or deteriorated structures or improvements;

5. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

6. point source effluent limitations or the discharge of a pollutant, other than from a nonpoint source, into the MS4,

The City may invoke Sections 54.011 - 54.017 of the Texas Local Government Code and petition the state district court or the county court at law of Tarrant County, through the City Attorney, for either the injunctive relief specified in Section 10.01(B) or the civil penalties specified in Section 10.01(C) below, or both the specified injunctive relief and civil penalties.

B. Pursuant to Section 54.016 of the Texas Local Government Code, the City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:

1. prohibits any conduct that violates any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above; or

2. compels the specific performance of any action that is necessary for compliance with any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(6) above.

C. Pursuant to Section 54.017 of the Texas Local Government Code, the City may recover a civil penalty of not more than $1,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(1)-(5) above, and a civil penalty of not more than $5,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 10.01(A)(6) above, if the City proves that:

1. the defendant was actually notified of the provisions of the Chapter; and

2. after the defendant received notice of the Chapter provisions, the defendant committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter.

Section 10.02 <u>Criminal Penalties</u>

A. Any person who has violated any provision of this Chapter, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than $2000 per violation, per day.

B. Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be subject to a fine of not more than $2000 per violation, per day.

C. In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator,

the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

Section 10.03 Remedies Nonexclusive

The remedies provided for in this Chapter are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

ARTICLE XI

SUPPLEMENTAL ENFORCEMENT ACTION

Section 11.01 Performance and Maintenance Bonds

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Chapter, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The City may deny approval of any building permit, early grading release, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

Section 11.02 Liability Insurance

The Director may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the Director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

Section 11.03 Public Nuisances

A. A violation of any provision of this Chapter, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated.

B. Any person(s) creating a public nuisance shall institute and complete all actions necessary to remedy the effects of such nuisance. If the person(s) responsible for creating the public nuisance fails to correct or abate the nuisance, the City may correct or abate the nuisance and the person(s) creating the nuisance shall be jointly and severally liable for the cost of such correction or abatement in accordance with state and local law.

C. It shall be the duty of the owner(s), occupant(s) or person(s) otherwise having supervision and control of any lot, tract or parcel of land to correct or abate any public nuisance existing in or on his/her property. If such nuisance is not corrected or abated, the City may correct or abate the nuisance and the owner(s), occupant(s) or person(s) otherwise having supervision and control of any lot, tract or parcel of land shall be jointly and severally liable for the cost of such correction or abatement in accordance with state and local law.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01 Charges and Fees

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

A. Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;

B. Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and

C. Other fees as the City may deem necessary to carry out the requirements contained in this Chapter. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

Section 12.02 Severability

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 12.03 Effective Date

This Chapter shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand and No/100 Dollars ($2,000)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the **31st** day of **July**, **2001**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **14th** day of **August**, **2001**, by a vote

of **9** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

Published ST 8-30-06 & 9-4-06

Ordinance No. 06-085

An ordinance amending the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article VI, Compliance Monitoring, Section 6.02, Inspection or Search Warrants, relative to updating the reference to the Community Services Department; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Storm Water Pollution Control"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article VI,** Compliance Monitoring, **Section 6.02,** Inspection or Search Warrants, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 6.02 Inspection or Search Warrants

If the Director, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Community Services, the Director of Engineering Services, the Director of Utilities, the Director of Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

6.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

7.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of August, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 22nd day of August, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY _____

PUBLISHED ST 02-19-07 & 02-26-07

Ordinance No. 07-004

An ordinance amending the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, General Provisions, Section 1.02, Administration, relative to changing the name of the department to Environmental Services; by the amendment of Section 1.03, Abbreviations, relative to changing the name of the Texas Natural Resource Conservation Commission; by the amendment of Section 1.04, Definitions, relative to the amendment of the definitions of "Director", "NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit", "No Exposure Certification", "Texas Natural Resource Conservation Commission", "TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity", and "Waters of the United States", the addition of the definitions of "TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit", "TPDES permit", "TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities", and "Surface Water in the State", and the deletion of the definition of "Water in the State"; through the amendment of Article II, General Prohibition, Section 2.01(B) relative to the addition of an affirmative defense for four discharges; through the amendment of Article III, Specific Prohibitions and Requirements, Subsection 3.01(B), relative to changing NPDES to TPDES; by the amendment of Subsection 3.01(C)(6), relative to the deletion of non-pressurized; by the amendment of Subsection 3.01(C)(15), relative to dechlorination; by the addition of Subsection 3.02(I), relative to adding reference to Subdivision Rules; through the amendment of Article IV, Storm Water Discharges from Construction Activities, by the amendment of Section 4.01, relative to the addition of the requirement to comply with the Design Criteria Manual; by the amendment of Subsection 4.02(A), relative to changing the reference from waters of the United States to surface water of the State; by the amendment of Subsection 4.02(B), relative to the addition of the

requirement to perform maintenance and to maintain documentation; by the amendment of the title of Section 4.03, Management Plan Submittal and Review for Disturbances of Less than Five Acres; by the amendment of Subsection 4.03(A), relative to changing from five acres to one acre; by the amendment of Subsection 4.03(B), relative to allowing more than a Professional Engineer to certify a Storm Water Pollution Prevention Plan; by the amendment of Subsection 4.03(E), relative to clarification of pollutants; by the amendment of Section 4.04, relative to changing the title of the section and changing from five acres to one acre; through the amendment of Article V, Storm Water Discharges Associated with Industrial Activity, by the amendment of Subsection 5.01(B), relative to changing NOC to NOI; by the amendment of Subsection 5.01(E), relative to changing TNRCC to TCEQ; by the amendment of Subsection 5.04(C), relative to changing TNRCC to TCEQ; by the amendment of Section 5.07, relative to formatting of table; through the amendment of Article VI, Compliance Monitoring, by the amendment of Section 6.02, relative to changing department names; through the amendment of Article VII, Reports of Violations, by the amendment of Subsection 7.01(B), relative to changing department name from Engineering Services to Environmental Services; by the amendment of Subsection 7.01(D)(2), relative to changing department name from Engineering Services to Environmental Services; by the amendment of Subsection 7.01(E), relative to changing department name from Engineering Services to Environmental Services; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Storm Water Pollution Control"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article I, General

Provisions, **Section 1.02**, Administration, so that hereafter said section shall be and read as follows:

Section 1.02 Administration

The Director of Environmental Services shall implement and enforce the provisions of this Chapter, except for public works construction projects and municipal operations which are administered or controlled by another City department. For public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City, the Director of the City department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this Chapter. The Director of each City department shall also implement and enforce the provisions of this chapter for all municipal operations under his/her direction. Any powers granted to or duties imposed in this Chapter upon the Director of Environmental Services or the Director of another City department may be delegated by him/her to other City personnel.

Further, Article I is hereby amended by the amendment of **Section 1.03**, Abbreviations, so that said section shall read as follows:

Section 1.03 Abbreviations

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

BMP	-	Best Management Practices
BOD5	-	Five Day Biological Oxygen Demand
CFR	-	Code of Federal Regulations
COD	-	Chemical Oxygen Demand
CSCE	-	Comprehensive Site Compliance Evaluation
EPA	-	U.S. Environmental Protection Agency
HHW	-	Household Hazardous Waste
LPE	-	Licensed Professional Engineer
mg/l	-	Milligrams per liter
MS4	-	Municipal Separate Storm Sewer System
MSGP	-	Multi-Sector General Permit
NOC	-	Notice of Change
NOI	-	Notice of Intent
NOT	-	Notice of Termination
NPDES	-	National Pollutant Discharge Elimination System
pH	-	Measure of Acidity or Alkalinity
POTW		Publicly Owned Treatment Works
PST		Petroleum Storage Tank
SWPPP		Storm Water Pollution Prevention Plan
TCEQ		Texas Commission on Environmental Quality
TPDES		Texas Pollutant Discharge Elimination System

TSS - Total Suspended Solids
USC - United States Code

Further, Article I is hereby amended by the amendment of **Section** 1.04, Definitions, by the **amendment** of the definitions of "Director", "NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit", "No Exposure Certification", "Texas Natural Resource Conservation Commission", "TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity", and "Waters of the United States", the **addition** of the definitions of "TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit", "TPDES permit", "TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities", and "Surface Water in the State", and the **deletion** of the definition of "Water in the State", so that said definitions shall read as follows:

"Director" shall mean the Director of Environmental Services for the City of Arlington, or his/her duly authorized representative, except in the case of public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City. In the case of such City public works projects, the term "Director" shall mean the Director of the City Department that is administering, performing, or contracting for the construction project, or his/her duly authorized representative.

"NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit" shall mean General Permit No. TXG110000 published by EPA in Volume 65 of the Federal Register at page 2165 on January 13, 2000, and any subsequent modifications or amendments thereto, that has been assumed and is now administered by the TCEQ.

"No Exposure Certification" shall mean receipt of an NPDES Form 3510-11 or an equivalent form issued by TCEQ related to the TPDES General Permit.

"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 nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or 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.

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

"TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity" shall mean TPDES General Permit No. TXR050000 issued by the TCEQ in 2001 as authorized under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

"TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit" shall mean the Construction General Permit issued by TCEQ on March 5, 2003 as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

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

"TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities" shall mean General Permit No. TXG110000 published by the TCEQ and as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

"Waters of the United States" - (from title 40, part122, section 2 of the Code of Federal Regulations) 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 CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States 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 Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Further, Article II, General Prohibition, is hereby amended by the amendment of **Subsection 2.01(B)**, so that said subsection shall read as follows:

B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section, upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges and is not damaging the environment:

1. A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);

2. A discharge or flow resulting from fire fighting by the Fire Department;

3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;

4. Agricultural storm water runoff;

A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;

6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;

7. A discharge or flow from a diverted stream flow or natural spring;

8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

9. Uncontaminated groundwater infiltration (as defined in 40 CFR §35.2005(20)) to the MS4;

10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

12. A discharge or flow from individual residential car washing (external surfaces only);

13. A discharge or flow from a riparian habitat or wetland.

14. Dechlorinated swimming pool water (not filter backwash from a swimming pool or hot tub) that: contains no harmful quantities of chlorine or other chemicals, and has a pH of 6.0 to 9.0, and the flow does not cause flooding or property damage.

15. Air conditioning condensate that is not contaminated.

16. A discharge or flow from cold water (or hot water with prior permission of the director) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance or substance being removed from the surface being cleaned.

17. Other similar occasional incidental non-storm water discharges.

Further, Article III, Specific Prohibitions and Requirements, is hereby amended by the amendment of **Subsection 3.01(B)**, so that said subsection shall read as follows:

B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard,

the City's TPDES permit, or any state-issued discharge permit for discharges from its MS4.

Further, Article III is hereby amended by the amendment of **Subsection 3.01(C)(6)**, so that said subsection shall read as follows:

6. Any wastewater from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, with the exception that the exterior of new or used automobiles for sale at a dealership may be rinsed with non-heated potable waters as long as no pollutants (including but not limited to detergent, surfactants, emulsifiers, etc.) enter the MS4;

Further, Article III is hereby amended by the amendment of **Subsection 3.01(C)(15)**, so that said subsection shall read as follows:

15. Any swimming pool or hot tub water that has not been dechlorinated, has a pH of less than 6 or greater than 9, causes flooding, property damage, or damage to the environment;

Further, Article III is hereby amended by the amendment of **Section 3.02**, by the addition of Subsection (I), so that said subsection shall read as follows:

I. Post construction BMP's as required by the Subdivision Rules and Regulations and the Design Criteria Manual.

Further, Article IV, Storm Water Discharges from Construction Activities, is hereby amended by the amendment of **Section 4.01**, so that said section shall read as follows:

Section 4.01 Goal for Erosion and Sediment Control

The goal for erosion and sediment control at sites disturbed by construction is achievement of at least the minimum site rating of 0.70 using the site rating system and the implementation of the design standards specified in the Integrated Storm Water Management (iSWM) Design Manual for Construction, North Central Texas Council of Governments, Arlington, Texas, December 2003 or adopted revisions and compliance with the City of Arlington Design Criteria Manual.

Further, Article IV is hereby amended by the amendment of **Subsection 4.02(A)**, so that said subsection shall read as follows:

A. All operators of construction sites shall use best management practices (BMP) to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with demolition, clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES Construction General Permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control. They shall be restored to serve their post-construction function before development or redevelopment activities are completed.

The best management practices used at construction sites may include, but not be limited to, the following measures:

1. Ensuring that existing vegetation is preserved by minimizing the disturbance of areas (using temporary fencing to protect areas if necessary) adjacent to construction areas by equipment parking or material storage.

2. Stabilizing disturbed areas of the site as soon as practicable in those portions where construction activities have temporarily or permanently ceased.

3. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;

4. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;

5. Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or surface water in the State;

6. Measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;

7. Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground

contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;

8. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and

9. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

Further, Article IV is hereby amended by the amendment of **Subsection 4.02(B)**, so that said subsection shall read as follows:

B. Qualified personnel (provided by the operator of the construction site) shall conduct inspections, perform maintenance of controls, and maintain documentation for disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.

Further, Article IV is hereby amended by the amendment of the title of **Section 4.03**, so that said title shall read as follows:

Section 4.03 <u>Management Plan Submittal and Review for Disturbances of Less than One Acre</u>

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(A)**, so that said subsection shall read as follows:

A. The requirements of this Section 4.03 shall not apply to any of the following activities:

1. Any construction activity that results in the disturbance of one or more acres of total land area, or that is part of a common plan of development or sale within which one or more acres of total land area are disturbed, and any other construction activity for which an NPDES or TPDES permit is required for storm water discharges associated with that construction activity. (In such circumstances, the requirements of Section 4.04 apply in lieu of this Section.)

2. Any public works construction project disturbing less than one acre that is administered, performed, contracted, or funded (in whole or in part) by the City.

3. Any construction activity, not a part of a larger plan of development of one acre or more, related to the construction, alteration, or addition to a single-family, duplex or four-plex residential structure, or an accessory use to any such structure, where one primary structure is constructed per legal lot and the construction activity does not result in the disturbance of more than 12,000 square feet of total land area.

4. Any construction incident to repair or maintenance of a utility line (such as for telecommunications, electricity, water, sewer, and natural gas). Construction incident to the laying of <u>new</u> utility lines or <u>replacement</u> of existing lines is not exempted from Section 4.03 by this paragraph.

5. Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building.

6. Construction of a fence, but no exemption is granted by this subparagraph for construction of a retaining wall or a fence that may significantly obstruct or change the direction of flow of water.

7. Any construction activity that the Director expressly finds not to cause, or threaten to cause, any discharge of any harmful quantity of any material associated with construction activity into the MS4 or any other water in the state.

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(B)**, so that said subsection shall read as follows:

B. Unless within one or more of the exceptions specified in Section 4.03(A) above, all operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, shall prepare and submit the following documents to the Director at least fifteen calendar days prior to the commencement of construction activities (unless, pursuant to Section 4.03(C) below, the Director expressly allows construction to be commenced within a shorter period of time following the document submittal):

1. An identifying notice on a form approved by the Director and to be posted at the site entrance containing the following information:

    a. The name, address, and telephone number of each operator of the construction activity;

    b. The name, address, and telephone number of each owner of the construction site;

    c. The location of the construction site, by street address and legal description; and

    d. A description of the nature of the construction project.

2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site, except in instances of land clearing or land filling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site.

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(E)**, so that said subsection shall read as follows:

E. The City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the Director are determined not to control and reduce the discharge of pollutants to include but not limited to sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

Further, Article IV is hereby amended by the amendment of **Section 4.04**, Five-Acre Disturbances, **including the amendment of the title of the section**, so that said section shall read as follows:

Section 4.04 One Acre or Greater Disturbances

All operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, that result in the disturbance of one or more acres of total land area, or that are part of a common plan of development or sale within which one or more acres of total land area are disturbed, or who are required to obtain a TPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in Section 4.02.):

A. Any operator who intends to obtain coverage for storm water discharges from a construction site under the TPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") but not an individual permit shall:

For sites five acres and more submit a signed copy of its NOI to the Director of Environmental Services, and to any other responsible City departmental Director, at least two calendar days prior to the commencement of construction activities, or

For sites one acre or more but less than five acres submit a copy of the Site Posting required by the TPDES General Permit.

For storm water discharges from construction sites where the operator changes, a revised Site Posting or NOI as appropriate for the site shall be submitted at least two calendar days prior to when the new operator commences work at the site.

B. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented prior to the beginning of construction activities in accordance with the requirements of the Construction General Permit or any individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter and any other city ordinance.

C. The SWPPP shall be prepared and certified by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site. The signature, date and seal of the Licensed Professional Engineer or other appropriate certification for the professional certifying the plan shall constitute his/her attestation to the best of his/her knowledge that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this

Chapter. The SWPPP shall contain the name, title, and business address of the professional signing the SWPPP, and the date that he/she did so.

D. The SWPPP shall be updated and modified as appropriate and as required by the NPDES or TPDES permit and this Chapter. Any update or modification to the SWPPP that results in a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States shall be prepared, signed, dated, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site.

E. The SWPPP shall be prepared and submitted to the Director at least fifteen calendar days prior to the commencement of construction activities.

F. A copy of any SWPPP that is required by Section 4.04(B) shall be submitted to the City in conjunction with any application for a building permit, demolition permit, early grading release, site development plan approval, and any other City approval necessary to commence or continue construction at the site.

G. If, upon the Director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the Director may conduct, the Director determines that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the Director may similarly issue an order prohibiting the continuation of any construction activity at the site. Any order issued by the Director under the authority of this paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.

H. Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter. Also, if at any time the City determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

I. All owners/developers, contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

J. The SWPPP, with the Licensed Professional Engineer's signature, seal, and date affixed, and the certifications of owners, developers, contractors and subcontractors required by Section 4.04(I), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

K. The operator shall make a copy of the SWPPP and any modification thereto available to the Director and any other authorized City inspector at the construction site upon request (as well as to EPA and state inspectors).

The Director may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested modifications have been made.

M. The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United

States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be modified to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP. All modifications to the SWPPP shall be signed, dated, and sealed by a Licensed Professional Engineer or other professional, approved by the Director of Environmental Services, certified in a discipline that includes erosion and sediment control principles appropriate for the site, then submitted to the Director within seven calendar days of a change, determination of ineffectiveness (self or City inspection), or effective date of changes in contractor and/or subcontractor.

N. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within twenty-four hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

O. Based on the results of the inspections required by Section 4.04(N), the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection. All modifications to the SWPPP shall be submitted to the Director within seven calendar days of the date of inspection.

P. A written report summarizing the scope of any inspection required by Section 4.04(N), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section 4.04(O) above shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES or TPDES permit, and this

Chapter. The report shall be certified and signed by the person responsible for making the report and consistent with the signing requirements of the permit.

Q. The operator shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES or TPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this Chapter and by the NPDES or TPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the Director of Environmental Services, and to any other responsible City departmental Director, a NOT that includes the information required for Notices of Termination by Part VIII of the Construction General Permit.

S. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit to the responsible Director written certification that the site has been finally stabilized. (See definition of final stabilization in this Chapter.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the responsible Director has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

Further, Article V, Storm Water Discharges Associated with Industrial Activity, is hereby amended by the amendment of **Subsection 5.01(B)**, so that said subsection shall read as follows:

B. If the owner or operator of a facility becomes aware of a failure to submit relevant facts or that incorrect information has been submitted, a copy of the signed revised NOI shall be submitted to the Director within fourteen calendar days of the discovery. If relevant information on the NOI or No Exposure Certification changes, a copy of the signed revised NOI shall be submitted within fourteen calendar days of the discovery.

Further, Article V is hereby amended by the amendment of **Subsection 5.01(E)**, so that said subsection shall read as follows:

E. Upon request by the Director, all owners and operators of any facility that is in non-compliance with the requirements of this Chapter, the NPDES or TPDES General Permit, the No Exposure Exclusion, or any applicable individual NPDES or TPDES permit issued for storm water discharges from the industrial facility,

shall consult with the Director, any other representative of the City, or any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the TCEQ, and/or the City may itself undertake any enforcement action authorized by Articles VIII, X, or XI of this Chapter. Exercise of the City's option for consultation under this Section 5.01(E) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

Further, Article V is hereby amended by the amendment of **Subsection 5.04(C)**, so that said subsection shall read as follows:

C. Copies of all sampling data and analyses reports required by the appropriate TPDES or NPDES Individual Permit shall be submitted to the Director at the same time that such reports are submitted to the EPA or TCEQ, unless otherwise notified in writing by the Director.

Further, Article V is hereby amended by the amendment of **Subsection 5.07(A)**, so that said subsection shall read as follows:

A. Upon the effective date of this chapter, no discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum concentrations (in mg/l) of each of the hazardous metals listed below:

Metal	Monthly Average	Daily Composite	Daily Maximum
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

Further, Article VI, Compliance Monitoring, is hereby amended by the amendment of **Section 6.02**, so that said subsection shall read as follows:

Section 6.02 Inspection or Search Warrants

If the Director, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to

demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Community Services, the Director of Environmental Services, the Director of Utilities, the Director of Public Works and Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

Further, Article VII, Reports of Violations, is hereby amended by the amendment of **Subsection 7.01(B)**, so that said subsection shall read as follows:

B. Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the City will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the Director of Environmental Services or other responsible City official will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

Further, Article VII is hereby amended by the amendment of **Subsection 7.01(D)(2)**, so that said subsection shall read as follows:

2. Other instances where pollutants are discharged into the MS4 or waters of the United States by spill, release, illicit connections or other means shall be reported to the Department of Environmental Services/Environmental Management.

Further, Article VII is hereby amended by the amendment of **Subsection 7.01(E)**, so that said subsection shall read as follows:

E. Both the Operator and the Owner of any commercial or industrial activity which has resulted in a spill or release of hazardous/toxic materials or a substance of a polluting nature is responsible for proper notification of the incident to the appropriate county, state, and federal agency. The reporting of a spill/release to the City of Arlington does not release the Owner or Operator from reporting to appropriate county, state and federal officials.

Thus, dependent on the type of release and the nature of the emergency caused thereby (i.e., life threatening or not), the following agencies, in addition to the

Department of Environmental Services/Environmental Management, are specified to be notified:

1. Hazardous Materials Response Team, City of Arlington Fire Department;

2. City of Arlington Police Department;

3. City of Arlington Department of Transportation/Streets Division;

4. Texas Commission on Environmental Quality;

5. U.S. Environmental Protection Agency; and

6. National Response Center.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand and No/100 Dollars ($2,000)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 23rd day of January, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 13th day of February, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

PUBLISHED ST 07-30-07 & 08-06-07

Ordinance No. 07-053

An ordinance of the City of Arlington, Texas, relating to the municipal storm water (drainage) utility system; restating findings; definitions; calculating storm water charges and monthly fees; providing for billing, payment, exemptions, penalties and remedies for failure to pay fees; restating the storm water utility system fund; providing that this ordinance shall be cumulative of all ordinances; providing for severability and an effective date

WHEREAS, by Ordinance No. 90-81, adopted August 14, 1990, the City Council found that the City will establish a schedule of drainage charges against all real property in the City subject to charges, provide drainage for all real property in the City upon payment of drainage charges (except real property that is exempt from such charges), and offer drainage service on nondiscriminatory, reasonable, and equitable terms; and

WHEREAS, by Ordinance 90-81, adopted August 14, 1990, the City adopted TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, (the "Act"), established a municipal drainage utility system and declared that system to be a public utility; and

WHEREAS, the drainage utility system, now known as the storm water system has continued to operate for the purpose of collecting, storing and disposing of surface water runoff; and

WHEREAS, regulation of the collection and control of storm water within the City limits is necessary to protect the health, safety, and welfare of the citizens; and

WHEREAS, in setting the schedule of charges for storm water service, the calculations are based on an inventory of the lots and tracts within the City, and the land use and impervious surface of the benefitted properties; and

WHEREAS, an inventory of residential lots and tracts shows the average square footage of impervious surface of single family lots and tracts is 2,800; and

WHEREAS, it is the intent of the City to fund a storm water utility system that fairly and equitably allocates the cost of storm water utility services to benefitted properties; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

SECTION I.
FINDINGS and DEFINITIONS

A. Findings Restated.

1. The City will establish a schedule of drainage charges against all real property in the City subject to charges under TEXAS LOCAL GOV'T CODE CHAPTER 402, SUBCHAPTER C. MUNICIPAL DRAINAGE UTILITY SYSTEMS, §402.041 et.seq.

2. The City will provide drainage for all real property in the City upon payment of drainage charges, except real property that is exempt from such charges.

3. The City will offer drainage service on nondiscriminatory, reasonable, and equitable terms. (Ord. 90-81, Section 1, August 14, 1990)

B. Definitions. The following definitions apply to the operation of the storm water utility system.

1. **Act:** means TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, and as it may be amended hereafter.

2. **Allocated Portion of a Parcel:** means that portion of a parcel which has been allocated to an owner or customer based on the area utilized by the owner or customer compared to the total area of a parcel.

3. **Benefitted Property:** means an improved parcel, lot or tract to which storm water service is made available. Publicly maintained streets shall not be included in benefitted property.

4. **Customer:** means the person(s) or entity(ies) that is shown as the customer or user of utility services for a parcel as recorded in the records of the City's utility billing system (UBS).

5. **Director:** means the Director of Public Works and Transportation of the City or his designated representative.

6. **Dwelling Unit:** means one or more rooms, including kitchen and bathroom facilities, arranged or used as separate living quarters for an individual family. Hotels and motels are excluded from this definition.

7. **Equivalent Residential Unit (ERU):** is a unit of measurement of impervious surface area determined from the average house structure, garage, driveway and other impervious area upon residential parcels within the City, to-wit: 2800 square feet.

Impervious: means a surface that has been compacted or covered with a layer of material so that it is resistant to infiltration by water. Impervious areas include, but are not limited to, compacted soils with a surface treatment, gravel or crushed stone surfaces, asphalt or concrete pavement, parking lots, driveways, sidewalks, buildings and other man made structure or surface that is built or laid on the natural surface of the land and has the effect of increasing, concentrating or otherwise altering storm water runoff.

9. **Improved Parcel:** means a lot or parcel that has been changed from its natural state by construction of a structure or other improvement on it that causes an impervious coverage of the soil.

10. **Multi-Family Parcel:** means any benefitted property or buildings with five (5) or more dwelling units.

11. **Non-residential Parcel:** means all benefitted property that is not defined as residential by this ordinance, including commercial, industrial, institutional, multi-family and governmental property.

12. **Owner:** means the person(s) or entity(ies) that is shown as the owner of a parcel as recorded in the records of the Tarrant County Appraisal. The owner of a parcel may also be recorded as the owner or customer receiving other utility services in the utility billing system.

13. **Parcel:** means one or more lots or tracts, or portions of lots or tracts.

14. **Residential Parcel:** means any benefitted property platted, zoned or used for residential development including single family, duplex, triplex, quadraplex, townhomes, manufactured homes or other improved parcel upon which buildings contain less than five (5) dwelling units.

15. **Service Area:** means the municipal boundaries.

16. **Storm Water:** includes the definition of "drainage" as found in the Act.

17. **Storm Water Infrastructure or Facilities:** means the property, real, personal or mixed, that is used to provide drainage and included in the storm water utility system, including bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

18. **Storm Water Utility System:** means the storm water utility system owned or controlled, in whole or in part by the City, including the City's existing storm water facilities, materials, and supplies and any storm water

facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefitted property, and including provision for additions, extensions, and improvements thereto and replacements thereof, and to be funded, in whole or in part, by the storm water utility fee.

19. **Wholly Sufficient and Privately Owned Storm Water System:** means land owned and operated by a person other than the City and from which the storm water does not discharge under any storm frequency event or conditions into a creek, river, slough, culvert, channel or other infrastructure that is part of the City's storm water utility system.

SECTION II.
CONTINUATION OF STORM WATER UTILITY

A. **Declaration of public utility restated.** The City having adopted the provisions of TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, by this ordinance continues the operation of the storm water utility system to serve the area within the boundaries of the City. The City Council restates the declaration of the storm water system of the City to be a public utility. (Ord. 90-81, August 14, 1990)

B. **Director**. The Director shall administer the storm water utility system. The Director shall keep an accurate record of properties benefitted or served by the storm water utility system and the storm water utility fee charged for each parcel or portion of a parcel.

C. **Program Implementation**. The City Council retains full discretion in establishing the time and quantitative priorities in expending funds on a reasonable basis as the same become available to meet the storm water needs of the City. The passage of this Ordinance shall not be construed to relieve private land owners, developers or other individuals or entities from providing storm water improvements pursuant to the ordinances of the City and the laws of this state which relate to storm water or storm water improvements. The Ordinance does not warrant, guarantee or provide any assurance that a benefitted property will be free from flooding or erosion, and does not create additional duties nor waive any immunities on the part of the City.

SECTION III.
STORM WATER UTILITY SCHEDULE OF CHARGES

A. **Storm Water Utility Rate Categories**. A storm water utility fee shall be imposed on each benefitted property within the City. The fee for all properties is computed using the same formula, in relation to an equivalent residential unit (ERU). For purposes of imposing the storm water utility fee, all parcels are classified into the following categories:

1. Residential

2. Non Residential

B. **Storm Water Fee.** The monthly fee is $2.00 per ERU beginning October 1, 2007. The monthly fee will be $2.75 per ERU beginning October 1, 2008. The monthly fee is $3.50 per ERU beginning October 1, 2009. The monthly fee is $4.25 per ERU beginning October 1, 2010.

C. **Fee Calculation.**

1. Residential. One (1) ERU per dwelling unit.

2. Non residential. An ERU will be individually calculated for each parcel by dividing the impervious surface area by 2,800 square feet. The result shall be a minimum of 1.0 ERU.

D. **Revision of Rates.** The storm water utility fee shall be adopted and may be revised by the City Council in the form of a resolution.

E. **Credit Availability.** Any non-residential property on which mitigation measures have been taken may be eligible for a credit to the storm water fee. The Director shall adjust the fee for such properties according to the actual mitigative effect of the measures taken. Best Management Practices (BMPs) that were required as part of development plan approval will not be eligible for such credits.

SECTION IV.
RESPONSIBILITY FOR STORM WATER UTILITY FEE

A. **Responsible Party**. The storm water utility fee shall be billed with the monthly water, sewer or solid waste billing as provided in Article III, of the Water and Sewer Chapter of the Code of Ordinances.

1. The Customer has primary responsibility for payment of the fee. Nevertheless, the Owner of benefitted property shall remain responsible for the payment of the fee. Failure of the Customer to pay the fee shall not relieve the Owner of this obligation.

2. For any improved parcel that does not receive water, sewer or solid waste service, the Director is hereby authorized to establish a "storm water only account" and to bill the storm water utility fee to either the owner or customer as appropriate.

3. Where an improved parcel is not occupied by a customer that might use water, sewer, solid waste or other utility service and considered by the City to be vacant, either on a temporary or permanent basis, the City may bill the owner of the parcel for the storm water utility service.

4. In the case of multiple accounts for a parcel, the fee shall be calculated for the entire parcel and may be allocated among the separate accounts in relation to the impervious area used by the customer assigned a particular account, or the fee for the entire parcel may be placed on one master metered account, provided the customer provides adequate assurance for payment. In either event, the minimum fee for each account shall be the rate established for one ERU.

B. **Storm Water Service Deposit.** A deposit will not be charged for initiation or continuation of storm water utility service.

C. **Terms of Payment.** All terms of payment, delinquency, terms of service and service charges shall be consistent with the Water and Sewer Chapter of the City Code of Ordinances and the Customer Service policies and procedures established by the utility billing department with regard to all utility services provided by the City.

D. **Non Payment.** Any charge due hereunder which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided at law or in this Ordinance, failure of a user of the storm water utility system to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the City.

E. **Administrative Review.** An administrative review of the Director's decision on applicable storm water fees shall be consistent with the Water Utilities Customer Service policies and procedures with regard to all utility services provided by the City.

SECTION V.
STORM WATER UTILITY FUND

The Chief Financial Officer shall maintain a storm water utility fund which may consist of one or more accounts. The income of the storm water utility shall be segregated and completely identifiable in the City accounts. Funds and revenues in the storm water utility fund may be paid over and transferred to the City's general fund as allowed by law.

SECTION VI.
EXEMPTIONS

A. A governmental entity listed below, and a parcel in which the governmental entity holds a freehold interest, is exempt from this ordinance:

1. the state of Texas

2. a state agency.

B. A public or private institution of higher education is exempt from payment of the fees established by this ordinance.

C. The owner of property described below, is exempt from this ordinance:

1. Property with proper construction and maintenance of a wholly sufficient and privately owned storm water system is exempt from this ordinance. The Owner shall be responsible to submit information to the Director adequate to establish this exemption. Director shall have the right to inspect such system at any reasonable time to determine if it is in compliance with the approved design and continues to function properly. If the facility fails to meet the proper operating and maintenance standards, such that storm water discharges into the city's storm water utility system, the Owner shall pay the monthly storm water utility fee at the normal rate, without benefit of reduction, until such time that the facility is wholly sufficient.

2. Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure, if any, constructed has been accepted by the City for maintenance.

3. A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued, or the municipality has taken another official action to release the property for occupancy.

SECTION VII.
CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, as amended, except where the provisions are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION VIII.
SEVERABILITY CLAUSE

It is hereby declared to be the action of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.

SECTION IX.
EFFECTIVE DATE

This Ordinance shall be in full force and effect after its passage, and it is so ordained.

PRESENTED AND GIVEN FIRST READING on the 3rd day of July, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 24th day of July, 2007, by a vote of _7_ ayes and _2__ nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY _____

Ordinance No. 07-100

An ordinance amending Ordinance No. 07-053, which is codified as Article XIII of the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, by the amendment of Section VI, Exemptions, by the addition of Subsection (D), relating to the addition of public school districts to exemptions from storm water fee assessed by the municipal storm water (drainage) utility system; providing that the effective date of the new exemption is October 1, 2007; providing for authority to reimburse any fees collected from newly exempted entities; providing that this ordinance shall be cumulative of all ordinances; providing for severability; declaring an emergency and providing for an effective date of ordinance

WHEREAS, by Ordinance No. 90-81, adopted August 14, 1990, the City Council found that the City will establish a schedule of drainage charges against all real property in the City subject to charges, provide drainage for all real property in the City upon payment of drainage charges (except real property that is exempt from such charges), and offer drainage service on nondiscriminatory, reasonable, and equitable terms; and

WHEREAS, by Ordinance No. 90-81, adopted August 14, 1990, the City adopted TEXAS LOCAL GOVERNMENT CODE, CHAPTER 402, SUBCHAPTER C, (the "Act"), established a municipal drainage utility system and declared that system to be a public utility; and

WHEREAS, by Ordinance No. 07-053, adopted July 24, 2007 the drainage utility system was continued and new storm water rates and exemptions were approved to be effective on October 1, 2007, and

WHEREAS, public school districts were not given an exemption on the passage of Ordinance No. 07-053; and

WHEREAS, the payment of the new storm water rates may potentially reduce monies from educational programs of the public school districts; and

WHEREAS, the City Council has found that it would be in the public interest to amend such ordinance to exempt public school districts from the assessed storm water fee; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That Ordinance No. 07-053, which is codified as Article XIII of the "Storm Water Pollution Control" Chapter, is hereby amended by the amendment of Section VI,

Exemptions, by the addition of Subsection (D) so that said subsection shall read as follows:

D. A public school district is exempt from payment of the fees established by this ordinance. This exemption shall be effective as of October 1, 2007.

II.

That any entity that paid storm water fees pursuant to Ordinance No. 07-053, that is now exempt for the period in which those fees were paid, may be reimbursed by the passage of a reimbursement resolution by the City Council.

III.

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, as amended, except where the provisions are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

IV.

It is hereby declared to be the action of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.

V.

This is an ordinance for the immediate preservation of the public peace, property, health and safety, and is an emergency measure within the meaning of Article VII, Sections 11 and 12, of the City Charter; and the City Council, by the affirmative vote of all of its members present and voting, hereby declares that this ordinance is an emergency measure, and the requirement that it be read at two (2) meetings, as specified in Section 11, is hereby waived.

VI.

This Ordinance shall be in full force and effect after its passage, and it is so ordained.

PRESENTED, FINALLY PASSED AND APPROVED, AND EFFECTIVE on the 18th day of December, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KAREN BARLAR, Acting City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY Eddie Martin

Ordinance No. 10-019

An ordinance amending the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article IV, Storm Water Discharges from Construction Activities, Section 4.03, Management Plan Submittal and Review for Disturbances of Less Than One Acre, Subsection (B)(2); and Section 4.04, One Acre or Greater Disturbances, by the addition of Subsection (T); relative to a requirement that final plans or other documents that will be archived must be submitted in electronic format; through the amendment of Article X, Judicial Enforcement Remedies, by the amendment of Section 10.02, Criminal Penalties, relative to updated penalty provisions; providing for a fine of up to $2,000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and an effective date

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Storm Water Pollution Control**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article IV**, Storm Water Discharges from Construction Activities, **Section 4.03**, Management Plan Submittal and Review for Disturbances of Less Than One Acre, **Subsection (B)(2)**, so that hereafter said section shall read as follows:

2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site, except in instances of land clearing or landfilling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site. Final plans or other documents that will be archived must be submitted in an electronic format specified by the Director of Community Development and Planning ("CDP Director") as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The City may provide an electronic conversion service for a fee in the amount set forth by City Council resolution. The CDP Director shall provide a

schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary to implement an electronic archiving program.

Further, **Article IV** is hereby amended by the amendment of **Section 4.04**, One Acre or Greater Disturbances, by the addition of Subsection (T), so that said subsection shall be and read as follows:

T. Final plans or other documents that will be archived must be submitted in an electronic format specified by the Director of Community Development and Planning ("CDP Director") as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The City may provide an electronic conversion service for a fee in the amount set forth by City Council resolution. The CDP Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary to implement an electronic archiving program.

Further, **Article X,** Judicial Enforcement Remedies, is hereby amended by the amendment of **Section 10.02**, Criminal Penalties, so that said section shall be and read as follows:

Section 10.02 Criminal Penalties

A. A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor; each day the violation continues shall be a separate offense.

1. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents ($500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

2. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

B. A person commits an offense by knowingly making any false statement, representation, or certification in any application, record, report, plan, or other

documentation filed, or required to be maintained, pursuant to this Chapter, or any order issued hereunder, or by falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required under this Chapter.

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

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective upon second publication.

PRESENTED AND GIVEN FIRST READING on the 15th day of December, 2009, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 12th day of January, 2010, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KATHRYN BARLAR, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY Kathy Zebulich

Ordinance No. 14-063

An ordinance amending the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article XIII, Municipal Storm Water (Drainage) Utility System, Section 13.03, Storm Water Utility Schedule of Charges, Subsection (B), amending storm water (drainage) utility fees; providing for a fine of up to $2,000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective November 1, 2014

WHEREAS, pursuant to Section 552.045 of the Texas Local Government Code, the City Council did give public notice and did hold a public hearing regarding the proposed revised rates for the municipal storm water (drainage) utility system; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Storm Water Pollution Control**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article XIII,** Municipal Storm Water (Drainage) Utility System, **Section 13.03**, Storm Water Utility Schedule Of Charges, **Subsection (B)**, so that hereafter said subsection shall read as follows, in all other respects said Chapter and Article to remain in full force and effect:

B. **Storm Water Fee.** The monthly fee is $4.75 per ERU beginning November 1, 2014. The monthly fee will be $5.25 per ERU beginning October 1, 2015. The monthly fee is $5.75 per ERU beginning October 1, 2016. The monthly fee is $6.25 per ERU beginning October 1, 2017. The monthly fee is $6.75 per ERU beginning October 1, 2018. The monthly fee is $7.25 per ERU beginning October 1, 2019. The monthly fee is $7.50 per ERU beginning October 1, 2020.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2,000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any provision in this ordinance, the Code of the City of Arlington, or Texas Local Government Code 552.041 et seq.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective on November 1, 2014.

PRESENTED AND GIVEN FIRST READING on the 14th day of October, 2014, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 28th

day of October, 2014, by a vote of 6 ayes and 3 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY