

ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING CHAPTER 13, "UTILITIES" BY ADDING ARTICLE 13-7 TO THE CODE OF ORDINANCES OF THE CITY OF ODESSA, TEXAS, STYLED "STORM WATER MANAGEMENT"; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; DIRECTING PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

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

Section 1. That Chapter 13, "Utilities", of the Code of Ordinances of the City of Odessa, Texas, is hereby amended by adding an article to be numbered 13-7, which said article reads as follows:

ARTICLE 13-7. STORM WATER MANAGEMENT

DIVISION 1. GENERAL PROVISIONS

Sec. 13-7-1. Definitions

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

Agricultural storm water runoff means any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point 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 (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the MS4 and 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.

CFR means the Code of Federal Regulations.

City means the City of Odessa, Texas.

Contaminated means containing a harmful quantity of any substance.

Contamination means the presence of or entry into a public water supply system, the MS4, waters of the state, or waters of the United States of any substance which may be deleterious to the public health and/or the quality of the water.

Cosmetic cleaning means cleaning done for cosmetic purposes. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or any cleaning otherwise regulated under federal, state, or local laws.

Director means the director of the department of public works or the director's authorized representatives.

Dirt means construction site waste materials, such as natural rock and soil overburden.

Discharge means 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 means 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.

Environmental Protection Agency or *EPA* means the United States Environmental Protection Agency, or any duly authorized official of said agency.

Facility, as used in Division 3 of this Article, means any facility, including construction sites, required by the Federal Clean Water Act to have a permit to discharge storm water associated with industrial activity.

Fire Code means the "Fire Prevention and Protection" chapter of the City Code.

Fire department means the Fire Department of the City of Odessa, or any duly authorized representative thereof.

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

Harmful quantity means the amount of any substance that will cause pollution of waters in the state, waters of the United States, or that will cause lethal or sub-lethal adverse effects on representative, sensitive aquatic monitoring organisms belonging to the city, upon their exposure to samples of any discharge into waters in the state, waters of the United States, or the MS4.

Municipal separate storm sewer system (MS4) means the system of conveyances (including sidewalks, 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 wastewater.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act.

NOI means notice of intent.

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

Notice of intent means the notice of intent that is required by the NPDES Storm water Multi-Sector General Permit, the EPA Region 6 NPDES Storm water Construction general permit, or any similar general permit to discharge storm water associated with industrial activity that is issued by the EPA or the TCEQ.

NPDES means the National Pollutant Discharge Elimination System.

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

Operate means drive, conduct, work, run, manage, or control.

Operator, as used in Division 3 of this article, means the party or parties that either individually or taken together meet the following two (2) criteria: 1) They have operational control over the site specifications (including the ability to make modifications in specifications); and 2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with SWPPP requirements and any permit conditions.

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

Point source means 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 means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; filter backwash; munitions; chemical wastes; biological materials; toxic materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; dirt; and industrial, municipal, recreational, and agricultural waste discharged into water or into the municipal separate storm sewer system.

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

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into ground-water, subsurface soils, surface soils, the municipal separate storm sewer system (MS4), the water of the state, the waters of the United States.

State means the State of Texas.

Storm water means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

Storm water discharge associated with industrial activity means 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. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (i) thru (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials; and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all area (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading transportation or conveyance of any raw material, intermediate product, finished product, by product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state or municipally owned or operated that meet the description of the facilities listed in paragraphs (i) thru (xi) of this definition) include those facilities designated under the provisions of 40 CFR, Section 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity".

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 344I, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR § 434.11(1) because the performance bond issued to the facility by the appropriate federal Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive

mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Federal Resource Conservation and Recovery Act (RCRA);

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)--(vii) or (ix)--(xi) of this definition are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the Federal Clean Water Act;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories (ii)--(x) of this definition);

Storm water pollution prevention plan means a plan required by a permit to discharge storm water associated with industrial activity, including construction, and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility.

SWPPP means storm water pollution prevention plan.

TAC means the Texas Administrative Code.

Texas Pollutant Discharge Elimination System means the program delegated to the State of Texas by the EPA pursuant to 33 USC § 1342(b).

TPDES means the Texas Pollutant Discharge Elimination System.

TSS (total suspended solids) means solids that either float on the surface, or are in suspension in, water, wastewater, or other liquids, and which are generally removable by a laboratory filtration device. TSS is expressed in milligrams per liter.

Uncontaminated means not containing a harmful quantity of any substance.

USC means United States Code.

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

Water in the state means ground-water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, wetlands, marshes, inlets, canals inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Waters of the United States means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; 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 means an area that is inundated or saturated by surface or ground-water 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.

Sec. 13-7-2. Administration

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

Sec. 13-7-3. Discharge to MS4 prohibited

(a) A person commits an offense if the person introduces or causes to be introduced into the MS4 any discharge that is not composed entirely of storm water.

(b) It is an affirmative defense to any enforcement action for a violation of subsection (a) that the discharge was composed entirely of one (1) or more of the following categories of discharges:

(1) a discharge authorized by, and in full compliance with, a NPDES/TPDES permit;

- (2) a discharge of flow resulting from fire fighting by the fire department;
- (3) a discharge or flow from water line flushing or fire hydrant testing, but not including a discharge from water line disinfection by superchlorination or other means unless it contains no harmful quantity of chlorine and discharges are not expected to adversely affect aquatic life;
- (4) a discharge or flow from lawn watering, landscape irrigation, or other water utilizing potable water, groundwater or surface water sources;
- (5) a discharge or flow from a diverted stream flow or natural spring;
- (6) a discharge or flow from uncontaminated pumped groundwater or rising groundwater;
- (7) uncontaminated groundwater infiltration to the MS4;
- (8) uncontaminated discharge or flow from a foundation drain, crawl space pump, rotting drain, sump pump;
- (9) 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;
- (10) a discharge or flow from air conditioning condensation that is unmixed with water from any other source of pollutant;
- (11) a discharge or flow from an individual residential car washing;
- (12) a discharge or flow from a riparian habitat or playa lake;
- (13) a discharge or flow from water used in pavement washing, vehicle or external building washing that is not contaminated with any harmful cleaning substance and where spills or leaks of toxic or hazardous materials have not occurred, unless all spill material is removed;
- (14) storm water runoff from a roof that is not contaminated by discharge from an emissions scrubber or filter or any other source of pollutant.

(c) No affirmative defense shall be available under subsection (b) if:

- (1) 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;
- (2) Written notice of such determination has been provided to the discharger;
- (3) And the discharge has continued after the expiration of the time given in the notice to cease the discharge.

(d) A person commits an offense if the person introduces or causes to be introduced into the MS4 any harmful quantity of any substance.

Sec. 13-7-4. Connection of sanitary sewer prohibited

A person commits an offense if the person connects a wastewater line to the MS4, or allows such a connection to continue.

Sec. 13-7-5. Nuisances

- (a) An actual or threatened discharge to the MS4 that violates or would violate this article is hereby declared to be a nuisance.
- (b) A wastewater line or a line designed for wastewater that is connected to the MS4 is hereby declared to be a nuisance.

Sec. 13-7-6. Suspension of utility service and MS4 access

Emergency suspension.

(a) The city may, without prior notice, suspend water service, sanitary sewer service, and/or MS4 discharge access to a person discharging to the MS4 or waters of the United States, when such suspension is necessary to stop an actual or threatened discharge which:

- (1) Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or
- (2) Presents or may present imminent and substantial danger to the MS4 or waters of the United States.

(b) When the director determines that city-provided water and/or sanitary sewer service needs to be suspended pursuant to subsection (a), the director will request the director of the utilities department to do so.

(c) As soon as is practicable after the suspension of service or MS4 discharge access, the director will notify the violator of the suspension in person or by certified mail, return receipt requested, and will order the violator to cease the discharge immediately. When time permits, the director should also attempt to notify the violator prior to suspending service or access.

(d) If the violator fails to comply with an order issued under subsection (c), the director will take such steps as the director deems necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(e) The city will not reinstate suspended services or MS4 access to the violator until:

- (1) The violator presents proof, satisfactory to the director, that the noncomplying discharge has been eliminated and its cause determined and corrected;
- (2) The violator pays the city for all costs the city incurred in responding to abating, and remediating the discharge or threatened discharge; and
- (3) The violator pays the city for all costs the city will incur in reinstating service or access.

(f) A violator whose service or access has been suspended or disconnected may appeal such enforcement action to the director, in writing, within ten (10) days of notice of the suspension.

(g) The city may obtain a lien against the property to recover its response costs pursuant to the procedure set out in Section 13-1-9 of this chapter.

(h) The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

Non emergency suspension.

(a) The city may terminate the city-provided water supply, sanitary sewer connection, and/or MS4 access any person discharging to the MS4 in violation of this article, if such termination would abate or reduce the illicit discharge.

(b) The director will notify a violator of the proposed termination of its water supply, sanitary sewer connection, and/or MS4 access. The violator may petition the director for a reconsideration and hearing within ten (10) days of the notice of proposed termination.

(c) The city will not reinstate suspended services or MS4 access to the discharger until:

(1) The violator presents proof, satisfactory to the director, that the noncomplying discharge has been eliminated and its cause determined and corrected; and

(2) The violator pays the city for all costs the city incurred in responding to abating, and remediating the discharge or threatened discharge; and

(3) The violator pays the city for all costs the city will incur in reinstating service or MS4 access.

(d) The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

(e) A person commits an offense if the person reinstates water service, sanitary sewer service, and or MS4 access to premises terminated pursuant to this section, without the prior approval of the director.

Secs. 13-7-7 thru 13-7-15. Reserved

DIVISION 2. STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY, INCLUDING CONSTRUCTION ACTIVITY

Sec. 13-7-16. Applicability

This division applies to all facilities located within the city that have storm water discharges associated with industrial activity, including construction activity.

Sec. 13-7-17. Access to facilities

(a) The director is authorized by Section 13-2-10 of this chapter to enter and inspect facilities subject to regulation under this article.

(b) Facility operators shall allow the director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(c) The director shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the director to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) 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 operator at the written or oral request of the director and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(e) Unreasonable delays in allowing the director access to a permitted facility is a violation of a storm water discharge permit and of this article. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the director reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

Sec. 13-7-18. Unpermitted discharges prohibited

A person who is the operator of a facility commits an offense if the person discharges, or causes to be discharged, storm water associated with industrial activity without first having obtained a NPDES or TPDES permit to do so.

Sec. 13-7-19. Submission of NOI to city

(a) The operator of a facility, including construction sites, required to have a NPDES or TPDES permit to discharge storm water associated with industrial activity shall submit a copy of the notice of intent (NOI) to the director at the same time the operator submits the original notice of intent to the EPA or the TCEQ as applicable.

(b) The copy of the notice of intent may be delivered to the director either in person or by mailing it to:

City of Odessa
Public Works Department
P.O. Box 4398
Odessa, Texas 79760

(c) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the notice of intent to do so to the director.

Sec. 13-7-20. Compliance with permit

(a) A facility shall be operated in strict compliance with the requirements of its NPDES or TPDES permit to discharge storm water associated with industrial activity.

(b) A person commits an offense if the person operates a facility in violation of a requirement of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.

Sec. 13-7-21. Modification of storm water pollution prevention plans

(a) The director may require any operator of a facility to modify the facility's storm water pollution prevention plan if in the best professional judgment of the director, the SWPPP does not comply with the requirements of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.

(b) The deficiencies in a facility's SWPPP will be made in writing, and the director will give the facility operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the SWPPP.

Section 2. That should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

Section 3. That any person violating the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000.00 as provided in Section 1-1-9, "General Provisions" Charter, Odessa City Code, which section is adopted by reference and made a part hereof.

Section 4. That the caption and penalty clause of this ordinance shall be published in the Odessa American, a newspaper of general circulation in the City of Odessa, in compliance with the provisions of Article 1176b-1, T.R.C.S.

Section 5. That this ordinance shall take effect as provided by the City Charter.

The foregoing ordinance was first approved on the 13th day of July, A.D., 2010, by the following vote:

Bill Cleaver	_____
James B. Goates	_____
Barbara Graff	_____
Dean Combs	_____
Roy Hunton	_____

The foregoing ordinance was adopted on second and final approval on the 27th day of July, A.D., 2010, by the following vote:

Bill Cleaver	_____
James B. Goates	_____
Barbara Graff	_____
Dean Combs	_____
Roy Hunton	_____

Approved this the 27th day of July, A.D., 2010.

Larry L. Melton, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

Larry Long, City Attorney