

ORDINANCE NO. 3770-05-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, REGULATING THE DISCHARGE OF WASTES INTO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) AND SURFACE WATER WITHIN THE CITY OF LEWISVILLE, TEXAS, PROVIDING AN APPROVAL SYSTEM AND MECHANISM TO ENSURE COMPLIANCE WITH STATE AND FEDERAL REGULATIONS, PROVIDING A POLLUTION CONTROL AND ABATEMENT SYSTEM, PROVIDING FOR ENFORCEMENT, PROVIDING A SYSTEM OF CHARGES FOR SERVICES RENDERED, PROVIDING A SYSTEM OF ALLOWABLE AND MISCELLANEOUS DISCHARGES, PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALER, PROVIDING A PENALTY, PROVIDING AN EFFECTIVE DATE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Lewisville has provided facilities for the collection and transport of storm water to promote the health, safety, and convenience of its people and for the safeguarding of water resources common to all; and

WHEREAS, provision has been made in the design, construction and operation of the Municipal Separate Storm Sewer System (MS4) to accommodate certain types and quantities of runoff to surface waters within the city; and

WHEREAS, it is the obligation of the City of Lewisville to facilitate compliance with Federal and State rules and regulations by producers of certain types of storm water and to comply with these same said regulations; and

WHEREAS, protection of the quality of storm water runoff into the municipal separate storm sewer system and surface waters within the city may require either the exclusion or controlled discharge point of origin of types or quantities of waste; and

WHEREAS, certain amendments and additions to Chapter 16, Section 371 through 392 of the City Code of the City of Lewisville are necessary;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

The entire text of Chapter 16, Section 371 through and inclusive of Section 392 is repealed in its entirety and in its place be inserted the following:

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SECTION 1. COMPLIANCE WITH OTHER AUTHORITY.***I. COMPLIANCE WITH FEDERAL AUTHORITY***

The City of Lewisville shall comply with, enforce and adopt all applicable Federal regulations pertaining to storm water discharges from regulated small MS4s. All persons within the jurisdiction of this Ordinance shall comply with all applicable Federal laws including the Clean Water Act (33 United States Code §1251 et. seq.) and the National Pollutant Discharge Elimination System (NPDES) regulations, as they now exist or as hereafter amended.

II. COMPLIANCE WITH STATE AUTHORITY

The City shall comply with, enforce and adopt all applicable sections of Chapter 26 of the Texas Water Code as it now exists or as hereafter amended. The City shall comply with all applicable Texas Pollutant Discharge Elimination System (TPDES) permits and requirements or any State permit, issued hereafter, for storm water discharges from its MS4. All persons within the jurisdiction of this Ordinance shall comply with all applicable State laws including the Texas Water Code and the Texas Pollutant Discharge Elimination System (TPDES) regulations as they now exist or as hereafter amended.

III. RIGHT OF REVISION

The City reserves the right to revise and to establish, by ordinance, more stringent standards or requirements on pollution prevention and discharges into, or adjacent to, water in the State.

SECTION 2. OBJECTIVES.

The objectives of this Ordinance are as follows:

- (a) To maintain and improve the quality of surface water within the city.
- (b) To prevent or reduce the discharge of contaminated storm water runoff from construction, industrial, and residential sites into the municipal separate storm sewer system (MS4) and surface waters within the city.
- (c) To facilitate compliance with Federal and State rules and regulations by Owners and Operators of construction sites and commercial and industrial facilities within the city.
- (d) To enable the city to comply with all Federal and State laws and regulations applicable to storm water discharges.

SECTION 3. DEFINITIONS.

As used in this Ordinance:

- (1) **AGRICULTURAL STORM WATER RUNOFF:** 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 § 122.23 or discharges from concentrated aquatic production facilities as defined in 40 CFR § 122.24;

- (2) **BEST MANAGEMENT PRACTICE or BMP:** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent the pollution of the MS4 and waters in the State. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage areas;
- (3) **CELLAR DIRT:** Construction site waste materials, such as natural rock and soil overburden;
- (4) **CITY:** The City of Lewisville, Texas, or any authorized person acting in its behalf;
- (5) **CLEAN WATER ACT or CWA:** The Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972; legislation which provides statutory authority for the National Pollutant Discharge Elimination System program;
- (6) **CODE OF FEDERAL REGULATIONS or CFR:** A codification of the general and permanent rules published in the Federal Register by the Executive Department and Agencies of the Federal Government;
- (7) **COMMENCEMENT OF CONSTRUCTION ACTIVITIES:** The initial disturbance of soils associated with clearing, grading or excavation activities, as well as other construction-related activities (e.g. stockpiling of fill material, demolition);
- (8) **COMMERCIAL:** Pertaining to any business, trade, industry or other activity engaged in for profit;
- (9) **COMMON PLAN OF DEVELOPMENT OR SALE:** A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development or sale is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects with the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate “common plans” with only the interconnected parts of a project being considered part of a “common plan” (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline, or utility project that is part of the same “common plan” is not included in the area to be disturbed;
- (10) **CONSTRUCTION PERMIT:** The TPDES Construction General Permit TXR150000, any successor permit, or any alternative TPDES permit for storm water discharges associated with construction activity (if the activity does not qualify for coverage under General Permit TXR150000) or the NPDES Permit for Oil and Gas Exploration activities;
- (11) **CONSTRUCTION SITE OPERATOR or OPERATOR:** The person or persons associated with a small or large construction activity that meets either of the following criteria:

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

- (a) The person or persons that have operational control over construction plans and specifications, including the ability to make modifications to those plan and specifications; or
- (b) The person or persons that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Storm Water Pollution Prevention Plan for the site or other permit conditions (e.g. they have day-to-day responsibility for directing workers at a construction site to carry out activities required by the Storm Water Pollution Prevention Plan or comply with other permit conditions).

Secondary Operator – The person whose operational control is limited to the employment of other operators or to the ability to approve or disapprove changes to plans and specifications. A secondary operator is also defined as a primary operator and shall comply with the permit requirements for primary operators if there are no other operators at the construction site.

Any person(s) contracted by the City of Lewisville to conduct the day-to-day operational activities at a site of municipal construction activity shall be considered a Primary Operator for the purposes of this Ordinance;

- (12) **CONTAMINATION:** The presence of or entry into a public water supply system, the MS4 or water in the State, any substance which may be detrimental to the public health and/or the quality of water;
- (13) **CONTRACTOR:** For the purposes of this Ordinance, the Contractor is the person or persons that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with local pollution prevention requirements, although they do not qualify as an Operator under the Construction Permit.
- (14) **CONTROL AUTHORITY:** The Director of Public Services (or other official designated by the City Manager) of the City of Lewisville, or his duly authorized agent or representative. For the purposes of this Ordinance, Control Authority shall be synonymous with MS4 Operator;
- (15) **CONVEYANCE:** Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff;
- (16) **DISCHARGE:** To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to cause, allow, permit, or suffer any of these acts or omissions;
- (17) **DOMESTIC SEWAGE:** Waterborne human waste and waste from domestic activities, including the use of toilet facilities, washing, bathing, and food preparation;
- (18) **ENVIRONMENTAL PROTECTION AGENCY or EPA:** The U.S. Environmental Protection Agency or any duly authorized official of said agency;

- (19) **EROSION:** The process of land being diminished or worn away due to wind, water, or glacial ice. Erosion occurs naturally, but can be intensified by land-disturbing activities such as development, farming, road building, timber harvesting, etc;
- (20) **FACILITY:** Any building, structure, installation, process or activity from which there is or may be a discharge of a pollutant;
- (21) **FERTILIZER:** 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;
- (22) **FINAL STABILIZATION:** A construction site status where any of the following conditions are met:
- (a) All soil disturbing activities at the construction site have been completed and a uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as riprap or gabions) have been employed.
 - (b) For individual lots in a residential construction site, the homebuilder has completed final stabilization on the individual lot(s) as specified in condition (a) above.
 - (c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or rangeland), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas, which are not being returned to their preconstruction agricultural use, shall meet the final stabilization conditions of condition (a) above;
- (23) **FIRE PROTECTION WATER:** Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire;
- (24) **GROUND WATER INFILTRATION:** Ground water that enters a storm sewer system (including sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes;
- (25) **HARMFUL QUANTITY:** The amount of any substance that will cause pollution of water in the State, or that will cause lethal or sub-lethal adverse affects on representative, sensitive aquatic monitoring organisms belonging to the City or State, upon their exposure to samples of any discharge into water in the State or the MS4;
- (26) **HAZARDOUS SUBSTANCE:** Any substance listed in Table 302.4 of 40 CFR Part 302;
- (27) **HAZARDOUS WASTE:** Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261;
- (28) **HERBICIDE:** A substance or mixture of substances used to destroy a plant or to inhibit plant growth;

- (29) **HOUSEHOLD HAZARDOUS WASTE or HHW:** 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;
- (30) **ILLICIT CONNECTION:** Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer;
- (31) **ILLICIT DISCHARGE:** Any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges authorized under an NPDES or TPDES permit and discharges resulting from emergency fire fighting activities;
- (32) **INDUSTRIAL FACILITY OPERATOR or OPERATOR:** The Owner or person that is responsible for the management of an industrial facility;
- (33) **INDUSTRIAL PERMIT:** The TPDES Multi-Sector General Permit TXR050000, any successor permit, or any alternative TPDES permit for storm water discharges associated with industrial activity (if the activity does not qualify for coverage under General Permit TXR050000);
- (34) **INDUSTRIAL WASTE:** Waste resulting from any process of industry, manufacturing, trade or business;
- (35) **LARGE CONSTRUCTION ACTIVITY:** Construction activities including clearing, grading, and excavating that result in land disturbances of equal to or greater than five (5) acres. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities);
- (36) **MAXIMUM EXTENT PRACTICABLE or MEP:** The technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA § 402(p);
- (37) **MS4 OPERATOR:** The public entity, and/or the entity contracted by the public entity, responsible for management and operation of the municipal separate storm sewer system;
- (38) **MUNICIPAL SEPARATE STORM SEWER SYSTEM or MS4:** A separate storm sewer system owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state.;
- (39) **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM or NPDES:** The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing requirements of certain sections of the Federal Clean Water Act;

- (40) **NON-POINT SOURCE:** Any source of any discharge of a pollutant that is not a “point source”;
- (41) **NOTICE OF CHANGE or NOC:** A written submission to the Executive Director of the Permitting Authority, from a permittee, identifying any incorrect information, changes in information, or relevant facts that were not provided in the Notice of Intent;
- (42) **NOTICE OF INTENT or NOI:** A written submission to the Executive Director of the Permitting Authority, from an applicant, requesting coverage under a general permit;
- (43) **NOTICE OF TERMINATION or NOT:** A written submission to the Executive Director of the permitting authority, from a permittee authorized under a general permit, requesting termination of coverage under such permit;
- (44) **NPDES PERMIT:** A permit issued by the EPA that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general basis. In the state of Texas, the EPA retains authority for permitting Oil and Gas Exploration activities and Indian Country land;
- (45) **OIL:** Any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste;
- (46) **OUTFALL:** A point source at the point where a municipal separate storm sewer discharges to water in the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S.;
- (47) **OWNER:** For the purposes of this Ordinance, the Owner is the person or persons that have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, although they do not qualify as an Operator under the Construction Permit.
- (48) **PERMIT:** Either an NPDES or TPDES permit, whichever is applicable;
- (49) **PERMITTEE:** An Operator authorized under an NPDES or TPDES permit;
- (50) **PERMITTING AUTHORITY:** For the purposes of this Ordinance, the permitting authority for storm water discharges is the Texas Commission on Environmental Quality, or any successor agency;
- (51) **PERSON:** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities;
- (52) **PESTICIDE:** 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);

- (53) **POINT SOURCE:** (from 40 CFR §122.22) Any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff;
- (54) **POLLUTANT:** Dredged spoil, solid waste, incinerator residue, garbage, sewage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, 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;
- (55) **POLLUTION:** (from Texas Water Code §26.001(14)) The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose;
- (56) **RELEASE:** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or water in the State;
- (57) **RIPARIAN:** Any area relating to or located on the bank of a natural watercourse;
- (58) **RUNOFF:** Drainage or flood discharge that leaves an area as surface flow or as pipeline flow;
- (59) **SANITARY SEWER:** 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 City sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted);
- (60) **SEDIMENT:** Soil, sand, and minerals washed from land into water, usually after rain;
- (61) **SEPARATE STORM SEWER SYSTEM:** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, outfalls, or storm drains), designed or used for collecting or conveying storm water; which is not a combined sewer, and which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR §122.2.
- (62) **SHALL:** Wherever used in this Ordinance will be interpreted in its mandatory sense; may is permissive;
- (63) **SMALL CONSTRUCTION ACTIVITY:** Construction activities including clearing, grading, and excavating that result in land disturbances of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of the site (e.g.,

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

- (64) **STORM DRAIN:** An opening leading to an underground pipe or an open ditch for carrying surface runoff;
- (65) **STORM WATER:** Any flow occurring during or after any form of natural precipitation, including rainfall runoff, snowmelt runoff, and surface runoff and drainage;
- (66) **STORM WATER ASSOCIATED WITH CONSTRUCTION ACTIVITY:** Storm water runoff from a construction activity where soil disturbing activities (including clearing, grading, and excavating) result in the disturbance of one (1) or more acres of total land area, or are part of a larger common plan of development or sale that will ultimately result in the disturbance of one (1) or more acres of total land area;
- (67) **STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY:** Storm water runoff that exits any system that is used for collecting and conveying storm water that originates from manufacturing, processing, material storage, and waste material disposal areas (and similar areas where storm water can contact industrial pollutants related to the industrial activity) at an industrial facility described by one or more Sectors of the TPDES Multi-Sector General Permit;
- (68) **STORM WATER POLLUTION PREVENTION PLAN or SWPPP:** A plan required by a permit to discharge storm water associated with industrial activity or construction activity, 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;
- (69) **STRUCTURAL CONTROL (or PRACTICE):** A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in storm water runoff. Structural controls and practices may include but are not limited to: wet ponds, infiltration basins, storm water wetlands, silt fences, earthen dikes, drainage swales, sediment traps, check dams, stabilized construction entrances, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins;
- (70) **TEMPORARY STABILIZATION:** A condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles, mulches, perimeter controls, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.
- (71) **TEXAS COMMISSION on ENVIRONMENTAL QUALITY or TCEQ:** The Texas Commission on Environmental Quality, any duly authorized official of said agency, or any successor agency;
- (72) **TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM or TPDES:** The State program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing requirements of certain sections of the Federal Clean Water Act;

- (73) **TPDES PERMIT:** A permit issued by the State of Texas that authorizes discharges of pollutants to water in the State and waters of the United States, whether the permit is applicable on an individual, group or general basis;
- (74) **WATER IN THE STATE:** Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State;
- (75) **WATERS OF THE UNITED STATES:** All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the Federal definition of "waters of the United States" at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act;
- (76) **WATER QUALITY STANDARD:** The designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by the State to be necessary to protect those uses, as specified in Chapter 307 of Title 30 of the Texas Administrative Code;
- (77) **WETLAND:** An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

SECTION 4. ADMINISTRATION.

The Director of Public Services and the Director's authorized representatives are authorized to administer, implement, and enforce the provisions of this Article.

SECTION 5. DISCHARGE PROHIBITIONS.

- I.* No person shall introduce or cause to be introduced, into the MS4, any discharge that is not composed entirely of storm water, except those discharges listed in Section 6, Subsection (*I*).
- II.* No person shall discharge or cause to be discharged, into the MS4, any harmful quantity of any substance, as determined by the Control Authority.
- III.* 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, or any other construction activities, in excess of what could be retained on-site or captured by employing erosion and sediment control measures to the maximum extent practicable.

- IV.* No person shall use, store, or dispose of any harmful quantity of any substance in any manner that introduces that substance into the MS4 or the environment.
- V.* No person shall discharge waste concrete into or adjacent to the MS4 or water in the State.
- VI.* No person shall intentionally dispose of yard wastes, such as grass clippings, leaves and tree branches into the MS4 or water in the State.
- VII.* No person shall introduce or cause to be introduced, into the MS4, any discharge that causes the City to violate its TPDES Permit for storm water discharges associated with small MS4s or any other discharge permit for discharges from its MS4.

SECTION 6. ALLOWABLE NON-STORM WATER DISCHARGES.

- I.* The following non-storm water discharges are not prohibited and may be discharged to the MS4, provided that Subsection 6 (*II.*) below does not apply:
 - (A) A discharge authorized by, and in full compliance with, a TPDES or NPDES permit;
 - (B) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely effect aquatic life);
 - (C) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing uncontaminated sources of potable water, groundwater, or surface water;
 - (D) Uncontaminated discharges from a potable water source;
 - (E) Uncontaminated diverted stream flows;
 - (F) Uncontaminated rising ground waters and springs;
 - (G) Uncontaminated ground water infiltration;
 - (H) Uncontaminated pumped ground water;
 - (I) An uncontaminated discharge from a foundation drain, or a footing drain;
 - (J) Uncontaminated air conditioning condensate;
 - (K) Uncontaminated water from a crawl space pump;
 - (L) A discharge from individual residential vehicle washing;
 - (M) Uncontaminated flows from a riparian habitat or wetland;
 - (N) Dechlorinated swimming pool discharges;
 - (O) A discharge from a temporary car wash sponsored by a civic group, school, religious, or nonprofit organization, where only soap and water are used and where efforts are made to minimize discharge;

- (P) Street wash water that does not contain any detergent, soap, degreaser, or any other harmful cleaning substance;
- (Q) A discharge or flow from vehicle, exterior building and pavement wash water, from construction sites, where detergents, soaps, degreasers and other harmful cleaning substances are not used and where spills of hazardous substances have not occurred (unless spilled materials have been removed; and if local, State, or Federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, and dust;
- (R) Uncontaminated water used to control dust at construction sites;
- (S) A discharge or flow from emergency fire fighting activities.

II. The City may, on a case-by-case basis, prohibit any of the above listed allowable non- stormwater discharges in Subsection 6 (I.) provided:

- (A) The discharge or flow in question has been determined by the Permitting Authority or Control Authority to be a substantial source of a pollutant or pollutants to water in the State or the MS4; and
- (B) Written notice of such determination has been provided to the discharger.

SECTION 7. ILLICIT CONNECTIONS PROHIBITED.

No person shall make an illicit connection to the MS4, or allow such a connection to continue.

SECTION 8. UNPERMITTED DISCHARGES PROHIBITED.

No person shall discharge, or cause to be discharged, storm water associated with regulated commercial, industrial or construction activities, without first having obtained an NPDES or TPDES permit to do so.

SECTION 9. STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

I. GENERAL REQUIREMENTS AND RESPONSIBILITIES

- (A) The Construction Site Operator(s) (hereinafter referred to as Operator) of large and small construction activities shall comply with all requirements of the Construction Permit and all other applicable regulations as may be required to ensure compliance with Federal, State, and local rules and regulations.
- (B) Any person who is contracted by the City to conduct the day-to-day operational activities at a site of municipal construction activity shall be responsible for providing, completing, submitting, displaying and retaining all documents required by, and in accordance with, the Construction Permit, and the implementation and maintenance of best management practices required by the Construction Permit and this Ordinance.

- (C) Any Owner of a site of construction activity, whether or not that Owner is an Operator, is jointly and severally responsible for compliance with the requirements in this Ordinance.
- (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 pollution prevention control measure, including site inspections, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.
- (E) The City of Lewisville has adopted the North Central Texas Council of Governments (NCTCOG) integrated Storm Water Management (iSWM) Manuals. All Operators, Owners and Contractors of construction activities shall use these manuals as a site development tool to minimize the discharge of pollutants to the MS4. Best management practices, which are not NCTCOG approved, may be considered on a case-by-case basis. The iSWM Manuals can be located through the NCTCOG website at www.nctcog.org.

II. *STORM WATER POLLUTION PREVENTION PLAN*

- (A) Operators of all small and large construction activities shall develop, implement, and maintain (including updates and modifications) a Storm Water Pollution Prevention Plan (SWPPP) in accordance with all applicable requirements of the Construction Permit.
- (B) Any Operator who intends to obtain coverage under the Construction Permit for storm water discharges from a construction activity shall submit a copy of the completed and signed SWPPP to the Control Authority in conjunction with any application for a development permit, building permit, or any other city permit or approval necessary to commence or continue construction at the site.
- (C) Upon the Control Authority review of the SWPPP, the City may withhold approval of any development permit, building permit, or any other city permit or approval necessary to commence or continue construction, if the SWPPP does not comply with the Construction Permit.
- (D) The SWPPP shall be completed and implemented prior to the commencement of construction activities at the site.
- (E) If the Control Authority observes upon a construction site inspection that the SWPPP no longer meets the requirements of the Construction Permit or this Ordinance, the Operator will be notified of any deficiencies. The Operator shall correct any deficiencies with the SWPPP within 7 days of receiving notification.
- (F) The SWPPP, with any modifications attached, shall be retained at the construction site from the date of commencement of construction activities until final stabilization has been completed on all disturbed areas or until a new Operator assumes control over the construction activity and provides a new SWPPP. For a large construction activity, the SWPPP shall be retained at the construction site until a Notice of Termination is submitted. If the construction site is inactive or does not have an on-site location to store the SWPPP, the location of the SWPPP shall be described on the Construction Site Notice posted at the site. The SWPPP and any modifications to it shall be made readily available to the Control Authority, upon request.

- (G) The following records shall be maintained and either attached to or referenced in the SWPPP, and made readily available to the Control Authority upon request:
- (1) the dates when major grading activities occur;
 - (2) the dates when construction activities temporarily or permanently cease on a portion of the site;
 - (3) the dates when stabilization measures are initiated;
 - (4) an up-to-date version of the site map; and
 - (5) the dates and descriptions of all pollution prevention deficiencies noted at the site as well as the corrective actions that were taken.

III. OBTAINING AUTHORIZATION TO DISCHARGE STORM WATER

- (A) Primary Operators of large construction activities, or who are otherwise required by the Permitting Authority to obtain authorization for storm water discharges associated with construction activity, shall submit a Notice of Intent (NOI) to the Permitting Authority in accordance with the Construction Permit. A copy of the signed and certified NOI shall be provided to the Control Authority and any Secondary Operator in accordance with the Construction Permit.

Primary and Secondary Operators shall sign and certify a completed TCEQ Construction Site Notice in accordance with the Construction Permit. A copy of the Construction Site Notice shall be provided to the Control Authority in accordance with the Construction Permit.

All persons meeting the definition of Secondary Operator are regulated by the Construction Permit, but are not required to submit an NOI, provided that another Operator at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the Operator of the need to obtain coverage (with records of notification available upon request).

- (B) Primary Operators shall post copies of the signed and certified NOI and Construction Site Notice at the construction site in a location where they are safely and readily available for viewing by the general public and the Control Authority prior to commencement of construction activities, and shall be maintained at that location until final stabilization has been completed on all disturbed areas, or until a new Operator assumes control over the construction activity and applies for permit coverage.

Secondary Operators shall post a copy of the signed and certified Construction Site Notice at the construction site in a location where it is safely and readily available for viewing by the general public and the Control Authority prior to commencement of construction activities, and shall be maintained at that location until final stabilization has been completed on all disturbed areas, or until a new Operator assumes control over the construction activity and applies for permit coverage.

- (C) If the construction project is of a linear nature (e.g. highway, pipeline, etc.), the notices shall be placed in a publicly accessible location near where construction is actively underway, and

shall be relocated, as necessary, along the length of the project. The notice shall be posted in a location where it is safely and readily available for viewing by the general public and the Control Authority.

- (D) Discharges of storm water runoff from construction support activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas may not be required to be authorized under a separate NPDES and/or TPDES Permit, provided that the activity is conducted in accordance with the Construction Permit.
- (E) If an Operator becomes aware that it submitted incorrect information, failed to submit relevant information, or that relevant information submitted in the NOI has changed, the Operator shall submit a Notice of Change (NOC) letter to the Permitting Authority, and provide a copy of the signed letter to the Control Authority, within 14 days of discovering such information.
- (F) Operators of small construction activities may be automatically authorized under the Construction Permit, and Operators of these construction sites are not required to submit an NOI provided that they:
 - 1. Develop a Storm Water Pollution Prevention Plan in accordance with the provisions of the Construction Permit;
 - 2. Sign and certify a completed TCEQ Construction Site Notice;
 - 3. Post a copy of the signed and certified Construction Site Notice at the construction site in a location where it is safely readily available for viewing by the general public and the Control Authority, prior to commencement of construction activities, and maintain the notice in that location through the date of final stabilization, or until a new Operator assumes control over the construction activity and applies for permit coverage; and
 - 4. Provide a copy of the signed and certified Construction Site Notice to the Control Authority in accordance with the requirements of the Construction Permit.
- (G) All Notices of Intent, Notices of Termination, Notices of Change letters, and TCEQ Construction Site Notices shall be signed in accordance with 30 TAC §305.128 and 30 TAC §305.44.
- (H) Construction activities that do not qualify as a small or large construction activity under the Construction Permit, shall satisfy all local documentation, permitting and approval requirements prior to being authorized to discharge storm water.

IV. BEST MANAGEMENT PRACTICES

- (A) The Operator, Owner or Contractor shall use best management practices to control and reduce the discharge, to the MS4 and water in the State, of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and any other construction activities to the maximum extent practicable. Such best management practices and erosion control measures are detailed in the NCTCOG iSWM Manuals and may include, but are not limited to, the following measures:

1. Ensuring that existing vegetation is preserved where feasible and that disturbed portions of the construction site are stabilized, in accordance with the requirements of the Construction Permit, on portions of the construction site where construction activities have temporarily or permanently ceased. Stabilization measures may include, but are not limited to the following:
 - (a) Temporary seeding;
 - (b) Permanent seeding;
 - (c) Mulching;
 - (d) Sod stabilization;
 - (e) Vegetative buffer strips;
 - (f) Protection of trees; and
 - (g) Preservation of mature vegetation.

Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities temporarily or permanently ceased, and except as provided in (a) and (b) below, shall be initiated no more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

- (a) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures are not required.
- (b) Where the initiation of stabilization measures by the 14th day after construction activity temporarily or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

Where stabilization measures are utilized, erosion and sediment control measures shall remain in place and be maintained until the area of disturbance meets the definition of final stabilization in this Ordinance.

2. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the construction 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 wind-blown wastes from the construction site;
4. Prevention of the discharge of building materials, including cement, lime, concrete, and mortar, to the MS4 or water in the State;
5. Providing general good housekeeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to ensure 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 and minimizing ground contact with waste materials;
 7. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices in good and effective operating condition; and
 8. Installation of permanent structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Such installed structural measures may include, but are not limited to, the following:
 - (a) Storm water detention structures (including wet ponds);
 - (b) Storm water retention structures;
 - (c) Flow attenuation by use of open vegetative swales and natural depressions;
 - (d) Other velocity dissipation devices;
 - (e) Infiltration of runoff on-site; and
 - (f) Sequential systems, which combine several practices.
- (B) The washing out of concrete trucks at construction sites shall be permitted, provided the following requirements are met:
1. Direct discharge of concrete truck wash out water to the MS4 or surface water in the State is prohibited.
 2. Concrete truck washout water shall be discharged to areas at the construction site where structural controls have been established to prevent direct discharge to the MS4 or surface water in the State or to areas that have a minimal slope that allow infiltration and filtering of wash out water to prevent direct discharge. Structural controls may consist of temporary berms, temporary shallow pits, temporary storage tanks with a slow rate release, or other reasonable measures to prevent runoff from the construction site.
 3. Washout of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck washout water is prohibited at all times and the Operator shall ensure that its BMPs are sufficient to prevent the discharge of concrete truck washout water as a result of rain.
 4. The discharge of wash out water shall not cause or contribute to groundwater contamination.
 5. If a SWPPP is required to be implemented, the SWPPP shall include concrete washout areas on the associated map.

- (C) Vehicular traffic onto and off of the construction site shall be prohibited during rainy conditions or when muddy conditions exist, unless measures are in place that prevent mud from being tracked off-site.
- (D) All best management practices shall be installed and maintained in accordance with the details and specifications listed in the NCTCOG iSWM Design Manual for Construction.
- (E) All plans and specifications that are prepared for the construction of site improvements shall illustrate and describe the best management practices that will be implemented at the construction site. The City may withhold any permit or approval necessary to commence or continue construction, if it determines that the best management practices are inadequate or inappropriate for the project. If the City observes upon a construction site inspection that the best management practices described in the plans and specifications are absent or ineffective at controlling or reducing the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, or any other construction activities to the maximum extent practicable, the Operator, Owner or Contractor will be notified, in writing. The Operator, Owner or Contractor shall initiate repairs to deficient best management practices within 7 calendar days of receiving notification. If no corrective measures have been initiated within 7 calendar days of receiving notification of the deficiencies, the City may escalate enforcement actions including, but not limited to, issuance of a Warning Citation or Citation, revocation or suspension of a development permit or building permit, or withholding issuance of a Certificate of Occupancy or Final Acceptance.

If existing best management practices require repairs or modifications, or if additional best management practices are necessary, an implementation schedule (including a reasonable completion date) shall be developed and, wherever possible, those changes shall be implemented prior to the next storm event. If implementation before the next anticipated storm event is impracticable, these changes shall be implemented as soon as possible thereafter. If the deficient or absent best management practice is causing or allowing a discharge of a harmful quantity of any substance, as determined by the Control Authority, the Operator, Owner or Contractor shall implement an interim control measure, or cease the activity associated with the discharge until the corrective action has been completed.

- (F) The Operator, Owner or Contractor shall make every reasonable effort to prevent dirt and sediment from accumulating on paved or impervious surfaces and locations where off-site discharge would occur during storm events. If installing structural control measures in these areas is impracticable, alternative measures such as frequent sweeping shall be implemented.
- (G) If fuels, oils or other chemicals are used or stored on-site, these materials shall be used and stored in such a manner that discharge into the MS4, water in the State or the environment is prevented. In the event of a discharge of these materials, the responsible party shall remove all contamination and restore the area prior to the next storm event or as soon as possible thereafter.
- (H) For large and small construction activities, the Operator shall be responsible for the design, installation and maintenance of all storm water pollution prevention practices in accordance with the Construction Permit. For all other construction activities, the Owner or Contractor shall be responsible for the design, installation and maintenance of all storm water pollution prevention practices in accordance with the NCTCOG Design Manual for Construction. The Operator, Owner or Contractor shall be responsible for the maintenance of all storm water pollution prevention practices from the time of commencement of construction activities until

final stabilization has been completed on all disturbed areas or until a new Operator, Owner or Contractor has assumed control over the construction activity. For large and small construction activities, the Operator shall retain responsibility until the construction activity qualifies for termination of permit coverage and a Notice of Termination or final Construction Site Notice has been submitted, in addition to any other requirements set forth in this Ordinance.

V. SITE INSPECTION AND MONITORING REQUIREMENTS

- (A) Personnel (provided by the Operator) shall inspect disturbed areas of any large or small construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the MS4 or water in the State. Personnel conducting these inspections shall be knowledgeable of the Construction Permit, familiar with the construction site, and knowledgeable of the SWPPP for the site. Erosion and sediment control measures identified in the SWPPP shall be inspected to ensure that they are operating correctly. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking. Inspections shall be conducted at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

As an alternative to the above-described inspection schedule, the SWPPP may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, the inspection shall occur on a specifically defined day (e.g. an inspection occurs every Tuesday), regardless of whether or not there has been a rainfall event since the previous inspection. The specifically defined day, on which the inspections will occur, shall be documented in the SWPPP. The SWPPP shall clearly identify which inspection schedule will be implemented. The inspection may occur on either schedule provided that the SWPPP reflects the current schedule and that any changes in the schedule are conducted in accordance with the requirements of the Construction Permit.

Where construction sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g. construction site is covered with snow, ice or frozen ground exists), inspections shall be conducted at least once every month.

In the event of flooding or other uncontrollable situations which prohibit access to the inspection sites, inspections shall be conducted as soon as access is practicable.

- (B) The SWPPP shall be modified based on the results of inspections, as necessary, to better control pollutants in storm water runoff. Revisions to the SWPPP shall be completed within seven (7) calendar days following the inspection, or receiving written notification from the Control Authority. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule shall be described in the SWPPP and, wherever possible, those changes shall be implemented prior to the next storm event. If implementation before the next anticipated storm event is impracticable, these changes shall be implemented as soon as practicable. Any claims that implementation is not practicable before the next storm shall be verified and approved by the Control Authority.
- (C) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP. Major observations should include: The locations of discharges of sediment or other pollutants from

the construction site; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed. Actions taken as a result of inspections shall be described within, and retained as part of the SWPPP. Reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the construction site is in compliance with the SWPPP and the Construction Permit.

The Operator shall store the inspection reports with the SWPPP and make those reports available for on-site review within 7 days from the date that the inspection was conducted. All inspection reports which are not included in the SWPPP, and which are greater than 7 days old, shall be made available on-site within 24 hours of request by the Control Authority.

- (D) All discharges of storm water runoff from concrete batch plants that qualify for coverage, and that are authorized to discharge storm water under the provisions of the Construction Permit, shall be monitored for compliance with benchmark values in accordance with such permit. Results of monitoring for determining compliance with benchmark values shall be recorded and, where applicable, reported to the Permitting Authority in accordance with the Construction Permit. The Operator shall make records of discharge monitoring readily available to the Control Authority, upon request.
- (E) It shall be the responsibility of the Operator, Owner or Contractor to clean any spills or discharges of fuel, oil or any other chemicals used or stored at the construction site. If any harmful quantity of fuels, oils or other chemicals is spilled or discharged, the Operator, Owner or Contractor shall provide documentation indicating that the area has been cleaned and restored in accordance with State and Federal rules and regulations.

VI. TERMINATING AUTHORIZATION TO DISCHARGE STORM WATER

Operators who have submitted an NOI shall terminate authorization for discharges associated with construction activity by submitting a Notice of Termination (NOT) in accordance with the requirements of the Construction Permit. The NOT shall be submitted to the Permitting Authority, and a copy of the signed and certified NOT provided to the Control Authority within thirty days after:

- (a) Final stabilization has been achieved on all portions of the construction site that are the responsibility of the Operator; or
- (b) Another permitted Operator has assumed control over all areas of the construction site that have not been finally stabilized; and
- (c) All silt fences and other temporary erosion controls have been removed, scheduled for removal as defined in the SWPPP, or transferred to a new Operator, if the new Operator has sought permit coverage. Operators are not required to remove, or schedule the removal of, erosion controls, which are designed to remain in place for an indefinite period, such as mulches and erosion mats.

Operators of small construction activities shall also meet the requirements listed in (a) through (c) above in order to consider their automatic permit coverage to be terminated. Notification of the termination of automatic permit coverage shall be made to the Control Authority in accordance with the requirements of the Construction Permit.

Operators of large and small construction activities shall remove the NOI and/or Construction Site Notice immediately following termination of permit coverage.

VII. FINAL ACCEPTANCE AND CERTIFICATE OF OCCUPANCY

The Storm Water Division shall not recommend that small or large construction activities be approved for Final Acceptance unless those construction activities are in compliance with this Ordinance. If the Operator seeking Final Acceptance will not be associated with any further construction activity after Final Acceptance is granted, the construction activity shall also meet the requirements necessary to qualify for termination of permit coverage. A final Certificate of Occupancy shall not be recommended until final stabilization has been achieved on all disturbed areas, all potential pollutants associated with the construction activity have been removed, and the construction activity meets any additional requirements necessary to qualify for termination of permit coverage. A final Certificate of Occupancy may be granted prior to meeting the above conditions, on a case-by-case basis, provided that the signatory authority certifies in writing that the construction activity will maintain compliance with the Construction Permit and/or this Ordinance until the construction activity has been completed.

Recommendation for Final Acceptance or a final Certificate of Occupancy for all other construction activities shall not be made until final stabilization has been achieved on all disturbed areas. Final Acceptance may be recommended, where final stabilization has not yet occurred, provided that either the disturbed soils have been temporarily stabilized or a new Operator, Owner or Contractor has assumed control over the construction activity and the construction site will not remain inactive for more than 21 days. Approval for Final Acceptance and a final Certificate of Occupancy may also be withheld in the event of outstanding violations or enforcement actions, or failure to pay applicable fees.

A final Certificate of Occupancy may be granted prior to meeting the above conditions, on a case-by-case basis, provided that the signatory authority provides written documentation to the Control Authority certifying that the construction activity will maintain compliance with the Construction Permit and/or this Ordinance until the construction activity has been completed.

VIII. SIGNATORY AUTHORITY

All applications, notices, reports, and all other applicable documents required under the Construction Permit shall be signed in accordance with the signatory requirements set forth in 30 TAC §305.44 as it now exists or as hereafter amended. The authority to sign documents other than the NOI, NOT, NOC letter and Construction Site Notice may be delegated to other qualified personnel provided that the requirements set forth in 30 TAC §305.128, as it now exists or as hereafter amended, are met.

All Operators, Owners and Contractors shall designate an authorized representative on a form provided by the Control Authority. The authorized representative will be the point of contact for all pollution prevention matters for the site. If no authorized representative is designated for a small or large construction activity, the signatory authority for the NOI or Construction Site Notice shall be the default authorized representative. For all other construction activities, the default authorized representative shall be the property Owner. All communications and enforcement actions shall be addressed to the authorized representative.

IX. RECORDKEEPING REQUIREMENTS

The Operator shall retain a copy of the SWPPP, all reports, notices, applications, monitoring and inspection records and other documents required by the Construction Permit or this Ordinance, for the construction site, and records of all data used to complete the NOI, for a period of at least three (3) years from the date that an NOI is submitted. For activities that are not required to submit an NOI (e.g. small construction activities that are not required to submit an NOI), records shall be retained for a period of at least three (3) years from the date that either: final stabilization has been achieved on all portions of the construction site that are the responsibility of the Operator; or another permitted Operator has assumed control over all areas of the construction site that have not been finally stabilized. The Operator shall make all documents and data, required by the Construction Permit or this Ordinance, readily available to the Control Authority, upon request.

SECTION 10. STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY.**I. GENERAL REQUIREMENTS AND RESPONSIBILITIES**

- (A) The Industrial Facility Operator (hereinafter referred to as Operator) shall comply with all requirements of the Industrial Permit and all other applicable documents as may be required to ensure compliance with Federal, State, and local rules and regulations.
- (B) Any Owner of a facility with a storm water discharge associated with industrial activity, whether or not he or she is an Operator of the facility, is jointly and severally responsible for compliance with the requirements of the Industrial Permit and any additional requirements of this Ordinance.
- (C) Any Contractor or subcontractor on a site of industrial 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 or maintain that control measure.

II. SPECIFIC REQUIREMENTS AND RESPONSIBILITIES

- (A) Any Operator at a facility that intends to discharge storm water associated with an industrial activity described in the Industrial Permit shall submit a Notice of Intent (NOI) in accordance with the Industrial Permit. The NOI shall be made readily available to the Control Authority, upon request.
- (B) Facilities with industrial activities described in the Industrial Permit, where there is no exposure of industrial materials or activities to precipitation or runoff, may qualify for a Conditional No Exposure Exclusion from permit requirements. Qualification for the exclusion shall be determined and certified in accordance with the Industrial Permit. All documentation for the Conditional No Exposure Exclusion from permit requirements shall be made readily available to the Control Authority, upon request.
- (C) A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Industrial Permit, and with any additional requirements of this Ordinance.

- (D) The Operator shall complete the SWPPP prior to the submittal of the NOI and, for a new industrial operation, prior to the commencement of the industrial activity at the facility. The Operator shall update and modify the SWPPP as required by the Industrial Permit and this Ordinance.
- (E) The SWPPP, and any modifications to it, shall be made readily available to the Control Authority upon request.
- (F) The Control Authority may notify the Operator at any time that the SWPPP does not meet the requirements of the Industrial Permit, or any additional requirements of this Ordinance. The notification shall identify those provisions of the Permit or this Ordinance, which are not being met by the SWPPP. The Operator shall respond, in writing, within fifteen days of receiving notification from the Control Authority (or as otherwise provided by the Control Authority), describing the changes that are to be made and the timeframe in which those changes will be completed.
- (G) If the industrial facility is required by the Industrial Permit to conduct compliance monitoring, the Operator shall retain records of the monitoring results at the facility and make them readily available to the Control Authority, upon request.
- (H) Where all storm water discharges associated with industrial activity that are authorized by the Industrial Permit and this Ordinance are eliminated, or where the Operator of a facility with storm water discharges associated with industrial activity changes, the Operator of the facility shall submit a Notice of Termination (NOT) in accordance with the Industrial Permit. The NOT shall be made readily available to the Control Authority, upon request.
- (I) The Operator shall retain all notices, plans, reports, monitoring and inspection records and all other required documents in accordance with the Industrial Permit, and shall make them readily available to the Control Authority, upon request.

SECTION 11. RESPONSIBILITY OF OTHER ENTITIES.

The Control Authority may require any person, whether or not they are required by Federal or State rules and regulations, to develop and maintain a SWPPP and/or implement best management practices, approved by the Control Authority, that prevent or minimize the discharge of pollutants into, or adjacent to, water in the State. The SWPPP shall be made readily available to the Control Authority, upon request.

SECTION 12. SUBMISSION OF DOCUMENTS.

All persons required by Federal or State regulations or this Ordinance to submit documents, pertaining to discharges of storm water or accidental discharges into the local MS4, shall submit all applicable documents to the following mailing address:

**City of Lewisville
Department of Public Services
Storm Water Division
P.O. Box 299002
Lewisville, Texas 75029-9002**

SECTION 13. ACCIDENTAL DISCHARGES.***I. SPILL CONTAINMENT***

The Control Authority may require any person to implement spill containment measures for storage and use of any substance it deems a potential threat to the MS4 or the environment should such substance be accidentally discharged. Such spill containment measures shall be provided and maintained at the person's own expense. Upon notification from the Control Authority that containment measures are required, the person shall develop and submit detailed plans, showing facilities and operating procedures to provide this protection, to the Control Authority for review. The Control Authority shall approve all required spill containment measures, prior to installation or implementation. Review and approval of such plans shall not relieve the person from the responsibility to modify the facility as necessary to meet the requirements of this Ordinance.

II. NOTIFICATION OF POTENTIAL PROBLEM

In the event of any accidental or unavoidable discharge into the MS4 or water in the State, it is the responsibility of the responsible party to notify the Control Authority within 24 hours of the incident, in addition to the appropriate Federal and State agencies. The notification shall include location of the discharge, type of material discharged, concentration and volume, and corrective action. Within five (5) days following an accidental discharge, the person shall submit to the Control Authority a detailed written report describing the cause of the discharge and measures to be taken to prevent similar future occurrences. Such notification shall not relieve the person of any expense, loss, damage or other liability which may be incurred as a result of damage to the MS4, fish kills, or any other damage to persons or property, nor shall such notification relieve the person of any fines, civil penalties, or other liability which may be imposed by this Ordinance or other applicable law. The initial notification shall be made using the following contact information:

Storm Water Division (during normal business hours)
(972) 219-3504

After Hours Reporting
(972) 219-3510

III. NOTICE TO EMPLOYEES

A notice shall be permanently posted on the person's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer such an accidental discharge to occur are advised of the emergency notification procedure.

SECTION 14. SAMPLING, INSPECTIONS AND INVESTIGATIONS.

- I.*** The Control Authority may randomly sample and analyze the storm water runoff from any facility within the City and conduct surveillance activities in order to identify, independent of information supplied by the person or persons, occasional and continuing noncompliance with storm water requirements of the State of Texas or this Ordinance.
- II.*** The Control Authority shall investigate instances of noncompliance with Storm Water requirements, as indicated in required reports, analytical results, and surveillance activities. Noncompliance

investigations may require that the Control Authority conduct an inspection of the person or facility in noncompliance.

- III.* Collection of information by the Control Authority shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.
- IV.* All sampling and analysis shall be performed in accordance with procedures established by the EPA Administrator pursuant to Section 304 (h) of the Clean Water Act and 40 CFR, Part 136 and amendments thereto.
- V.* The Control Authority may select an independent firm or laboratory to determine storm water or non-storm water constituents. Chain of custody procedures shall be followed.

SECTION 15. NONCOMPLIANCE NOTIFICATION PROCEDURE.

- I.* Each noncompliance with Federal, State or local regulations may result in the person receiving a verbal notice and/or written Notice of Violation. A written Notice of Violation shall require that the person respond, in writing, to the Control Authority within fifteen working days from the date of the Notice of Violation.
- II.* In addition to the notice set forth in Subsection 15 (*I.*), noncompliance may result in enforcement actions by the Control Authority, including, but not limited to:
 - (a) Issuance of a Warning Citation;
 - (b) Issuance of a Citation;
 - (c) Recommendation for the denial, suspension, or revocation of a development permit, building permit or any other City permit or approval necessary to commence or continue construction or to assume occupancy.

The Control Authority shall determine the level of enforcement needed to promote compliance.

- III.* The Control Authority may, by use of all legal means available, stop an actual or threatened discharge by verbal order to cease discharge if, in the opinion of the Control Authority, the discharge presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment or which may be in violation of Federal, State or local regulations.

If the person does not voluntarily comply with the order to cease discharge, the Control Authority shall take such steps as deemed necessary to prevent or minimize damage to the MS4 or environment or endangerment to the public. Prior to resuming activity, the person shall demonstrate to the Control Authority that permanent corrective measures have been taken to prevent reoccurrences of the offense. Any cost incurred by the Control Authority for sampling, analysis, assessment or remediation may be recovered from the person, or its authorized representative.

IV. CERTIFICATION STATEMENTS

All applications, notices, reports, and all other documents requiring certification as specified in the TPDES permit or this Ordinance shall include this statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervised in accordance with a system designed to assure that qualified personnel properly gather and evaluate 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 violation.”

V. DISCHARGE OF HAZARDOUS WASTE

Hazardous waste as defined by the Resource Conservation and Recovery Act is prohibited from entering the MS4. A person shall notify the Control Authority, the EPA Regional Waste Management Division Director, and the State Hazardous Waste Authorities, in writing, of any discharge into the MS4 of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261, in accordance with 40 CFR 403.12 (p).

VI. FRAUD AND FALSE STATEMENTS

The reports and other documents required to be submitted or maintained, under this section, shall be subject to:

- (a) The provisions of U.S.C. Section 1001 relating to fraud and false statements;
- (b) The provisions of Section 309 (c) (4) of the Clean Water Act, as amended, governing false statements, representation, or certification;
- (c) The provisions of Section 309 (c) (6) of the Clean Water Act regarding responsible corporate officials; and
- (d) Section 20 of this Ordinance.

SECTION 16. CHARGES AND FEES.

I. The City may adopt charges and fees, which may include:

- (a) Fees for reimbursement of costs of implementing the City’s Storm Water Management Program;
- (b) Fees for inspection, investigation, sampling and surveillance procedures;
- (c) Fees for reviewing accidental discharge procedures, SWPPPs, and construction plans; and
- (d) Other fees as the City may deem necessary to carry out the requirements contained herein.

II. These fees relate solely to the matters covered by this Ordinance and are separate from all other applicable fees chargeable by the City.

III. Construction and development projects shall be subject to a construction inspection fee. The fee is based on the amount of soil disturbance created by the project, as determined by the Engineering Site Plan, Building Permit, or Storm Water Pollution Prevention Plan (where applicable). Fees shall be charged in accordance with Chapter 2 Article VIII Fees as set forth in the Lewisville Code. The fee shall be billed monthly and applied to each regular inspection and rainfall inspection conducted. Storm water inspections shall not be discontinued until the Control Authority receives notification that the construction activity has been completed, in accordance with this Ordinance.

SECTION 17. BILLING.

Construction inspection fees provided for in this Ordinance shall be billed on a separate invoice and shall be paid monthly in accordance with the existing billing practices of the City of Lewisville.

SECTION 18. FAILURE TO PAY BILLS.

Failure to pay fees and monthly bills for construction inspection fees shall be sufficient cause to recommend a Stop Work Order and/or withhold approval for additional permits and approvals to continue or commence work, Final Acceptance or a Certificate of Occupancy.

SECTION 19. ACCESS TO RECORDS.

I. The Control Authority shall have access to, and the right to inspect and copy, any and all persons records which pertain to that person's discharge to the MS4, disposal and/or generation of hazardous waste and discharges into the environment. The person shall be required to retain records of all information resulting from any monitoring or reporting activity required by these regulations for a minimum of three (3) years from the termination of an applicable NPDES or TPDES Permit and/or the completion of the construction, commercial or industrial activity. This period of retention shall be extended during the course of any unresolved litigation regarding the person or MS4 or when requested by the Permitting Authority or Control Authority.

II. The constituents and characteristics of storm water discharged by a facility shall not be considered confidential and shall be available to the public without restriction. Other information obtained from reports, questionnaires, permits, monitoring programs and inspections shall be available to the public without restriction unless the person specifically requests, in writing, at the time the information is known to be obtained by the Control Authority, that the information is to be considered confidential. Information submitted to the Control Authority by the person shall be stamped "Confidential Information" on each page containing such information that the person wishes to be held confidential. If a claim of confidentiality is asserted, the Control Authority shall determine if such information may be held confidential in accordance with 40 CFR Part 2 (Public Information). If the person does not claim the information as confidential at the time the Control Authority obtains the information, it will be available to the public without further notice.

SECTION 20. FALSIFYING INFORMATION.

Any person who knowingly makes any false statements, representation or certification in any application, notice, record, report, plan or other document filed or required to be maintained pursuant to this Ordinance, or any TPDES or NPDES Permit, or who falsifies, tampers with, or knowingly renders inaccurate any

monitoring device or method required under this Ordinance, shall be punished by a fine of no more than ten thousand dollars (\$10,000.00) and may be subject to prosecution.

SECTION 21. PROTECTION FROM DAMAGE.

No unauthorized person shall intentionally, knowingly, recklessly or by criminal negligence, cause damage to, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment, which is part of the MS4. Any person violating this provision shall be subject to prosecution.

SECTION 22. POWER TO ENTER PROPERTY.

- I.** The Control Authority and other duly authorized employees of the City bearing proper credentials and identification are entitled to:
 - (a) Enter any public or private property at any reasonable time for the purpose of enforcing this Ordinance; and
 - (b) Enter all private property through which the City holds an easement for the purpose of inspection, observation, measurement, sampling, maintenance or repair.
- II.** All activities conducted under this authority shall be in full accordance with all applicable terms, rules and regulations pertaining to safety and security.
- III.** If the Control Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety, or welfare of the community, the Control Authority may seek issuance of a search warrant from the appropriate judicial authority.
- IV.** Except when caused by negligence or failure of the person to maintain safe conditions, the City shall indemnify the person against loss or damage to its property by City employees through the course of their activities when representing the City, and against liability claims and demands for personal injury or property damage asserted against the person.
- V.** No person acting under authority of this provision may inquire into any area not having direct or potential impact on the kind and source of a discharge to the MS4, disposal and/or generation of hazardous waste and discharges into the environment, except as provided in Section 20.

SECTION 23. LEGAL ACTION.

If any person discharges, permits or causes to be discharged industrial waste, hazardous waste or other wastes in violation of Chapter 26 of the Texas Water Code or into the MS4 contrary to the provisions of this Ordinance, State requirements, Federal Regulations, or any order of the City, the City Attorney may commence an action for appropriate legal and/or equitable relief, including injunctive relief, in a court of competent jurisdiction.

SECTION 24. PENALTIES.

- I.* A person commits an offense if the person intentionally, knowingly, recklessly or by criminal negligence violates any provision of this Ordinance or any order or permit issued hereunder, and upon conviction, shall be deemed guilty of a Class C misdemeanor, punishable by a fine of not less than One Hundred (\$100.00) Dollars and not more than Two Thousand (\$2,000.00) Dollars, and each day that such violation continues shall constitute a separate offense.
- II.* Any person violating any of the provisions of this Ordinance shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation. In addition to the penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this article or the orders, rules and regulations issued hereunder.
- III.* The Control Authority is further authorized to prosecute and seek all criminal and civil remedies in the various courts as set forth by the Texas Water Code.
- IV.* Any person violating any provision of this Ordinance shall be punished upon conviction by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense, and each and every day such violation shall continue shall constitute a separate offense. In no case shall a fine be recommended which is less than the economic benefit realized by the person for violation of this Ordinance, and/or the effective Permit. The economic benefit may be determined in accordance with the U.S. EPA's Guidance Manual for Calculation of Economic Benefit of Noncompliance with Pretreatment Standards, where applicable.

SECTION 25. REPEALER.

That all Ordinances of the City of Lewisville, Texas in conflict with this Ordinance be and the same are hereby repealed.

SECTION 26. SEVERABILITY.

If any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect.

SECTION 27. EMERGENCY.

If being for the public welfare that this Ordinance be changed creates an emergency and public necessity and the rule requiring three (3) readings be and the same is hereby waived, and this Ordinance shall now be placed on its third and final reading for passage, and shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provided.

SECTION 28. EFFECTIVE DATE.

This Ordinance shall become effective from and after its adoption and publication of notice as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 17th DAY OF MAY, 2010.

APPROVED:



Lathan Watts, MAYOR PRO TEM

ATTEST:



Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:



Lizbeth Plaster, ASSISTANT CITY ATTORNEY