

ORDINANCE NO. 2012-3421

AN ORDINANCE AMENDING CHAPTER 12, UNIFIED DEVELOPMENT ORDINANCE, AS FOLLOWS: RENAMING ARTICLE 7, GENERAL DEVELOPMENT STANDARDS, SECTION 8 AS "FLOOD HAZARD PROTECTION" TO BE CONSISTENT WITH THE OTHER PROVISIONS IN THE CODE OF ORDINANCES; ADDING A NEW ARTICLE 7, SECTION 13 "DRAINAGE AND STORMWATER MANAGEMENT" TO REGULATE DISCHARGES INTO THE CITY STORMWATER SYSTEM ASSOCIATED WITH INDUSTRIAL OR CONSTRUCTION ACTIVITY; ADDING A NEW ARTICLE 10, SECTION 6 "SPECIFIC ENFORCEMENT AND PENALTIES FOR DRAINAGE AND STORMWATER MANAGEMENT" TO ESTABLISH THE ASSOCIATED ENFORCEMENT AND PENALTIES FOR SECTION 13; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Chapter 12, Article 7 of the Code of Ordinances of the City of College Station, Texas, be hereby amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2:** That Chapter 12, Article 10 of the Code of Ordinances of the City of College Station, Texas, be hereby amended as set out in Exhibit "B", attached hereto and made a part of this ordinance for all purposes.
- PART 3:** That all previous ordinances in direct conflict with this ordinance are hereby superseded and repealed, but only to the extent of such conflict.
- PART 4:** That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 5:** That this ordinance shall become effective immediately upon passage and approval.

PASSED, ADOPTED AND APPROVED THIS 12<sup>th</sup> DAY OF July 2012.

ATTEST:

Sherry Mosher  
CITY SECRETARY

APPROVED:

Nancy F. Ivory  
MAYOR



## EXHIBIT "A"

That Chapter 12, Unified Development Ordinance, Article 7, General Development Standards, of the Code of Ordinances, City of College Station, Texas, is hereby amended to read as follows:

### **"CHAPTER 12 UNIFIED DEVELOPMENT ORDINANCE**

#### ARTICLE 7 – GENERAL DEVELOPMENT STANDARDS

....

#### 7.8 – FLOOD HAZARD PROTECTION.

....

#### 7.13 – DRAINAGE AND STORMWATER MANAGEMENT.

##### **A. GENERAL.**

##### **1. Purpose and intent.**

This ordinance establishes methods for controlling the introduction of pollutants into the municipal stormwater drainage system and establishes legal authority for the City to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with the MS4 permit for industrial and construction activity.

##### **2. Compatibility with other regulations.**

- a. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restriction of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.
- b. Any reference to this section shall also apply to Chapter 7, Section 13 of this Code of Ordinances, and both Sections shall be interpreted and enforced in conjunction with each other, where applicable.

##### **3. Definitions.**

In this section:

**Best management practices (BMP)** means schedules of activities, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal stormwater drainage system 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.

**Construction activity or construction activities** include clearing, grading, and excavating that are subject to TPDES General Construction Permits. It does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Additionally, it does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities.

**Construction site** means any construction site required by the Clean Water Act to operate within the limits of a TPDES permit to discharge stormwater associated with construction activity.

**Construction site notice (CSN)** means a written submission to the MS4 operator from an applicant stating that a small construction activity will be commencing and will operate under the provisions of the TCEQ General Permit TXR150000.

**Facility** means any facility, industrial facility or construction site, required by the Clean Water Act to have a permit to discharge stormwater associated with industrial or construction activity.

**Final Stabilization** means that:

- a. All soil disturbing activities at the Site have been completed and either of the two following criteria are met:
  - 1) A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or
  - 2) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- b. When background native vegetation or other appropriate vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation or other appropriate vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.
- c. For individual lots in residential construction, final stabilization means that either:
  - 1) The homebuilder has completed final stabilization as specified above; or
  - 2) The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.
- d. For construction Projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), 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 Waters of the State," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (a) or (b) or (c) above.

**Industrial facility** means any facility required by the Clean Water Act to have a permit to

discharge stormwater associated with industrial activity subject to TPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**Notice of change (NOC)** means the notification of changes to SWP3 that is required by the TPDES Stormwater Permits.

**Notice of intent (NOI)** means the advance notification that is required by the TPDES Stormwater Permits prior to commencement of work.

**Notice of termination (NOT)** means the notification that is required by the TPDES Stormwater Permits upon completion of work.

**Regulated activity** means an activity occurring at an industrial facility or construction site, which qualifies the facility or site to acquire a permit to discharge stormwater under the Clean Water Act.

**Release** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal stormwater drainage system, the water of the state, the waters of the United States.

**Stormwater discharge associated with industrial activity** means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an industrial facility. The following categories of facilities are considered to be engaging in "industrial activity":

- a. Facilities subject to stormwater 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 (k) of this definition);
- b. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
- c. 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 noncoal 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 stormwater 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;
- d. 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);
- e. 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;
- f. 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;
  - g. Steam electric power generating facilities, including coal handling sites;
  - h. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 422125), 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, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a)-(g) or (i)-(k) of this definition are associated with industrial activity;
  - i. 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 Clean Water Act;
  - j. 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;
  - k. Facilities under Standard Industrial Classifications (SIC Code) 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, 422125, (and which are not otherwise included within categories (b)-(j) of this definition);

**Stormwater pollution prevention plan (SWP3)** means a plan required by a TPDES permit to discharge stormwater 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 stormwater discharges from industrial facilities and construction sites.

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

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

## **B. PROHIBITIONS.**

### **1. Unpermitted discharges prohibited.**

It is an offense for an operator or responsible party of a facility to:

- a. Discharge, or cause to be discharged, stormwater associated with industrial or

construction site activity without first having obtained a TPDES permit from the TCEQ.

- b. Operate a facility that is discharging stormwater associated with a construction site activity without having submitted a copy of the NOI or construction site notice to the City.
- c. Introduce sediment, concrete, asphalt or any other construction debris into the MS4 from a construction activity. The Administrator will provide the operator a reasonable amount of time, to remove any pollutants or debris from the MS4 conveyances.

## **C. FACILITY INSPECTION FOR STORMWATER DISCHARGES.**

### **1. Applicability for industrial and construction activity.**

- a. This section applies to all facilities located within the City limits that have stormwater discharges associated with industrial activity or construction site activity. State regulations require that subject facilities apply for and obtain general permits for industrial facilities (TPDES TXR050000) and construction sites (TXR150000) that have been determined to contribute or have the potential to contribute substantial pollutant loads to the MS4 or waters of the state. The general permits require that the permittee develop, implement, and maintain a stormwater pollution prevention plan (SWP3) and submit a NOI notifying the TCEQ and the MS4 operator (City of College Station).
- b. The MS4 permit issued to the City by the TCEQ mandates the City to "Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance with permit conditions" (Part III (E)(6)) and to implement a program that shall include "Inspection of construction sites and enforcement of control measure requirements" (Part III (A)(9)(b)). To meet these requirements the City must enter onto the premises of industrial and construction sites to inspect, monitor, and conduct surveillance of requirements mandated by the TCEQ. These requirements include, but are not limited to:
  - 1) Review of the facilities' SWP3 with onsite conditions;
  - 2) Evaluation of BMP to effectively prohibit the discharge of nonstormwater to the MS4;
  - 3) Inspection for illicit connections and illicit discharges;
  - 4) Self inspection compliance; and
  - 5) Compliance with the City's MS4 permit and the facilities subject general permit (TXR150000 or TXR050000).

### **2. Access to industrial facilities and construction sites.**

- a. The intent of facility inspections shall be to determine compliance with the conditions of the City's TPDES permit, any TPDES general permit the facility is currently obligated to for industrial and construction activities, and this ordinance. Facility owners and operators will allow the Administrator ready access to applicable sections of public and private premises for the sole purpose of inspection, surveillance, and monitoring for the presence of illegal discharges to the MS4, illicit connections to the MS4, and assessment of any portions of a regulated facility influenced by stormwater

runoff that may adversely affect the MS4 or waters of the United States.

- b. Admittance to the facility shall be requested at a reasonable time during the facilities normal working hours unless it is determined by the Administrator that imminent and substantial danger exists.
- c. The owner or operator shall make all necessary arrangements to allow access to the Administrator.
- d. If the owner or operator refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- e. The Administrator retains the authority to collect samples and photographs from stormwater outfalls or other components of the MS4 as may be deemed appropriate in the administration and enforcement of this ordinance.
- f. The Administrator has the authority to establish on subject facilities devices as are necessary in the opinion of the Administrator to conduct monitoring of the facility's stormwater discharge.
- g. The Administrator or the designated inspector must present appropriate credentials to the facility officials at the time of entry to a facility.

### **3. Review and modification of stormwater pollution prevention plans.**

- a. The Administrator has the authority to request to review any documents or plans (stormwater pollution prevention plan, spill prevention control plans, hazardous material plans, waste management documentation, etc.) from a regulated facility that the Administrator deems may affect stormwater discharges to the MS4.
- b. The Administrator may require an operator of a regulated facility to modify its stormwater pollution prevention plan if the stormwater pollution prevention plan does not comply with the requirements of the facility's TPDES permit to discharge stormwater associated with industrial or construction activity.
- c. The deficiencies in a facility's stormwater pollution prevention plan will be communicated in writing, and the Administrator will provide the operator a reasonable amount of time to make the necessary changes in the stormwater pollution prevention plan.

### **4. Review and modifications of best management practices.**

- a. Any person engaged in activities or operation, or owning facilities or property, which will or may result in pollutants entering the MS4 or waters of the United States, shall implement BMPs to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a regulated facility shall prove reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or waters of the United States. Practices implemented to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.
- b. The City does not maintain a list of required or approved BMPs for regulated facilities. The Administrator may request facilities to demonstrate the effectiveness of implemented BMPs. Suggested BMPs and a list of prohibited BMPs will be maintained in the B/CS Drainage Design Guidelines.

- c. The Administrator may require an operator of a regulated facility to modify its BMP if the BMPs do not provide effective protection from accidental discharge of prohibited materials or other wastes from entering into the MS4 or waters of the United States.
- d. The deficiencies in a facility's BMP will be communicated in writing, and the Administrator will provide the operator a reasonable amount of time to make the necessary changes in the BMPs.

**5. Compliance with permit.**

- a. A facility shall be operated in strict compliance with the requirements of the TPDES permit to discharge stormwater associated with industrial or construction site activity.
- b. A person commits an offense if the person operates a facility in violation of a requirement of the facility's TPDES permit to discharge stormwater associated with industrial or construction site activity.

**D. STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY.**

**1. Applicability.**

This subsection applies to all facilities located within the City limits that have stormwater discharges associated with industrial activity.

**2. Industrial and high risk runoff monitoring.**

- a. All hazardous waste treatment and storage facilities, active municipal landfills, facilities subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA), and any other industrial discharger the City determines is contributing a substantial pollutant load to the MS4 shall submit self-monitoring data to the City on an annual basis. Submittal date of self-monitoring data is to be determined by the Administrator.
- b. The City's MS4 permit requires that all industrial facilities listed in (a) be subject to site inspections of no less than once per permit term (five years). However, the Administrator has the authority to inspect these industrial facilities as often as deemed necessary to assure permit compliance and safety of the MS4 and waters of the United States.
- c. An unreasonable delay or refusal to submit self-monitoring data to the Administrator is a violation of this ordinance. A person who is the operator of an industrial facility with a TPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Administrator reasonable access to a facility's self-monitoring data for the purpose of review required by this ordinance.
- d. An industrial facility may submit a "no exposure" certification to the City in lieu of self-monitoring; however, any facility operating under a "no exposure" certification is subject to periodic facility inspections (not less than once per permit term—five years) to verify the facility's "no exposure" exemption.
- e. The City may waive monitoring requirements for industrial facilities determined to be in compliance with the TPDES Multi-Sector General Permit Number TXR050000.

- f. The Administrator has the authority to conduct inspections on any industrial facility subject to the TCEQ's TPDES Multi-Sector General Permit or has been deemed to be, or has potential to be, contributing a substantial pollutant load to the MS4 to determine compliance and safety of the MS4 and waters of the United States.

## **E. STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY.**

### **1. Applicability.**

This subsection applies to all facilities located within the City limits that have stormwater discharges associated with construction activity.

### **2. Submission of notice of intent, notice of change, notice of termination or construction site notice to municipal stormwater drainage system operator.**

- a. The operator of a construction site required to have a TPDES permit to discharge stormwater associated with construction activity shall submit a copy of the above notices to the Administrator at the same time the operator submits the original notice to the TCEQ.
- b. The operator of a construction site which does not require a NOI is required to submit, per TCEQ's TPDES general permit for construction sites, a construction site notice to the Administrator.
- c. Copies of all notices may be delivered to the Administrator either in person or by mail.

## **F. ENFORCEMENT.**

Any person found guilty of violating a provision of this ordinance may be punished as provided for in Chapter 12, Article 10, Section 10.6 of this Code of Ordinances.”

## EXHIBIT "B"

That Chapter 12, Unified Development Ordinance, Article 10, Enforcement, of the Code of Ordinances, City of College Station, Texas, is hereby amended by adding a section, to be numbered Section 6, which said section shall read as follows:

### **"CHAPTER 12 UNIFIED DEVELOPMENT ORDINANCE**

....

#### ARTICLE 10 – ENFORCEMENT

....

#### **10.6 – SPECIFIC ENFORCEMENT AND PENALTIES FOR DRAINAGE AND STORMWATER MANAGEMENT.**

##### **A. Enforcement Responsibility.**

The Administrator or his designee has the responsibility for enforcement of the provisions of this ordinance. The duties include not only the issuance of permits as required by this ordinance, but also the responsibility of ensuring that all facilities conform with this subpart and with any other applicable state and federal laws, requirements and regulations of this Code of Ordinances or of the City. The Administrator has the authority to adopt policies and procedures not inconsistent with the terms of this ordinance necessary to implement the provisions of this division.

##### **B. Violations.**

1. Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Each violation shall be deemed a separate offense for each and every day during which any violation of any of the provisions of this ordinance is committed or continued. Any person found guilty of violating a provision of this ordinance may be punished as provided for in Chapter 1, Section 5 of this Code of Ordinances.
2. The owner or operator of any facility, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
3. A violation of this section is also declared a nuisance and may be enforced five thousand (5,000) feet outside the City Limits.

##### **C. Notice of violations.**

If the Administrator determines that there is a violation of this ordinance, notice will be sent to the property owner or operator of record by registered or certified mail, unless deemed an emergency pursuant to Chapter 7, Section 13, Subsection C of this Code of Ordinances. The notice will specify the measures required to come into full compliance with this ordinance and shall specify the time within which the measures must be completed. Failure to comply within

the time specified is a violation of this ordinance and subject to additional penalties outlined herein.

**D. Voluntary compliance.**

The Administrator has the authority to instruct an operator of a facility that commits any acts prohibited by this ordinance to achieve voluntary compliance as determined by the Administrator. The Administrator will provide a reasonable amount of time, specific to the occurrence, to remedy the violation.

**E. Stop orders.**

The Administrator has the authority to issue stop work orders for any facility that commits any acts prohibited by this ordinance.

**F. Appeals, interpretation, and variances.**

Where applicable, any appeals, interpretations or variances of the Administrator's designee shall first be to the Administrator, then to a court of competent jurisdiction. Any appeals, interpretations or variances of the Administrator shall be to a court of competent jurisdiction directly."