

AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING CHAPTER 12, "STORMWATER MANAGEMENT CODE", SO AS TO ESTABLISH METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM; SETTING FORTH THE MINIMUM REQUIREMENTS FOR STORMWATER MANAGEMENT; REGULATING NON-STORMWATER DISCHARGES TO THE MUNICIPAL STORMWATER DRAINAGE SYSTEM; PROVIDING FOR CIVIL ENFORCEMENT AND REMEDIES; PROVIDING FOR CRIMINAL ENFORCEMENT AND A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); SETTING FORTH AN APPEAL PROCEDURE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the Midland City Code so as to establish methods for controlling the introduction of pollutants into the City's municipal separate storm sewer system, to set forth the minimum requirements for stormwater management, and to regulate non-stormwater discharges to the municipal stormwater drainage system; and

WHEREAS, the City Council finds that the public health, safety, and general welfare will be best served by such amendments;

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

SECTION ONE. That the Midland City Code Title XI, "Planning and Development", shall be amended by adding Chapter 12, "Stormwater Management Code", which shall read as follows:

ARTICLE I. IN GENERAL

11-12-1. General Provisions.

- (A) *Intent and purposes.* This Chapter establishes methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System (MS4) of the City of Midland, Texas, in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) Small MS4

General Permit process. The purpose of this Chapter is to set forth the minimum requirements for Stormwater management to protect the public health, safety, environment and general welfare through the regulation of Non-Stormwater Discharges to the Municipal Stormwater Drainage System to the maximum extent practicable, as required by federal law. The objectives of this Chapter are:

1. To prevent the Discharge of Contaminated Stormwater Runoff into the Municipal Separate Storm Sewer System (MS4) and natural waters within the City of Midland;
2. To prohibit Illicit Connections to the MS4;
3. To control the Discharge of spills and prohibit dumping or disposal of materials other than Stormwater into the Small MS4;
4. To enforce compliance with the City of Midland's ordinances, permits, contracts, or orders;
5. To require installation, implementation, and maintenance of control measures;
6. To receive and collect information, such as Stormwater plans, inspection reports, and other information deemed necessary to assess compliance with said permit, from operators of Construction Sites, new or redeveloped land, and industrial and commercial facilities;
7. To establish legal authority to implement inspection and enforcement procedures to ensure compliance with this Chapter;
8. To respond to non-compliance with Best Management Practices (BMPs) consistent with the City of Midland's ordinances or other regulatory mechanism(s);
9. To assess penalties, including monetary, civil, or criminal penalties; and
10. To enter into interagency or interlocal agreements, as necessary.

(B) *Compatibility with other permit and ordinance requirements.* This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(C) *Administration.* The Assistant City Manager to whom the Director of Engineering Services reports shall administer, implement, and enforce the provisions of this Chapter, and shall hereafter be referred to as the Stormwater Administrator throughout this Chapter. Any powers granted or duties imposed upon the Stormwater Administrator of the City of Midland may be delegated

in writing by the Stormwater Administrator of the City of Midland to Persons or entities acting in the beneficial interest of City of Midland.

- (D) *Ultimate responsibility.* The standards set forth herein and promulgated pursuant to this Chapter are minimum standards. This Chapter does not intend nor imply that compliance by any Person will ensure prevention of Contamination, Pollution, and Unauthorized Discharge of Pollutants.
- (E) *Interlocal agreements.* The City of Midland has the authority to enter into interagency or interlocal agreements, as necessary in accordance with TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)i, as may be amended.

11-12-2. Definitions.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Agricultural Stormwater Runoff: Any Stormwater Runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not Discharges from concentrated animal feeding operations as defined in 40 CFR § 122.23, or Discharges from concentrated aquatic animal production facilities as defined in 40 CFR § 122.24.

Adverse Impact: A detrimental effect upon water quality or beneficial uses caused by a Discharge or loading of a Pollutant or Pollutants.

Appeal: A request for a review of the Stormwater Administrator's interpretation or application, directly or by delegation of authority, of a provision, rule, standard, regulation, determination or requirement set forth in this Chapter.

Applicant: Property owner or agent of a property owner who filed an application for a Stormwater authorization under a TPDES general permit or an individual TPDES permit.

Authorized Enforcement Agency: Employees or designees of the Stormwater Administrator of the City of Midland, Texas, or the Texas Commission on Environmental Quality (TCEQ) have authority to enforce this Chapter and/or the TPDES regulations.

Best Management Practices (BMPs): Activities or structural improvements that help reduce the quantity and improve the quality of Stormwater Runoff by preventing or reducing the amount of pollution discharged from a site. BMPs may include a list of recommended activities, maintenance procedures, prohibitions of practices, structural controls, local ordinances, and other management practices.

Building: Any structure, either temporary or permanent, with walls and a roof, designed to shelter a Person, animal, or property, and occupying more than 100 square feet of area.

CFR: The Code of Federal Regulations (CFR) contains all of the rules published in the Federal Register by the executive branch agencies of the Federal Government (e.g., EPA).

Clean Water Act (CWA): The Clean Water Act, as defined in 33 USC §1251 et seq., as may be amended, establishes the basic structure for regulating Discharges of Pollutants into waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted by Congress in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded by Congress in 1972. The “Clean Water Act” became the Act’s common name with amendments in 1972.

Construction Activity: Soil disturbance, including clearing, grading, and excavating, and not including Routine Maintenance.

Construction Site: Any Construction Site required by the Clean Water Act to operate in accordance with the conditions and authorization of a NPDES/TPDES permit to Discharge Stormwater associated with Construction Activity.

Construction Site Notice (CSN): A notice posted at a Construction Site in a location that is safely and readily visible to the general public and to representatives of agencies having jurisdictional authority that certifies the Construction Site operates under and complies with the TPDES General Permit for Construction Stormwater and states the on-site location of the SWP3. A copy of the CSN must be submitted to the MS4 operator prior to commencing Construction Activities.

Contaminated: Containing a Harmful Quantity of any substance.

Contamination: The presence of or entry into a public water supply system, the Municipal Stormwater Drainage System, waters of the state, or waters of the United States of any substance which may be harmful to the public health and/or the quality of the water.

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

Discharge: Any addition or introduction of any Pollutant, Stormwater, or any other substance whatsoever into the Municipal Stormwater Drainage System or into waters of the United States. This includes, but is not limited to, household hazardous waste, used motor vehicle fluids, and collected quantities of grass clippings, leaf litter, and animal wastes.

Drainage and Stormwater Easement: An easement from the owner of a private Stormwater Facility to the local government, guaranteeing long-term maintenance of Stormwater Management practices, and allowing access by the local government for inspection and corrective actions if needed.

Environmental Protection Agency (EPA): The United States Environmental Protection Agency, or any duly authorized official of said agency.

Facility: 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.

General Permit for Construction Stormwater: The permit, issued by TCEQ under the TPDES permitting program, that authorizes Stormwater and certain Non-Stormwater Discharges associated with Construction Activities to Surface Water in the State. The TPDES General Permit for Construction Stormwater contains requirements applicable to all Construction Activities that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES General Permit for Construction Stormwater is TPDES General Permit Number TXR150000 Relating to Stormwater Discharges Associated With Construction Activities, issued by TCEQ on February 19, 2013, and effective March 5, 2013, as amended or renewed thereafter.

Harmful Quantity: The amount of any substance that will cause Pollution of waters of the state, the Municipal Stormwater Drainage System, or that will present or may present imminent and substantial danger to the environment or to the health or welfare of Persons.

Hazardous Materials: Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

Hyperchlorinated Water: Water resulting from hyperchlorination of waterlines or vessels, with a chlorine concentration greater than 10 milligrams per liter (mg/L).

Illicit Connection: Any man-made Conveyance connecting an Illicit Discharge directly to a Municipal Separate Storm Sewer System.

Illicit Discharge: Any Discharge to a Municipal Separate Storm Sewer System that is not entirely composed of Stormwater, except Discharges pursuant to a TPDES Stormwater general permit or a separate authorization and Discharges resulting from emergency firefighting activities.

Industrial Facility: Any Facility required by the Clean Water Act to have a permit to Discharge Stormwater associated with industrial activity subject to NPDES/TPDES Industrial Permits as defined in 40 CFR § 122.26(b)(14).

Land Disturbance Activity: Any activity which changes the volume or Discharge rate of Stormwater Runoff from the land surface. This includes grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

Mean High Water Mark (MHW): The average of the higher high water height of each tidal day observed over the National Tidal Datum Epoch. For stations with shorter series, comparison of simultaneous observations with a control tide station is made in order to derive the equivalent datum of the National Tidal Datum Epoch.

MS4: Municipal Separate Storm Sewer System; see also *Municipal Stormwater Drainage System*.

Multi Sector General Permit: The permit, issued by TCEQ under the TPDES permitting program, that authorizes point source Discharges of Stormwater and certain Non-Stormwater associated with industrial activities to Surface Water in the State, including direct Discharges to MS4s. The TPDES Multi Sector General Permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES Multi Sector General Permit is TPDES General Permit Number TXR050000, issued by TCEQ on July 22, 2011, and effective August 14, 2011, as amended or renewed thereafter.

Municipal Stormwater Drainage System: The system of Conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying Stormwater, and which is not used for collecting or conveying sewage. Also designated as Municipal Separate Storm Sewer System (MS4).

National Oceanic and Atmospheric Administration (NOAA): The United States National Oceanic and Atmospheric Administration, or any duly authorized official or entity of said agency.

National Pollutant Discharge Elimination System (NPDES): Permit program which controls water Pollution by regulating point sources that Discharge pollutants into waters of the United States. Point sources are discrete Conveyances such as pipes or man-made ditches.

National Tidal Datum Epoch (NTDE): The specific 19-year period adopted by the NOAA's National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values (e.g., mean lower low water, etc.) for tidal datum's. It is necessary for standardization because of periodic and apparent secular trends in sea level. The present NTDE is 1983 through 2001 and is actively considered for revision every 20-25 years.

Non-Stormwater Discharge: Any Discharge to the storm drain system that is not composed entirely of Stormwater.

Notice of Intent (NOI): A written submission to the TCEQ requesting coverage under the TPDES General Permit for Construction Stormwater, and certifying that the Construction Activities will comply with the site SWP3. A copy of the NOI must be submitted to the MS4 operator prior to commencing Construction Activities.

Person: Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

Playa Lake: Any of several naturally occurring, broad, shallow, roughly circular depressions of varying sizes and depths that serve as natural detention basins for Stormwater flows within the City.

Pollutant: In accordance with the Texas Water Code § 26.001(13), as may be amended, a Pollutant includes the following: dredged spoil, solid waste, incinerator residue, sewage, garbage, 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 any water in the state.

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

Premises: Any Building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Release: 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, or the waters of the United States.

Routine Maintenance: Work that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site, such as the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Small MS4: For the purposes of this Chapter, a Municipal Separate Storm Sewer System, or portion thereof, owned and operated by the City that is located within an urbanized area as determined by the U.S. Census Bureau 2000 or 2010 decennial census, and subject to the TPDES Small MS4 General Permit conditions and authorization.

Small MS4 General Permit: The permit, issued by TCEQ, that authorizes Stormwater and certain Non-Stormwater Discharges from Small MS4s to Surface Water in the State under the TPDES permitting program. The TPDES Small MS4 General Permit contains requirements applicable to all Small MS4s that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES Small MS4 General Permit is TCEQ General Permit Number TXR040000 Relating to Discharges from Small Municipal Separate Storm Sewer Systems, issued by TCEQ and effective December 13, 2013, as amended or renewed thereafter.

Stormwater and Stormwater Runoff: Rainfall runoff, snow-melt runoff, and surface runoff and drainage.

Stormwater Control Practices: Structural or nonstructural measures to minimize Stormwater Runoff to Surface Water in the State.

Stormwater Management: The use of structural or non-structural control practices/BMPs designed to reduce Stormwater Pollutant runoff, Discharge volumes, peak flow Discharge rates, and detrimental changes in stream temperature that affect water quality.

Stormwater Pollution Prevention Plan (SWP3): A document that describes the Best Management Practices and activities to be implemented by the permit holder to identify sources of Pollution or Contamination at a site and actions to eliminate or reduce Pollutant Discharges.

Surface Water in the State: Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the Mean High Water Mark (MHW) out 10.36 miles into the Gulf of Mexico), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

TCEQ: Texas Commission on Environmental Quality or successor. Municipal Separate Storm Sewer System interest delegated to the TCEQ upon authority of the EPA.

Texas Pollutant Discharge Elimination System (TPDES) Stormwater Discharge Permit: A permit issued by the TCEQ, under the authority of Texas Water Code § 26.027 or 26.040, as may be amended, that authorizes the Discharge of Pollutants into or adjacent water in the state. The TPDES program is administered under the authority delegated pursuant to 33 U.S.C. § 1342(b), as may be amended.

Unauthorized Discharge: Any direct or indirect Non-Stormwater Discharge to the Municipal Stormwater Drainage System except as exempted in Section 11-12-3(A)2 of this Chapter.

USC or U.S.C.: The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. The USC does not include regulations issued by the executive branch agencies of the Federal Government (e.g., EPA).

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

ARTICLE II. ILLICIT CONNECTIONS AND DISCHARGES

11-12-3. Prohibition of Illicit Connections and Illicit Discharges.

The City of Midland has the authority to prohibit Illicit Discharges and Illicit Connections in accordance with TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)a, as may be amended. This Chapter prohibits Unauthorized Discharges into the storm drain system. No Person shall Release Discharges into the Municipal Separate Storm Sewer System containing any Pollutants that cause or contribute to a violation of water quality standards, other than Stormwater or authorized Non-Stormwater Discharges.

The City of Midland has the authority to respond to and control spills, leaks, and other accidental Discharges of materials into the MS4.

(A) General prohibition.

1. No Person may dispose of, or Release, or introduce or cause to be introduced into the MS4 a Discharge that is not composed entirely of Stormwater.

2. *Allowable Non-Stormwater Discharges.* It is an affirmative defense to prosecution or any enforcement action for violation of this Chapter, upon presentation of evidence by the discharger, that the Discharge was composed entirely of one or more of the following categories of Discharges:
 - a. Water line flushing (excluding Discharges of Hyperchlorinated Water, unless first dechlorinated and Discharges are not expected to have an Adverse Impact on aquatic life);
 - b. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources, unless prohibited by elsewhere in the City Code;
 - c. Discharges from potable water sources;
 - d. Uncontaminated pumped ground water;
 - e. Individual residential vehicle washing or commercial mobile vehicle washing on private property;
 - f. Street wash water after all/visible debris and sediments have been removed and does not contain soap or other chemicals either added for cleaning or washed off the surface being cleaned;
 - g. Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
 - h. Agricultural Stormwater Runoff as defined in this Chapter;
 - i. Other allowable Non-Stormwater Discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
 - j. Non-Stormwater Discharges specifically listed in the TPDES Multi-Sector General Permit or the TPDES General Permit for Construction Stormwater; and
 - k. Other similar occasional incidental Non-Stormwater Discharges, unless the TCEQ develops permits or regulations addressing these Discharges.
3. The burden of proof that a Discharge was composed entirely of one or more of the categories in Section 11-12-3(A)2 and that it was not a source of a Pollutant or Pollutants to the MS4, or to Playa Lakes, or to the Surface Water in the State or the waters of the U.S. is upon the Person or entity responsible for the Discharge.

4. No Person may dispose of, Release, introduce or cause to be introduced into the MS4 any Harmful Quantity of any substance.

(B) Specific prohibits and requirements.

1. The specific prohibitions and requirements in this Section are not a complete list of all the Discharges prohibited by the general prohibition.
2. No Person may dispose of, Release, introduce or cause to be introduced into the MS4 any Discharge that causes or contributes to a violation of a water quality standard, or any state-issued Discharge permit for Discharges from its MS4.
3. No Person may dispose of, Release, Discharge, or otherwise introduce, cause, suffer, allow, or permit to be introduced any of the following substances into the MS4:
 - a. Oil, cutting oil, petroleum products, and other motor vehicle fluids, such as gasoline, antifreeze, oil, transmission fluid, hydraulic fluid, brake fluid, or power steering fluid;
 - b. Industrial waste;
 - c. Hazardous waste, including household hazardous waste;
 - d. Any liquids, solids or gases or any other substances which are a fire or other hazard to the system, which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fires, explosions, or be injurious in any other way to the facilities or operation of the Stormwater system;
 - e. Domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - f. Free or emulsified fats, waxes, greases or oils;
 - g. Garbage, rubbish, collected yard waste, refuse, or other floatable material;
 - h. Waste water from the testing of fire protection systems;
 - i. Wastewater from washout of concrete and wastewater from water well drilling operations, unless managed by an appropriate control;
 - j. Wastewater from washout and cleanout of stucco, paint, from release oils, and other construction materials;
 - k. Fuels, oils, or other Pollutants used in vehicle and equipment operation and maintenance;

- l. Soaps and solvents used in vehicle and equipment washing;
 - m. Discharges from dewatering activities, including Discharges from dewatering of trenches and excavations, unless managed by appropriate BMPs; or
 - n. Swimming pool, spa or fountain water unless proof of dechlorination or removal of chemicals is provided by the discharger, or filter backwash from, or waste from the construction, maintenance or repair of, a swimming pool, spa, or fountain.
- 4. No Person may dispose of, Release, introduce or cause to be introduced into the MS4, waters of the state or of the U.S., or Playa Lakes, any Harmful Quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other Construction Activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.
 - 5. No Person may connect a line conveying sanitary sewage, domestic, industrial or a combination of both to the MS4, or allow such a connection to continue.

ARTICLE III. ENFORCEMENT

11-12-4. Entry and Inspections.

- (A) The Stormwater Administrator or designated representative has the authority to enter and inspect private property, including facilities, equipment, practices, or operations related to Stormwater Discharges to the Small MS4 in accordance with the TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)f, as may be amended.
- (B) Admittance to the site to be inspected shall be requested at a reasonable time during normal working hours unless it is determined by the Stormwater Administrator that imminent and substantial danger exists.
- (C) In the event the property owner or operator refuses entry after an inspection request has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

11-12-5. Spill or Discharge Reporting and Cleanup.

- (A) Reporting Requirements.
 - 1. *Hazardous Spills and Discharges.* A discharger of a reportable quantity of a hazardous or extremely hazardous substance into the MS4, Surface Water in the State, or the waters of the U.S., must telephone 911 and notify the Fire Department and the Stormwater Administrator immediately after becoming aware of the Discharge.

2. *Non-Hazardous Spills and Discharges.* In the event of a Release of non-hazardous materials, the discharger shall notify the Stormwater Administrator no later than the following business day.

(B) Response to Spills and Discharges.

1. Spills or leaks of polluting substances discharged to or having the potential to be indirectly transported to the MS4 shall be contained, controlled, collected and removed promptly. All affected areas shall be restored to their preexisting condition. Any costs of the containment, control, collection, removal or restoration incurred by the City of Midland shall be reimbursed to the City by the Person or Persons associated with the spill or leak.
2. Notification shall not relieve the responsible Person(s) of any expense, loss, damage, or other liability which may be incurred as a result of the Release, including any liability for damage to the City, to natural resources, or to any other Person or property, nor shall such notification relieve the responsible Person of any fine, penalty, or other liability which may be imposed pursuant to this Chapter or to state or federal law.
3. Any Person responsible for any Release as described in Section 11-12-5(A) shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the Release.

11-12-6. Citizen Participation.

All citizens are encourage to report to the City of Midland any spills, Releases, Illicit Connections, Discharges from Construction Activity, other instances of a Person or Persons discharging Pollutants into the MS4 or Surface Water in the State, and any other violation of this Chapter of which they become aware. Such citizen reports may be made by telephone, in writing or in Person.

The Stormwater Administrator will designate an individual or office to receive all such citizen reports and will establish a phone number and publish the number to facilitate citizen reports.

11-12-7. Enforcement, Remedies and Penalties.

- (A) *Civil enforcement and remedies.* The governing body of the City of Midland, Texas may institute in a court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this Chapter or of any order or ruling made in connection with the City's administration or enforcement including, but not limited to, an action for injunctive relief.
- (B) *Penalties.* Each violation of this Chapter or of any order or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$2,000.00, and each day a violation continues to exist shall constitute a separate offense.

ARTICLE IV. SPECIFIC PROGRAM REQUIREMENTS

11-12-8. Construction Activity.

- (A) This Chapter regulates Construction Activity for which TCEQ requires TPDES General Permit for Construction Stormwater coverage for small sites of at least one acre but less than five acres and large sites of five or more acres.
- (B) When required by TCEQ, operators of Construction Activities shall obtain TPDES permit coverage for the Discharge of Stormwater and eligible Non-Stormwater Discharges from the Construction Activity. Operators shall comply with the requirements, effluent limitations, certifications, notice, inspections, and all other applicable conditions of said permit.
- (C) All plans for Construction Activity that are required by a City ordinance to be submitted for review shall include an erosion control plan drawing.
- (D) All operators of a Construction Activity shall submit to the City of Midland a signed copy of its Notice of Intent (NOI) and/or Construction Site Notice (CSN), as applicable under the TPDES General Permit for Construction Stormwater. The NOI and/or CSN shall be submitted at least seven (7) days prior to commencing Construction Activities and shall be posted at the Construction Site in accordance with TPDES General Permit for Construction Stormwater requirements.
- (E) Qualified personnel (provided by the operator of the Construction Activity) shall inspect all areas of the Construction Site that might Discharge soil, wastes and other Pollutants. All erosion and sediment control measures and other management practices shall be observed in order to ensure they are operating correctly and are effective. The operator of the Construction Activity shall maintain, repair, or replace controls and management practices, as appropriate. At a minimum, controls and management practices shall be cleaned and repaired or replaced as needed when capacity is reduced by fifty percent (50%).
- (F) The City of Midland may inspect a Construction Activity for compliance with its SWP3 and the TPDES General Permit for Construction Stormwater. Notice of deficiencies will be provided in writing, and the Stormwater Administrator will give a reasonable amount of time, not to exceed ten (10) days, to implement the necessary corrective actions.
- (G) The City of Midland may deny approval of any building permit, subdivision plat, site development plan, inspection, or any other approval necessary to commence or continue construction or to assume occupancy on the grounds that the controls and management practices described in the erosion control plan drawing reviewed by the City of Midland or observed on a site inspection by the City of Midland are determined by the Stormwater Administrator to not be sufficient to minimize the Discharge of soil, waste, and other Pollutants associated with Construction Activity to the extent practicable.

11-12-9. Industrial Activity.

- (A) All operators of an industrial activity shall obtain a NPDES or TPDES Multi-Sector General Permit, except where alternative TPDES permit coverage is obtained for the Discharge of Stormwater and eligible Non-Stormwater Discharge from the industrial activity. All operators shall comply with the requirements, effluent limitations, certifications, notices, inspections, Discharges monitoring, and all other applicable conditions of the permit.
- (B) The City of Midland may require submission of an Industrial Facility's SWP3 to the City of Midland upon determination by the Stormwater Administrator that an industrial activity may be introducing Pollutants to the MS4 or Surface Water in the State. The City of Midland may review a submitted SWP3 and require that changes be made to the SWP3 and that the SWP3 resubmitted if, in the professional judgement of the Stormwater Administrator or authorized representative, the SWP3 does not comply with the requirements of the NPDES or TPDES Multi-Sector General Permit. Notice of the deficiencies in the SWP3 will be provided in writing, and the Stormwater Administrator will give the operator a reasonable amount of time, not to exceed twenty-one (21) days, to make the necessary changes and resubmit to SWP3.
- (C) The City of Midland has the authority to inspect an Industrial Facility and take enforcement actions as provided in Sections 11-12-4 and 11-12-7 of this Chapter.

11-12-10. Stormwater Requirements for New Developments and Redevelopments.

- (A) The requirements of this Section shall apply to all developments and redevelopments within the corporate limits that are equal to or greater than one acre, unless one of the following exceptions applies to the development or redevelopment:
 - 1. Redevelopment or expansion results in no net increase in impervious area;
 - 2. Development and redevelopment decreases predevelopment runoff volumes as defined in Storm Drainage Design Manual; or
 - 3. Any new development or redevelopment project has or will have permit coverage under the Texas Pollutant Discharge Elimination System Industrial Stormwater Permit issued by the Texas Commission on Environmental Quality (TCEQ).
- (B) The purpose of this Section is to establish a set of water quality and quantity policies for the regulation of Stormwater Runoff to minimize increases in Stormwater Runoff rates and volumes, soil erosion, and nonpoint source Pollution.
- (C) Developers shall follow the standards for Stormwater Runoff control established in the City of Midland Storm Drainage Design Manual, Midland Master Drainage Plan, applicable procedures in the Building Regulations and Planning and Development ordinances.

- (D) The City of Midland may enforce the provisions of this Section through either the subdivision process or the building permit process, as applicable to the type of project proposed.
- (E) *Maintenance of Structural Stormwater Controls (Structural BMPs).* Developments that include a structural Stormwater control practice, such as a detention basin or other constructed feature intended to provide Stormwater Runoff quality or quantity improvements, are required to provide for maintenance of the structural practice and for City access for inspection and corrective actions.
 1. A Drainage and Stormwater Easement shall be provided by the property owner for Facility inspections and maintenance. The easement shall be dedicated to the City of Midland by plat or by separate instrument. This easement shall be in a form approved by the City of Midland, and will be accepted and recorded by the City of Midland in the official records of the county in which the property is located.
 2. All structural Stormwater controls shall be maintained by the property owner or, if applicable, the homeowner's association unless the City agrees to assume maintenance. Any agreement for City maintenance will be made a part of the Drainage and Stormwater Easement.
 3. Authorized representatives of the Stormwater Administrator may conduct inspections of the structural Stormwater control.
 4. Deficiencies in maintenance and operation of a structural Stormwater control shall be remedied by the property owner or, if applicable, the homeowner's association.

ARTICLE V. APPEALS

11-12-11. Appeals to the City Manager.

- (A) Any person contesting the Stormwater Administrator's interpretation or application, directly or by delegation of authority, of any provision, rule, standard, regulation, determination or requirement set forth in this Chapter shall have the right to Appeal by submitting to the City Manager within 14 days of the action that the person wishes to contest a written request for a hearing setting forth fully the grounds for the Appeal, including the factual basis for the Appeal and all relevant supporting documents, and the relief sought.
- (B) If a person requests a hearing under this Section, a hearing shall be held before the City Manager within 21 days of the date that the request is received, at a time to be determined by the City Manager, and notice of the hearing shall be given to the appellant.
- (C) The City Manager may affirm, reverse, or modify the decision of the Stormwater Administrator. The City Manager shall issue a written decision and order within 48 hours following the hearing. The decision and order of the City Manager shall be final and conclusive.

SECTION TWO. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00) pursuant to State law. The definition of all offenses under this ordinance does not require a culpable mental state. The definition of all offenses under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this ordinance, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 17th day of November, A.D., 2015; and passed to second reading on motion of Council member Dufford, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Hotchkiss, Sparks, Morales, Dufford, Lacy, Robnett

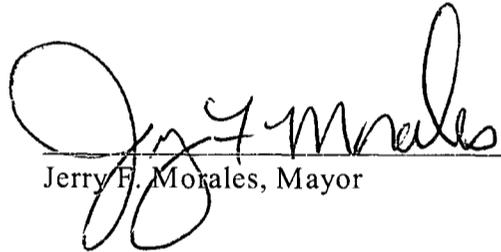
Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Dufford, seconded by Council member Sparks, on the 15th day of December, A.D., 2015, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Robnett

Council members voting "NAY": Lacy

PASSED AND APPROVED THIS 15th day of December, A.D., 2015.


Jerry F. Morales, Mayor

ATTEST:


Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:


Frank Salvato, Assistant City Manager


Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

A handwritten signature in black ink, appearing to read 'JOHN OHNEMILLER', written over a horizontal line.

John Ohnemiller, City Attorney