

ORDINANCE NUMBER 674-2009

AN ORDINANCE OF THE CITY OF DICKINSON, TEXAS, AMENDING CHAPTER 12, OFFENSES – MISCELLANEOUS, OF THE CODE OF ORDINANCES OF THE CITY OF DICKINSON, TEXAS, BY THE ADDITION OF A NEW ARTICLE X TO BE ENTITLED “STORM WATER DRAINAGE SYSTEM REGULATIONS” AND ESTABLISHING DEFINITIONS AND REGULATIONS FOR ILLEGAL DISCHARGES AND CONNECTIONS TO THE CITY’S STORM WATER DRAINAGE SYSTEM; PROVIDING FOR THE INCORPORATION OF PREAMBLE; PROVIDING FOR ENFORCEMENT OF VIOLATIONS OF ANY OF THE REGULATIONS ADOPTED HEREIN; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR EACH AND EVERY DAY A VIOLATION HEREOF OCCURS; PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE, AND SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Dickinson, Texas, in order to better provide for the health, safety and welfare of its citizens, finds that it is necessary to implement procedures to monitor and regulate the discharge of non-storm water pollutants into the City’s storm water drainage system in order to comply with federal and state law; and

WHEREAS, this ordinance is designed to control and regulate the introduction of non-storm water pollutants into the City’s storm water drainage system to achieve compliance with the requirements of the Texas Pollutant Discharge Elimination System (“TPDES”) permit process.

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

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct and are incorporated herein.

Section 2. Chapter 12, Offenses – Miscellaneous, of the Code of Ordinances of the City of Dickinson, Texas, is hereby amended by the addition of a new Article X to be entitled “Storm Water Drainage System Regulations” and to read in its entirety as follows:

“ARTICLE X. STORM WATER DRAINAGE SYSTEM REGULATIONS

Sec. 12-160. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Authorized Enforcement Agency shall mean employees or designees of the City of Dickinson designated to enforce this Article.

Best Management Practices (BMPs) shall mean schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act (CWA) shall mean The Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

Construction Activity shall mean activities subject to TPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials shall mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge shall mean any direct or indirect non-storm water discharge to the storm water system, except as exempted in Section 12-165 herein.

Illicit Connection shall mean any drain or conveyance connecting an illicit discharge directly to the storm water system, whether on the surface or subsurface, which allows an illegal discharge to enter the storm water system including, but not limited to, any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity shall mean activities subject to NPDES or TPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Municipal Separate Storm Sewer System (MS4) shall mean a separate storm sewer system owned or operated by 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.

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

Non-Storm Water Discharge shall mean any discharge to the storm water drain system that is not composed entirely of storm water.

Person shall mean 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.

Pollutant shall mean anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, Articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System shall mean publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water shall mean any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWPPP or SWP₃) shall mean a document that describes the Best Management Practices and activities to be implemented by a person or entity to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

Sec. 12-161. Purpose/Intent.

The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the City of Dickinson through the regulation of non-storm water discharges to the storm water system to the maximum extent practicable as required by federal and state law. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this Article are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Article.

Sec. 12-162. Applicability.

This Article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Sec. 12-163. Responsibility for administration.

The City Administrator or his/her designee shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the Authorized Enforcement Agency may be delegated in

writing by the City Administrator to persons or entities acting in the beneficial interest of or in the employ of the agency.

Sec. 12-164. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, or unauthorized discharge of Pollutants.

Sec. 12-165. Discharge Prohibitions.

(a) Prohibition of Illegal Discharges. It shall be unlawful for any person to discharge or cause to be discharged into the municipal Storm Drainage System or watercourses any materials, including, but not limited to, Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than Storm Water.

(b) Exceptions. The commencement, conduct or continuance of any Illegal Discharge to the Storm Drainage System is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Article:

1. flushing of water lines or other potable water sources;
2. landscape irrigation or lawn watering;
3. diverted stream flows;
4. rising ground water;
5. uncontaminated ground water infiltration to storm drains;
6. uncontaminated pumped ground water;
7. foundation or footing drains (not including active groundwater dewatering systems);
8. crawl space pumps;
9. air conditioning condensation;
10. springs;
11. non-commercial washing of vehicles;
12. natural riparian habitat or wetland flows;
13. swimming pools (if dechlorinated - typically less than one parts per million (PPM) chlorine);
14. fire fighting activities and
15. any other water source not containing Pollutants.

- (2) Discharges specified in writing by the Authorized Enforcement Agency as being necessary to protect public health and safety.
- (3) Dye testing, as long as a verbal notification is provided to the Authorized Enforcement Agency prior to the time of the test.
- (4) Any Non-Storm Water Discharge permitted under an NPDES or TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided further that written approval has been granted for any discharge to the Storm Drainage System.

(c) Prohibition of Illicit Connections.

(1) It shall be unlawful to construct, use, maintain or continue the existence of Illicit Connections to the City's Storm Drainage System.

(2) This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A Person is considered to be in violation of this Article if the Person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Sec. 12-166. Suspension of MS4 access.

(a) Suspension due to Illegal Discharges in emergency situations. The City Administrator or his/her designee may, without prior notice, suspend MS4 discharge access to a Person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, the health or welfare of persons, the MS4, or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(b) Suspension due to the detection of Illegal Discharge. Any Person discharging into the MS4 in violation of this Article may have their MS4 access terminated if such termination would abate or reduce an Illegal Discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the Authorized Enforcement Agency for a reconsideration and hearing.

(c) Reinstatement without permission. A Person commits an offense if the Person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Authorized Enforcement Agency.

Sec. 12-167. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES or TPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City Administrator or his/her designee prior to allowing discharges to the MS4.

Sec. 12-168. Submission of notice of intent to City.

(a) The operator of a facility, including construction sites, required to have a NPDES or TPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the City Administrator or his/her designee at the same time the operator submits the original Notice of Intent to the EPA or the TCEQ as applicable. The copy of the Notice of Intent may be delivered to the City Administrator or his/her designee either in person or by mail.

(b) A Person commits an offense if the Person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the City Administrator or his/her designee.

Sec. 12-169. Monitoring of discharges.

(a) Applicability. This Section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(b) Access to Facilities.

(1) The City Administrator or his/her designee shall be permitted to enter and inspect facilities subject to regulation under this

Article as often as may be necessary to determine compliance with this Article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

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

(3) The City Administrator or his/her designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The City Administrator or his/her designee has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City Administrator or his/her designee and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the City Administrator or his/her designee access to a permitted facility is a violation of a storm water discharge permit and of this Article. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.

(7) If the City Administrator or his/her designee has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued

hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 12-170. Requirement to prevent, control, and reduce storm water pollutants by the use of best management practices.

The City of Dickinson will adopt policies identifying Best Management Practices ("BMPs") for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drainage system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES or TPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES and/or TPDES permit.

Sec. 12-171. Watercourse protection.

Every Person who owns property, or is responsible for maintaining an easement through which a watercourse passes, or the lessee of such property, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the property owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec. 12-172. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drainage system, or waters of the U.S., said person shall take all necessary steps to

ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials said person shall notify the authorized enforcement agency no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Administrator or his/her designee within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Sec. 12-173. Enforcement.

(a) Notice of Violation. Whenever the City Administrator or his/her designee finds that a person has violated a prohibition or failed to meet a requirement of this Article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Sec. 12-174. Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency to the City Administrator or his/her designee. The notice of appeal must be received within 5 business days from the date of the Notice of Violation. Hearing on the appeal before the City Administrator or his/her designee shall take place within 15 business days from the date of receipt of the notice of appeal. The decision of the City Administrator or their designee shall be final.

Sec. 12-175. Enforcement measures after appeal.

If any violation of which a person has received notice as required by Section 12-173 hereof has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 10 business days of the decision of the City Administrator or his/her designee upholding the decision, then representatives of the authorized enforcement agency shall enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the authorized enforcement agency or its designated contractor to enter upon the premises for the purposes set forth above.

Sec. 12-176. Cost of abatement of the violation.

In the event of action by the authorized enforcement agency as described in Section 12-175 above, the owner of the property will be notified of the cost of abatement, including administrative costs, within 30 calendar days after the abatement of the violation. The property owner may file a written protest objecting to the amount of the assessment within 10 business days. If the amount due is not paid within a timely manner as determined by the decision of the City Administrator or his/her designee or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation.

Sec. 12-177. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or

continues to violate the provisions hereof, the Authorized Enforcement Agency may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 12-178. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Article is deemed to be a threat to public health, safety and welfare and is declared to be a public nuisance. Consequently, any such public nuisance may be summarily abated or restored at the violator's expense and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken."

Section 3. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of said Ordinances except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the Ordinances or sections thereof that have been specifically repealed on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance or section thereof and for that purpose the Ordinance or section thereof shall remain in full force and effect.

Section 4. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Dickinson, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6.

6.01 Any person who intentionally, knowingly, recklessly or with criminal negligence violates any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed Two Thousand Dollars (\$2,000.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

6.02 If the City Council of the City of Dickinson determines that a violation of this Ordinance creates a threat to the public safety, the City of Dickinson may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity. The City of Dickinson is not required to give bond as a condition to the issuance of injunctive relief.

Section 7. This Ordinance shall become effective upon final reading and adoption of this Ordinance, in accordance with law.

DULY PASSED AND APPROVED on first reading this the 28th day of July, 2009.

DULY PASSED AND APPROVED AND ADOPTED on second reading this the 11th day of August, 2009.

DULY PASSED, APPROVED AND ADOPTED on third and final reading this the _____ day of _____, 2009 (Third reading suspended).



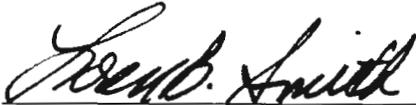
Julie Masters, Mayor
City of Dickinson, Texas

ATTEST:



Carol L. McLemore, City Secretary
City of Dickinson, Texas

APPROVED AS TO FORM AND CONTENT:



Loren B. Smith, City Attorney
City of Dickinson, Texas