

ORDINANCE NO _____

AN ORDINANCE OF THE CITY OF CARROLLTON, TEXAS REPEALING CHAPTER 173 OF THE CARROLLTON CITY CODE IN ITS ENTIRETY AND AMENDING IN ITS PLACE A REVISED CHAPTER 173, ENTITLED "STORMWATER POLLUTION PREVENTION", TO BE SUBSTITUTED THEREFOR, IN CONTINUATION OF THE EXISTING STORMWATER PROGRAM; ESTABLISHING REGULATIONS GOVERNING ALLOWABLE AND PROHIBITED DISCHARGES, SPECIFIC PROHIBITIONS, CONSTRUCTION ACTIVITIES AND INDUSTRIAL ACTIVITIES; ESTABLISHING REQUIREMENTS FOR COMPLIANCE MONITORING, REPORTS OF VIOLATIONS; PROVIDING FOR ADMINISTRATIVE AND JUDICIAL ENFORCEMENT REMEDIES AND SUPPLEMENTAL ENFORCEMENT ACTION; PROVIDING FOR RECONSIDERATION, HEARING, AND APPEAL; PROVIDING FOR A PENALTY UP TO \$2000 PER DAY; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND, PROVIDING FOR AN EFFECTIVE DATE ON AND AFTER ITS ADOPTION AND PUBLICATION.

WHEREAS, the City of Carrollton, Texas (the "City") is a Home Rule municipality possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, Section 54.004 of the Texas Local Government Code provides that a home rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

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

SECTION 1

Section 173.02 of the Code of Ordinances, City of Carrollton, is hereby amended to include the definition of Commercial Cosmetic Cleaning to read as follows:

“Sec. 173.02 - Definitions

Commercial Cosmetic Cleaning. Power washing, steam cleaning, and any other cosmetic cleaning operations of vehicles, parking lots, buildings, and other exterior surfaces, conducted for commercial purposes.”

SECTION 2

Section 173.04 (C) of the Code of Ordinance, City of Carrollton, is hereby amended to include amendments in Section 173.04 (C) and addition of Sections 173.04 (C) (26) and 173.04 (C) (27) to read as follows:

“CHAPTER 173. -STORMWATER POLLUTION PREVENTION

ARTICLE I. IN GENERAL.

Sec. 173.00 Purpose and Scope

- (A) To maintain and improve the quality of surface water and groundwater within the City of Carrollton, the North Central Texas Region, and the State of Texas.
- (B) To prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Carrollton.
- (C) To promote public awareness of the harm involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers and natural waters of the city.
- (D) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
- (E) To facilitate compliance with state and federal water quality standards, limitations, and permits by owners and operators of industrial and construction sites within the city.
- (F) To enable the City to comply with all federal and state laws and regulations applicable to stormwater discharges.

Sec. 173.01 - Administration

The DCO will administer, implement, and enforce the provisions of this ordinance. For construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City, the DCO will delegate the City department that is administering, performing, or contracting for the construction project the duty to implement and enforce the provisions of this ordinance. Any powers granted to or duties imposed in this ordinance upon the DCO may be delegated to other city personnel.

Sec. 173.02 - Definitions

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

Act. The Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act (CWA), as amended, 33 USC. 1251 et seq.

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 Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

Animal Waste. Any animal manure, litter or bedding; water that has contacted animal manure, litter, or bedding; water from washing, flushing, or cleaning animal pens; and liquid or solid waste from facilities such as pens used at kennels, animal hospitals, poultry processing facilities, dairies, or rendering plants.

Best Management Practices (BMP). Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, and other management practices to prevent or reduce the pollution of surface water in the state or the waters of the U.S. 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.

Biological Oxygen Demand (BOD). The quantity of oxygen by weight, expressed in milligrams of oxygen per liter of water, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a temperature of 20° C. A high BOD indicates a high level of organic matter or waste in the water.

CFR. The Code of Federal Regulations, as periodically amended.

City. The City of Carrollton, Texas, or the City Council of Carrollton.

Coal Pile Runoff. The rainfall runoff from or through any coal storage pile.

Commencement of Construction. The initial disturbance of soils associated with clearing, grading, excavating, landfilling, and other construction activities.

Commercial. Pertaining to any business, trade, industry, or other activity engaged in for profit.

Commercial Cosmetic Cleaning. Power washing, steam cleaning, and any other cosmetic cleaning operations of vehicles, parking lots, buildings, and other exterior surfaces, conducted for commercial purposes.

Common Plan of Development or Sale. A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, A common plan of development or sale is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Construction. Any human activity that involves clearing, grading, excavation, landfilling, demolitions, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

Construction Site Notice (CSN). A form that applies to construction sites operating under the TPDES General Permit Number TXR150000 for discharges of stormwater runoff from large or small construction sites, including the larger common plan of development. The form is required to be posted in accordance with the permit.

Contaminated. Containing a harmful quantity of any substance.

Designated City Official or DCO. The City Manager or his/her designee.

Discharge. Any addition, introduction, release, or flow of any pollutant, stormwater, or other substance, whether separate or mixed, into the municipal separate storm sewer system (MS4), surface water in the state, or the waters of the U.S. The term includes any spilling, leaking, pumping, pouring, emitting, emptying, escaping, leaching, dumping, disposing, or other type of release or discharge engaged in, caused, or allowed by a discharger.

Discharger. Any person who causes, allows, permits, or suffers, or is otherwise responsible for, a discharge, spill, or release, including, without limitation, any operator of a construction site or industrial facility, and the owner of a facility that is the source of a discharge.

Disposal, Dispose of. The discharge, deposit, release, injection, dumping, spilling, leaking, or placing of any waste, including but not limited to solid or semisolid wastes (i.e., grease trap wastes, grit trap wastes, and/or septage) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including, but not limited to, ground waters. This includes disposal to any surface where a pollutant or its residual, with surface water or stormwater or groundwater, may flow, wash, or leach into the MS4.

Domestic Sewage. Any human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

Environmental Protection Agency or EPA. The United States Environmental Protection Agency, the regional office thereof, any federal or state department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

Extremely Hazardous Substance. Any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

Facility. Any building, structure, installation, equipment, vehicle, vessel, process, or activity, or other property, real or personal.

Fertilizer. A solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Final Stabilization. A construction activity where any of the following have been met:

- (a) The status when all soil disturbing activities at a site have been completed, and a uniform (i.e. evenly distributed, without large bare areas) perennial vegetative cover, with an established density of 70% of the original cover for unpaved areas and areas not covered

- by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (b) For individual lots in a residential construction site by either:
 - (1) The homebuilder completing final stabilization as specified in condition (a) above;
or
 - (2) The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.
 - (c) For construction activities on land used for agricultural purposes, 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 a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.
 - (d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:
 - (1) Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator.
 - (2) The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.

Fire Department. The City of Carrollton Fire Department or any duly authorized representative thereof.

Fire Protection Water. Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.

Floatables. Anything lighter than water that can float on top of water.

Garbage. Putrescible animal and vegetable waste and residue from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Governmental Entity. A state agency, county, school, district, municipality, or other political subdivision of the state.

Grease trap. A receptacle designed and constructed to intercept and prevent the passage of greasy, fatty liquid, semi-liquid, and/or solid wastes into the sanitary sewer system to which the receptacle is directly or indirectly connected. It may also be referred to as a grease interceptor or separator.

Grit trap. A receptacle designed and constructed to intercept and prevent the passage of petroleum-based products, used oils, flammable substances, vehicle grease wastes and solids such as sand and grit into the sanitary sewer system, to which the receptacle is directly or indirectly connected. It may also be referred to as an oil and sand interceptor.

Harmful Quantity. The amount of any substance that will cause pollution in the municipal separate storm sewer system, surface water in the state or the waters of the U.S.

Hazardous Substance. Any substance listed in Table 302.4 of 40 CFR Part 302.

Hazardous Waste. Any liquid, semi liquid or solid waste (or combination of wastes), which because of its quantity, concentration, physical, chemical or infectious characteristics may:

- (A) Have any of the following characteristics: Toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, explosive, or otherwise capable of causing substantial personal injury or illness.
- (B) Pose a substantial hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed, and is identified or listed as a hazardous waste as defined by the Texas Solid Waste Disposal Act or defined under 40 CFR Part 261.3.

Hazardous Waste Treatment, Disposal, and Recovery Facility. All contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

Household Hazardous Waste (HHW). Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b) (1), would be classified as a hazardous waste under 40 CFR Part 261.

Illicit Discharge. Any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except those discharges that are allowed under this ordinance, or pursuant to a separate authorization from the state or EPA.

Industrial Activity. Manufacturing, processing, material storage, and waste material disposal areas (and similar areas where stormwater can contact industrial pollutants related to the industrial activity) at an industrial facility described by the TPDES Multi-Sector Industrial General Permit, TXR050000, or by another TCEQ or TPDES permit.

Industrial Waste. Any waste resulting from any process of industry, manufacturing, trade or business, or from the development of any natural resources, or any mixture of the waste with water or domestic sewage that is distinct from normal domestic sewage.

Landfilling. The deposition of soil and other inert materials on the land to raise its grade and/or smooth its features.

Milligrams per liter (mg/L). A metric weight-to-volume ratio; the milligrams per liter value multiplied by the factor 8.345 is equivalent to pounds per million gallons of water.

Motor Vehicle Fluid. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, petroleum products such as gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal Landfill. An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Commission on Environmental Quality).

Municipal Separate Storm Sewer System (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, pavement, catch basins, curbs, gutters, ditches, man-made channels, or storm drains and piping): (i) owned and operated by the United States, a state, city, town, county or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state; (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR§122.2.

Municipal Solid Waste. Solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

NPDES General Permit for Stormwater Discharges Associated with Industrial Activity or Baseline Industrial General Permit. The Baseline Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

NPDES General Permit for Stormwater Discharges from Construction Sites or Construction General Permit. The Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.

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

NPDES Stormwater Multi-Sector General Permit for Industrial Activities or Multi-Sector General Permit. The Multi-Sector General Permit for stormwater discharges associated with specified industrial activities issued by EPA, and published in Volume 60 of the Federal Register at page 51109 on September 29, 1995, and any subsequent modifications or amendments thereto.

Nonpoint Source. Any source of any discharge of a pollutant that is not a “point source.”

Notice of Change (NOC). The Notice of Change that is required by the Construction General Permit, the Multi-Sector General Permit or the Municipal Separate Storm Sewer General Permit.

Notice of Intent (NOI). The Notice of Intent that is required by the Construction General Permit, the Multi-Sector General Permit, or the Municipal Separate Storm Sewer General Permit.

Notice of Termination (NOT). The Notice of Termination that is required by the Construction General Permit, the Multi-Sector General Permit, or the Municipal Separate Storm Sewer General Permit.

Oil. Any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil, vegetable or animal, or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

Operator. The person or persons associated with a large or small construction activity or an industrial activity that is either a primary or secondary operator as defined below:

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

- (a) have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (b) have the day-to-day operational control over those activities at a construction site that are necessary to ensure compliance with a stormwater pollution prevention plan (SWPPP) for the site or other permit conditions (e.g. they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

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

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

Pesticide. A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code).

Petroleum Product. A product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and # 1 and # 2 diesel.

Petroleum Storage Tank (PST). Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting above or underground pipes. For the purposes of this ordinance, storage of any motor vehicle fluid is also included.

pH. The logarithm (base 10) of the reciprocal of the hydrogen ion concentration, a measure of the acidity or alkalinity of a solution.

Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant. Dredged spoil, dirt, mud, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, chemical sludge, medical waste, biological materials, radioactive materials, hazardous waste, heat, wrecked or discarded equipment, rock, sand, cellar dirt, yard waste, animal waste, and industrial, municipal, and agricultural waste discharged into water, and any other similar material or substance characterized by state or federal law or EPA regulation as a pollutant. The term “pollutant” does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pasture land, and farmland.

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

Publicly Owned Treatment Works (POTW). A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes lift stations, sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant.

Public Construction Project. Any construction performed or funded in whole or part, separately or collectively, by the federal, state, county, or local government, including the City of Carrollton.

Qualified Personnel. Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the municipal separate storm sewer system (MS4), surface water in the state or the waters of the U.S. This includes disposal to any surface where a pollutant or its residual, with surface water or stormwater or groundwater, may flow, wash, or leach into the MS4.

Reportable Quantity.

- (A) For a hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; and
- (B) For an extremely hazardous substance, the quantity established in 40 CFR Part 355 and listed in Appendix A thereto.

Rubbish. Nonputrescible solid wastes, excluding ashes, which consist of:

- (A) Combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard waste, leaves, and similar materials; and
- (B) Noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Sanitary Sewer (or Sewer). The system of pipes, conduits, and other conveyances which carry industrial waste, domestic sewage, or a combination of both, from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant utilized by the City and to which stormwater, surface water, and groundwater are not intentionally admitted.

Sanitary Sewage or Sewage. The domestic wastewater and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant utilized by the City for treatment.

Septic Tank Waste (or Septage). Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid Waste. Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.

Spill. The accidental or intentional loss or unauthorized discharge of any waste or raw material.

State. The State of Texas.

Storm sewer or storm drain. A drainage system which carries stormwater and surface waters and drainage but excludes sewage and unpermitted industrial wastes and is not part of a publicly owned treatment works (POTW) as defined by 40 CFR 122.2.

Stormwater. Rain or stormwater runoff, including snowmelt runoff, surface runoff, and drainage runoff resulting from precipitation that reaches the surface of the earth during a storm event.

Stormwater Discharge Associated with Industrial Activity. 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 plant which is within one of the categories of facilities listed in 40 CFR § 122.26 (b) (14), and which is not excluded from EPA's definition of the same term.

Stormwater Pollution Prevention Plan (SWPPP). A plan required by either the Construction General Permit, the Baseline Industrial General Permit, or the Multi-Sector General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity at the facility.

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 of 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, 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.

To discharge. To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit or suffer any of these acts or omissions.

Total Suspended Solids (TSS). Any solids found in water that can be removed from a solution by filtration. Origins of suspended solids can be man-made wastes or natural sources such as silt or sediment.

TPDES permit. A Texas Pollutant Discharge Elimination System permit issued by the State of Texas under authority from EPA pursuant to 33 USC § 1342 (b) that authorizes the discharge of pollutants to surface water in the state or the waters of the U. S., whether the permit is applicable on an individual, group, or general area-wide basis.

Trap. A device designed to skim, settle, or otherwise remove oil, grease, sand, flammable wastes or other harmful substances from discharges into the sanitary sewer system. The meaning is the same as the term interceptor in the *International Plumbing Code*.

Used Oil or Used Motor Oil. Any oil that has been refined from crude oil or synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

Waste. Unwanted by-products, rejected, unutilized, or superfluous substances in liquid, gaseous, or solid form resulting from domestic, agricultural, or industrial activities.

Wastewater. Both liquid and water-carried pollutants, e.g., industrial wastes and sewage, from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, together with inflow/infiltration that may be present, whether treated or untreated, which are contributed to the POTW.

Water Quality Standard. The designation of a body segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

Waters of the United States. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of “waters of the United States” at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

Watercourse. A natural or man-made channel in which a flow of water occurs, either continuously or intermittently.

Wetland. An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard Waste. Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

ARTICLE II. GENERAL PROHIBITIONS

Sec. 173.03. - GENERAL PROHIBITIONS

- (A) 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.
- (B) It is an affirmative defense to any enforcement action for violation of Section 173.03 (A), upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges:
 - (1) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
 - (2) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;

- (3) Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;
 - (4) Diverted stream flows;
 - (5) Rising ground waters and springs;
 - (6) Uncontaminated ground water infiltration;
 - (7) Uncontaminated pumped ground water;
 - (8) Foundation and footing drains;
 - (9) Air conditioning condensation;
 - (10) Water from crawl space pumps;
 - (11) Individual residential vehicle washing;
 - (12) Flows from wetlands and riparian habitats;
 - (13) 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;
 - (14) 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);
 - (15) Other allowable non-stormwater discharges listed in 40 CFR §122.26(d)(2)(iv)(B)(1);
 - (16) Non-stormwater discharges specifically listed in the TPDES Multi-Sector General Permit (MSGP) or the TPDES Construction General Permit (CGP);
 - (17) Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and,
 - (18) Other similar occasional incidental non-stormwater discharges, unless the TCEQ develops permits or regulations addressing these discharges.
- (C) No affirmative defense shall be available under Section 173.03 (B) if
- (1) the discharge or flow in question has been determined by the DCO to be a source of a pollutant or pollutants to the MS4, or to the surface water in the state or the waters of the U.S.;
 - (2) written notice of such determination has been provided to the discharger; and

- (3) the discharge has continued after the expiration of the time given in the notice to cease the discharge.
- (D) The burden of proof that a discharge was composed entirely of one or more of the categories in Section 173.03 (B) and that it was not a source of a pollutant or pollutants to the MS4, 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.
- (E) No person may dispose of, release, introduce or cause to be introduced into the MS4 any harmful quantity of any substance.

ARTICLE III. SPECIFIC PROHIBITIONS AND REQUIREMENTS, COSMETIC CLEANING AND COMMERCIAL MOBILE CLEANING OPERATIONS, REGULATION OF PESTICIDES, HERBICIDES AND FERTILIZERS, AND USED OIL REGULATION

Sec. 173.04. – Specific prohibitions and Requirements

- (A) The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Section 173.03.
- (B) No person may dispose of, release, introduce, or cause to be introduced into the MS4 any discharge that would result in or contribute to a violation of a water quality standard, the TPDES permit issued to the City, or any state-issued discharge permit for discharges from its MS4.
- (C) No person may dispose of, release, discharge, or otherwise introduce, cause, suffer, allow, or permit to be introduced any of the following substances into or that may reach the MS4 or into or adjacent to any water body:
 - (1) 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;
 - (2) Industrial or regulated waste;
 - (3) Hazardous waste, including household hazardous waste;
 - (4) 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.
 - (5) Domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - (6) Free or emulsified fats, waxes, greases, or oils;
 - (7) Garbage, rubbish, yard waste, refuse, or other floatable material;

- (8) Wastewater from a carwash facility or operation (including fundraisers); from any vehicle washing, cleaning, power washing, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment;
- (9) Wastewater from the washing, cleaning, deicing, or other maintenance of aircraft;
- (10) Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance, including any oils, grime, grit, dirt, or substances resulting from the cleaning, or that is at a temperature that has been elevated by induced heating;
- (11) Wastewater from floor, rug, carpet, upholstery, or drapery cleaning;
- (12) Wastewater from power washing, or any other street and pavement cleaning method that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance, or that is at a temperature that has been elevated by induced heating; or any wastewater from the washdown or other cleaning of any pavement or surface where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, or contains any oils, grime, grit, or dirt, unless all harmful quantities of the cleaning agents and all substances released by the cleaning agents have been previously removed, and approved by the DCO for discharge to the MS4 rather than the sanitary sewer;
- (13) Effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
- (14) Filter backwash from any water treatment system, contact or non-contact cooling water, or unpermitted condensate;
- (15) 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;
- (16) Runoff or washdown water from any animal pen or yard, kennel, or pet, fowl, or livestock containment area;
- (17) Ready-mixed concrete, mortar, ceramic, or asphalt base material, hydromulch material, or any wastewater or substance from the cleaning of any vehicle or equipment containing, or used in transporting or applying, such material;
- (18) Discharges from water line disinfection by superchlorination or other means if the total residual of the disinfectant is higher than EPA's Primary Drinking Water Standards Maximum Residual Disinfectant Level Goal (MRDLG) or may adversely affect aquatic life;
- (19) Wastewater from the testing of fire protection systems;

- (20) Water from a water curtain in a spray room used for painting vehicles or equipment;
 - (21) Contaminated runoff from a vehicle salvage yard or any other facility classified as Standard Industrial Classification 5015 or 5093;
 - (22) Solid or liquid substances which may cause obstruction, damage, block or clog the MS4, such as, but not limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues, bulk solids, waste paper, or floatables;
 - (23) Non-stormwater having a pH less than six (6.0), greater than nine point zero (9.0), or any non-stormwater having any other corrosive property capable of causing damage or hazard to the stormwater system;
 - (24) Releases from a petroleum storage tank (PST) or chemical storage tank, or any leachate or runoff from soil contaminated by a leaking PST or chemical storage tank, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST or chemical storage tank release;
 - (25) Noxious or malodorous liquids, gases or solids which either singly or by interaction with other substances is sufficient to prevent entry into the MS4 for maintenance and repair;
 - (26) Paint or paint-related materials;
 - (27) No person may use or store any solid waste, hazardous waste or regulated waste in a manner that the material could enter the MS4.
- (D) No person may dispose of, release, introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, 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.
- (E) 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.
- (F) No person may dispose of, deposit or allow to accumulate wastewater, liquid waste or pollutants on public or private property.

Sec. 173.05. – Regulation of Pesticides, Herbicides and Fertilizers and Cosmetic Cleaning and Commercial Mobile cleaning Operations.

- (A) Regulation of pesticides, herbicides, and fertilizers. No person may:

- (1) No person may use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.
 - (2) No person may use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of pesticide, herbicide, or fertilizer to enter the MS4 or surface water in the state or the waters of the U.S.
 - (3) No person may dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide or fertilizer to enter the MS4 or surface water in the state or the waters of the U.S.
 - (4) A license, permit, registration, certification, or evidence of financial responsibility required by state or federal law for the sale, distribution, application, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must be presented to the DCO for examination upon request.
- (B) Regulation of Cosmetic Cleaning and Commercial Mobile Cleaning Operations.
- (1) Cosmetic cleaning or a mobile cleaning operation may not discharge any wastewater or contaminated water from mobile cleaning operations to the MS4. All wastewater or contaminated water from these operations must be contained, collected, and disposed of properly.
 - (2) Contaminated water from mobile cleaning operations includes, but is not limited to:
 - (a) Water containing soap, detergent, degreaser, solvent or other harmful cleaning substances, including biodegradable products;
 - (b) Any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of the released material have been previously removed; or,
 - (c) Wastewater with excessive amounts of sediments; and,
 - (d) Wastewater from power washing.
 - (3) Best management practices must be used to the maximum extent practicable to prevent contaminants from entering the MS4. BMPs include, but are not limited to:
 - (a) Picking up litter and debris, sweeping up accumulated sediment and dirt, and sealing the waste in trash bags and placing the bags in a trash receptacle.

- (b) Removing oil and grease spots, leaks, or spills with a dry absorbent, sweeping up the absorbent, and disposing of it in accordance with state or federal requirements.
 - (c) Blocking storm drain inlets or flows of drainage to contain wastewater on the property.
- (4) All wastewater must be disposed of in an approved manner. Discharges to the sanitary sewer system must meet the requirements of the Wastewater Pretreatment Ordinance, Ordinance 2768, specifically Sections 171.04, 171.06, and 171.07. Discharges to the sanitary sewer must be filtered using a 200 Mesh screen or smaller to remove silt, sand, sludge, and debris. Wastewater containing hydrocarbons must also be filtered through an oil absorbent filter or oil/water separator.
- (5) Wastewater may also be hauled off-site and disposed of by an environmental waste company. Disposal in this method must meet the requirements of the city's Liquid Waste Ordinance, Ordinance 172."

Sec. 173.06. – Used Oil Regulation

- (A) No person may:
- (1) Discharge used oil into the MS4, a sanitary sewer, drainage system, septic tank, surface water, groundwater, water course, or surface that will drain to any of these;
 - (2) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill; or,
 - (3) Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

ARTICLE IV. STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

Sec. 173.07. - General requirements.

- (A) All operators meeting the definition of a small or large construction site must comply with all terms and conditions of the TPDES Construction General Permit. All operators of construction sites, regardless of size or TPDES permit requirements, must use best management practices to control and reduce the discharge to the MS4 and to the surface water in the State or the waters of the U.S., of sediment, silt, earth, soil, and other material associated with clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Such best management practices may include, but not be limited to, the following measures:
- (1) Ensuring that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Stabilization

measures may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures;

- (2) Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the maximum extent practicable;
- (3) Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;
- (4) Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4, surface water in the state or the waters of the U.S.;
- (5) General good house-keeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;
- (6) Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;
- (7) Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and
- (8) Installation of structural measures during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Structural measures may include, but not be limited to, the following: stormwater detention structures (including wet ponds); stormwater retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site, and for a period of two years after final acceptance by the City, unless the area is disturbed by new owners.
- (9) The current owner(s) of the property is responsible for the maintenance of the permanent stabilization structures listed in this section to ensure proper operation, water quality protection and flood control, and
- (10) Installation and maintenance of erosion and sediment controls.

- (B) Qualified personnel (provided by the operator of the construction site) must inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within 24 hours of the end of a storm event that is 0.5 inches or greater. Inspections may be performed once every seven calendar days, on a specifically defined day, regardless of whether or not there has been a rainfall event. All erosion and sediment control measures and other identified best management practices must be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices must be modified as appropriate, and as soon as is practicable.
- (C) Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in this Section 173.07.
- (D) Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure.

Sec. 173.08. – One acre or greater land disturbances

(A) All operators of sites of construction activity, including clearing, grading, excavation, demolitions, and landfilling activities, that result in the disturbance of one or more acres of total land area, or that are part of a larger common plan of development or sale within which one or more acres of total land area are disturbed, and who are required to obtain a TPDES permit for stormwater discharges associated with construction activity, must comply with the following requirements (in addition to those in Section 173.07):

- (1) All operators must obtain coverage for stormwater discharges from a construction site under the TPDES General Permit, must post a signed copy of its Construction Site Notice (CSN) on the construction site prior to the commencement of construction activities. The notices required to be posted will depend on the size of the construction project and is explained in the TPDES General Permit for construction activities. The CSN must be posted in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities. For large construction sites, a signed copy of the NOI and CSN from all operators must be submitted to the DCO seven (7) days prior to the commencement of construction activities. For small construction sites, a signed copy of the CSN from all operators must be submitted to the DCO at least two (2) days prior to the commencement of construction activities.
- (2) A Stormwater Pollution Prevention Plan (SWPPP) must be prepared and implemented in accordance with the requirements of the TPDES permit issued for stormwater discharges from the construction site, and with any additional requirements imposed by or under this ordinance and any other city ordinance.

- (3) The SWPPP must be completed and implemented prior to the beginning of construction activities. The SWPPP must be updated and modified as required by the TPDES permit and this ordinance.
- (4) The operator must submit the SWPPP and any modifications thereto to the DCO for review prior to commencement of construction activity at the site.
- (5) If, upon the DCO's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the DCO may conduct, the DCO determines that the SWPPP does not comply with the requirements of the TPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this ordinance, the DCO may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the DCO determines that the SWPPP is not being fully implemented, the DCO may similarly issue an order prohibiting the continuation of any construction activity at the site.
- (6) Upon review of the SWPPP and any site inspection that is conducted, the DCO may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the TPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this ordinance. Also, if at any time the DCO determines that the SWPPP is not being fully implemented, the DCO may similarly deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.
- (7) All operators identified in the SWPPP must sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

I certify under penalty of law that I understand the terms and conditions of the Texas Pollutant Discharge Elimination System (TPDES) permit and any modification by the State of Texas that authorizes the stormwater discharges associated with industrial activity from the construction site identified as part of this certification, with the Stormwater Pollution Prevention Ordinance of the City of Carrollton, and with those provisions of the Stormwater Pollution Prevention Plan (SWPPP) for the construction site for which I am responsible.

The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

- (8) The SWPPP and the certifications of all operators required by Section 173.08 (7), and with any modifications attached, must be retained at the construction site from the date of commencement of construction through the date of final stabilization, and the required Notice of Termination (NOT) has been submitted in accordance with the TPDES permit.

- (9) The operator must make a copy of the SWPPP and any modification thereto available to the DCO at the construction site upon request.
- (10) The DCO may notify the operator at any time that the SWPPP does not meet the requirements of the TPDES permit issued for stormwater discharges from the construction site, or any additional requirement imposed by or under this ordinance. Such notification must identify those provisions of the permit or ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) calendar days of such notification from the DCO (or as otherwise provided by the DCO), the operator must make the required changes to the SWPPP and submit to the DCO a written certification that the requested modifications have been made.
- (11) The operator must modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4, or surface water in the state, or the waters of the U. S., or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in achieving the general objective of controlling pollutants in stormwater discharges associated with construction activity.
- (12) Qualified personnel (provided by the operator) must inspect at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater: disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Inspections may be performed once every seven calendar days, on a specifically defined day, regardless of whether or not there has been a rainfall event. Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures and best management practices must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters and the MS4. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking.
- (13) All protective measures in the SWPPP must be maintained in effective operating condition. If, through inspections or other means, the operator determines that BMPs are not operating effectively, then the operator shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls, prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWPPP and maintenance must be scheduled and accomplished as soon as practicable, but in no case later than seven (7) calendar days following the inspection. Erosion and sediment controls that have been intentionally disabled, run over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.

- (14) A report summarizing the scope of any inspection required by Section 173.08 (12), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with appropriate plan revisions must be made and retained as part of the SWPPP. The report must identify any incidence of noncompliance; or if the report does not identify any incidence of noncompliance, the report must contain a certification that the facility is in compliance with the SWPPP, the TPDES permit, and this ordinance. The report must be signed by the person responsible for making it.
 - (15) The operator must retain copies of any SWPPP and all reports required by this ordinance or by the TPDES permit for the site, for a period of at least three years from the date that the site is finally stabilized, and the required CSN or Notice of Termination (NOT) has been submitted. Such plans, reports and records must be made available to the DCO upon request.
 - (16) Where a site has been finally stabilized and all stormwater discharges from construction activities that are authorized by this ordinance and by the TPDES permit are eliminated, or where the operator of all stormwater discharges from the construction site changes, the operator of the construction site must submit to the DCO a copy of the CSN or NOT as required by the TPDES Construction General Permit.
 - (17) The City may withhold an occupancy permit for any premises constructed on the site until such certification of final stabilization has been filed and the DCO has determined, following any appropriate inspection, that final stabilization has, in fact, occurred, that any required permanent structural controls have been completed and all temporary controls have been removed.
- (B) Post Construction Requirements.
- (1) The owner or operator must ensure all temporary control measures for erosion control or other BMPs are removed once final stabilization has been achieved.
 - (2) The owner or operator must ensure all long-term operation and maintenance of post-construction stormwater runoff control mechanisms, such as detention and retention basins, dry wells, and other measures.

Article V. STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY.

Sec. 173.09. - Stormwater Discharges Associated with Industrial Activity.

- (A) All operators of municipal landfills; hazardous waste treatment, disposal, and recovery facilities; industrial facilities that are subject to Section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023; and industrial facilities that are sources of stormwater discharges associated with an industrial activity as specified in the NPDES or the TPDES Multi-Sector General Permit, or that the DCO determines are contributing a substantial pollutant loading to the MS4, must comply with the following requirements:

- (1) All operators required to obtain industrial stormwater coverage must obtain the appropriate authorization as specified in the NPDES or TPDES Multi-Sector General Permit. Any operator who intends to obtain coverage for stormwater discharges associated with industrial activity under the TPDES Stormwater Multi-Sector General Permit for Industrial Activities (Multi-Sector General Permit) or an NPDES permit for oil and gas industrial activities, must submit a signed copy of his/her Notice of Intent (NOI) to the DCO at least fifteen (15) calendar days prior to the commencement of the industrial activity at the facility. For stormwater discharges associated with industrial activity where the operator changes, a copy of the required NOI must be submitted at least two (2) calendar days prior to the change. Facilities that qualify for the No Exposure Certification (NEC) must submit copies of the certification to the DCO.
- (2) A Stormwater Pollution Prevention Plan (SWPPP) must be prepared and implemented in accordance with the requirements of the appropriate NPDES or TPDES permit issued for stormwater discharges from the industrial facility, and with any additional requirement imposed by or under this ordinance and any other city ordinance.
- (3) The SWPPP must be completed prior to the submittal of the NOI to the DCO and, for a new industrial operation, prior to the commencement of the industrial activity at the facility. The SWPPP must be updated and modified as required by the appropriate NPDES or TPDES permit and this ordinance.
- (4) The DCO may require the operator to submit the SWPPP, and any modifications thereto, to the DCO for review. Such submittal and review of the SWPPP may be required by the DCO prior to commencement of or during industrial activity at the facility.
- (5) Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any application for a permit, or any other City approval necessary to commence or continue the operation of the facility, on the grounds that the SWPPP does not comply with the requirements of the appropriate NPDES or TPDES permit issued for stormwater discharges from the industrial facility, or any additional requirement imposed by or under this ordinance. Also, if at any time the DCO determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any application for a permit, or any other City approval necessary to commence or continue operation of the industrial facility.
- (6) The SWPPP, with any modifications attached, must be retained at the industrial site from the date of commencement of operations and for 3 years after all stormwater discharges associated with industrial activity at the facility are eliminated, and the required Notice of Termination (NOT) has been submitted in accordance with the appropriate NPDES or TPDES permit.
- (7) The operator must make a copy of the SWPPP and any modification thereto available to the DCO upon request.
- (8) The DCO may notify the operator at any time that the SWPPP does not meet the requirements of the appropriate NPDES or TPDES permit issued for stormwater

discharges from the industrial facility, or any additional requirement imposed by or under this ordinance. Such notification must identify those provisions of the permit or ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) calendar days of such notification from the DCO (or as otherwise provided by the DCO), the operator must make the required changes to the SWPPP and submit to the DCO a written certification that the requested modifications have been made.

- (9) The operator must modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4, surface water in the State, or the waters of the U.S., or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges associated with industrial activity.
- (10) Qualified personnel (provided by the operator) must conduct comprehensive site compliance evaluations including, but not limited to, inspection of equipment and areas of the facility specified in the SWPPP as required by the appropriate NPDES or TPDES permit at intervals of no less than once per year. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of the inspection must be maintained and made available to the DCO upon request.
- (11) Based on the results of the compliance evaluation, the description of potential pollutant sources and the pollution prevention measures and controls identified in the SWPPP must be modified as appropriate, but in no case later than fifteen (15) calendar days following the inspection. Such modifications must provide for timely implementation of any changes to the SWPPP within twelve (12) weeks after the compliance evaluation.
- (12) A report summarizing the scope of any site evaluation required by the appropriate NPDES or TPDES permit, and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with appropriate plan revisions must be made and retained as part of the SWPPP for at least three years after all stormwater discharges from the facility are eliminated and the required NOT has been submitted. The report must identify any incidence of noncompliance; or if the report does not identify any incidence of noncompliance, the report must contain a certification that the facility is in compliance with the SWPPP, the appropriate NPDES or TPDES permit, and this ordinance. The report must be signed by the person responsible for making it.
- (13) If the industrial facility is required by the appropriate NPDES or TPDES permit to conduct monitoring, the required monitoring must be conducted, and records of the monitoring results must be retained at the facility and made available to the DCO upon request.
- (14) By written notice, the DCO may require any industrial facility identified in accordance with this, Section 173.09, to implement a monitoring program, at the industrial

facility's expense, that includes the submission of quantitative data on the following constituents:

- (a) any pollutants limited in effluent guidelines subcategories; where applicable;
- (b) any pollutant listed in an existing NPDES or TPDES permit for the facility;
- (c) oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen; and
- (d) information on discharges required under 40 CFR 122.21 (g) (7) (ii), (iii) and (iv).

Written reports of any of such monitoring results must be retained at the facility and made available to the DCO upon request.

- (15) By written notice, the DCO may require any industrial facility identified in this Section 173.09 to conduct semi-annual or annual monitoring of stormwater discharges, or the DCO may specify an alternative monitoring frequency and/or specify additional parameters to be analyzed. Written reports of any of such monitoring results must be retained at the facility and made available to the DCO upon request.
- (16) The operator must retain copies of any SWPPP and all reports and records required by this ordinance or by the appropriate NPDES or TPDES permit for the facility, for a period of at least three years after stormwater discharges associated with industrial activity at the facility are eliminated, or that operator is no longer operating the facility, and the required NOT has been submitted. Such plans, reports and records must be made available to the DCO upon request.
- (17) Upon the effective date of this ordinance, any discharge composed of coal pile runoff must comply with the following limitations:
 - (a) No discharge may exceed a maximum concentration for any time of 50 mg/l total suspended solids, nor may such runoff be diluted with stormwater or other flows in order to meet this limitation;
 - (b) The pH of such discharges must be within the range of 6.0-9.0.

Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a ten-year, 24-hour rainfall event is not subject to the 50 mg/l limitation for total suspended solids.

- (18) No stormwater discharge associated with industrial activity may contain any of the following hazardous metals in a concentration that exceeds either the maximum allowable concentrations (in mg/l) listed below for each metal or the

maximum concentrations for each metal allowed under current state law, whichever limit is more stringent:

<u>Metal</u>	<u>Daily Average</u>	<u>Daily Composite</u>	<u>Daily Maximum</u>
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

- (19) When all stormwater discharges associated with industrial activity that are authorized by this ordinance and by the NPDES or TPDES permit for those discharges from industrial activities are eliminated, or when the operator of stormwater discharges associated with industrial activity at a facility changes, the operator of the facility must submit to the DCO a NOT that includes the information required for NOTs by the appropriate NPDES or TPDES permit.
- (20) The operator must implement proper waste disposal and waste management techniques including installing and maintaining covered receptacles for rubbish, garbage, and recyclables to assure that such waste materials are not blown or carried by rainfall runoff from the site.
- (21) Any owner of a facility with a stormwater discharge associated with industrial activity to which Section 173.09 (A) applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with the best management practices (BMPs) required in the SWPPP for the facility and for compliance with the effluent limitations for coal pile runoff and hazardous metals specified in Sections 173.09 (A) (17) and (18) above.
- (22) Upon request by the DCO, all owners and operators of any facility that experience a problem complying with the requirements of this ordinance, or any applicable NPDES or TPDES permit issued for stormwater discharges from the industrial facility, must consult with the DCO and any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, at its discretion, report the noncompliance to EPA and/or the State, and/or the City may itself undertake any enforcement action authorized in this ordinance. Exercise of the City's option for consultation under this Section 173.09 (C) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

Article VI. COMPLIANCE MONITORING.

Sec. 173.10. - Compliance Inspection and Sampling; Right of Entry.

- (A) The DCO shall have the right to enter the premises of any person discharging stormwater to the municipal separate storm sewer system (MS4), surface water in the state, or the waters of the U.S. to determine if the discharger is complying with all requirements of this ordinance, and with any state or federal discharge permit, limitation, or requirement. Dischargers must allow the DCO ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.
- (B) Dischargers must make available to the DCO upon request, and provide copies upon request of any SWPPP, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, NOIs, and any other records, reports, and other documents related to compliance with this ordinance and with any state or federal discharge permit.
- (C) Where a discharger has security measures in force that requires proper identification and clearance before entry into its premises, the discharger must make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the DCO will be permitted to enter without delay for the purposes of performing his/her responsibilities.
- (D) The DCO shall have the right to install on the discharger's property, or require installation of, such devices as are necessary to conduct sampling, monitoring, and/or metering of the discharger's operations. Any tampering with such devices or interference with their activities shall be a violation of this ordinance.
- (E) The DCO may require any discharger to the MS4, surface water in the state, or the waters of the U.S. to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges, or activities which may impact the discharges, and may specify the frequency and parameters of any such required monitoring.
- (F) The DCO may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment must be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality must be calibrated to ensure their accuracy. To assure the validity of required data gathering, the DCO may specify that approved components be used, such as, but not limited to, equipment, methodologies, quality control and services.
- (G) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled must be promptly removed by the discharger at the written or verbal request of the DCO and may not be replaced. The costs of clearing such access will be borne by the discharger.
- (H) Unreasonable delays in allowing the DCO access to any part of the discharger's premises are a violation of this ordinance. Any delay of access of more than five minutes during reasonable business hours for routine inspection and sampling, or of more than fifteen minutes

at other times for the purpose of investigating spills or discharges that require immediate abatement, shall be considered obstruction of this Section 173.10.

Sec. 173.11. - Search Warrants

If the DCO has been refused access to any part of the premises from which stormwater is discharged, and (a) he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance or any state or federal discharge permit, limitation, or requirement, or (b) that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any order issued hereunder, or (c) to protect the overall public health, safety, and welfare of the community, then the DCO may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this section, the DCO of Environmental Services, and his/her duly authorized representatives are declared to be “health officers,” as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

- (A) A person commits an offense if he/she:
 - (1) lawfully consents to the DCO’s entry into a facility that discharges stormwater, but then knowingly obstructs or hinders the DCO in accessing the facility for the lawful purposes of inspection or sampling; or,
 - (2) knowingly obstructs or hinders the DCO in accessing, for the lawful purposes of inspection or sampling pursuant to a lawfully issued administrative search warrant, a facility that discharges stormwater.
- (B) Lawful inspection and sampling shall include, but not be limited to:
 - (1) access to all parts of a facility;
 - (2) providing for the review and copying of all records that may indicate compliance with a SWPPP or other documents relating to this ordinance, or the nature of substances used, stored or transported, and how they may be disposed of; and
 - (3) allowing photographic and other recorded evidence, including analog and digital formats. The DCO will maintain any such information as confidential, upon request, to the full extent allowed by law.

REPORTS OF VIOLATIONS

Sec. 173.12. - Reports of Violation

- (A) Citizens may, and are encouraged to report any spills, releases, illicit connections, or any other instances of anyone discharging pollutants into the MS4, surface water in the state, or the waters of the U.S., and any other violation of this ordinance to the DCO.
- (B) The DCO will keep the identity of the reporting citizen confidential, and upon request, inform the reporting citizen of any action undertaken by the City in response to the citizen’s report.

- (C) The operator and the owner of any commercial or industrial activity must report any spills, releases, illicit connections, or other instances where pollutants are discharged into the MS4, surface water in the state, or the waters of the U.S. and any other violation of this ordinance for which they are responsible to the City in accordance with the following:
- (1) A hazardous and/or toxic material spill or release to any surface must be immediately reported to the Carrollton Fire Department at 911 and Environmental Services.
 - (2) Other instances where pollutants are discharged into the MS4, surface water in the state, or the waters of the U.S. by spill, release, illicit connections or other means must be reported to the Carrollton Fire Department at 911 and Environmental Services, available after business hours through 911.
- (D) Both the operator and the owner of any commercial or industrial activity, where a spill or a release of a hazardous/toxic material or a substance of a polluting nature has occurred, are responsible for proper notification of the incident to the City and the appropriate county, state, and federal agency. The reporting of a spill/release to the City does not release or remove any obligation of the owner or operator from reporting to appropriate county, state and federal agencies.

These officials may include, but not be limited to:

1. The City of Carrollton's Fire Department and Environmental Services
2. National Response Center
3. Texas Commission on Environmental Quality
4. U.S. Environmental Protection Agency
5. Dallas County Fire Marshal's Office on behalf of the Dallas County Local Emergency Planning Committee (LEPC)
6. Texas Department of Parks and Wildlife
7. U.S. Fish & Wildlife Service

Sec. 173.13. - Discharge reporting and cleanup

- (A) A discharger of a reportable quantity of a hazardous or extremely hazardous substance to an outside surface or into the MS4, surface water in the state, or the waters of the U.S., must telephone 911 and notify the Carrollton Fire Department and Environmental Services immediately after becoming aware of the discharge. A discharger of any of the following substances into the MS4, surface water in the state, or the waters of the U.S. must telephone and notify the DCO concerning the incident within 1 hour after its occurrence, or the first knowledge of its occurrence:
- (1) An amount of oil that either:
 - (a) Violates applicable water quality standards; or
 - (b) Causes a film or sheen upon, or discoloration of, the surface of the water or an adjoining shoreline, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline.

- (2) A harmful quantity of any other pollutant that is not a hazardous or extremely hazardous substance.
- (B) The notification required by Section 173.13 (A) must include all of the following information:
- (1) The identity or chemical name of the substance released and whether the substance is an extremely hazardous substance.
 - (2) The exact location of the discharge, including any known name of the waters involved or threatened and any other environmental media affected.
 - (3) The time and duration of the discharge at the moment of notification.
 - (4) An estimate of the quantity and concentration, if known, of the substance discharged.
 - (5) The source of the discharge.
 - (6) Any known or anticipated health risks associated with the discharge and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals.
 - (7) Precautions that should be taken as a result of the discharge.
 - (8) Steps that have been taken to contain or clean up the discharged substance and related material and to minimize the impact of the discharge.
 - (9) The name and telephone number of each person to be contacted for further information.
- (C) Within 10 days after a discharge under Section 173.13 (A), the discharger must, unless expressly waived in writing by the DCO, submit a written report containing each item of information required by Section 173.13 (B), as well as the following additional information:
- (1) The ultimate duration, concentration, and quantity of the discharge.
 - (2) All actions taken to respond to, contain, and clean up the discharged substances, and all precautions taken to minimize the impact of the discharge.
 - (3) Any known or anticipated acute or chronic health risks associated with the discharge.
 - (4) Where appropriate, advice regarding medical attention necessary for exposed individuals.
 - (5) The identity of each governmental entity and private sector representative responding to the discharge.
 - (6) Measures taken or to be taken by the discharger to prevent similar future occurrences.

- (D) The notifications required by Sections 173.13 (B) and 173.13 (C) do not relieve the discharger from any expense, loss, damage, or other liability that may be incurred as a result of the discharge, including any liability for damage to the city, to natural resources, or to any other person or property. The notifications also do not relieve the discharger from any fine, penalty, or other liability that may be imposed under this ordinance or under state or federal law.
- (E) A release report required by a state or federal regulatory authority that contains the information described in Sections 173.13 (B) and 173.13 (C) meets the reporting requirements of Section 173.13 (C), upon submittal of the report to the DCO.
- (F) The owner or operator of any facility, vehicle, or other source responsible for a discharge described in Section 173.13 (A) must:
 - (1) Comply with all state, federal, and local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the discharge; and
 - (2) Reimburse the city for any costs incurred by the city in responding to the discharge.
- (G) A discharger commits an offense if he/she:
 - (1) Fails or refuses to report the discharge within the time required by Section 173.13 (A) after becoming aware of the discharge;
 - (2) Knowingly provides false or incorrect information in a notification or report required under this section; or
 - (3) Fails or refuses to take the necessary action to clean up pollution or damage to the MS4, the surface water in the state or waters of the U.S., or to other property, that is caused by the discharge.
 - (4) Fails or refuses to provide driver's license or other identity information when requested by the DCO.

ADMINISTRATIVE ENFORCEMENT REMEDIES

Sec. 173.14. – Warning notice.

When the DCO finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the DCO may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately cease any offending discharge. Resolution of the matter in response to the warning notice in no way relieves the discharger of liability for any violations occurring before or after receipt of the warning notice. Issuance of a warning notice shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

Sec. 173.15. - Notification of Violation.

- (A) When the DCO finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the DCO may serve upon that person a written notice of violation.
- (B) When required by the DCO, an explanation of the cause of the violation and a plan for the satisfactory correction and prevention of reoccurrence, including specific required actions, must be submitted by the discharger to the DCO. This response may be verbal, or if required, must be in writing, but within the time specified by the DCO.
- (C) Submission of an explanation and/or plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation. Issuance of a notice of violation shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

Sec. 173.16. - Consent Orders.

- (A) When the DCO finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the DCO may enter into an agreement with the person specifying how the discharger will come into compliance within a specified time. The consent order may also stipulate fines, remedial actions or other terms that both parties consent to, and must be signed by the DCO and the discharger.
- (B) The City may suspend water service, sanitary sewer service, and/or MS4 discharge access to a discharger that does not come into compliance within the time provided.
- (C) Consent orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4, surface water in the state or the waters of the U.S.
- (D) A consent order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

Sec. 173.17. - Show Cause Hearing.

- (A) The DCO may order any person who has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, to appear before the DCO and show cause why a proposed enforcement action should not be taken.
- (B) Notice shall be served on the discharger specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the discharger show cause why the proposed enforcement action should not be taken.
 - (1) The notice of the hearing must be served personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing.
 - (2) Such notice may be served on any authorized representative of the discharger.

- (C) A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the discharger.

Sec. 173.18. - Compliance Orders.

- (A) When the DCO finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the DCO may issue an order to the discharger directing that the discharger come into compliance within a specified time limit.
- (B) The City may suspend water service, sanitary sewer service, and/or MS4 discharge access to a discharger that does not come into compliance within the time provided.
- (C) Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4, surface water in the state or the waters of the U.S.
- (D) A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

Sec. 173.19. - Cease and Desist Orders.

- (A) When the DCO finds that any person has violated, or continues to violate, or threatens to violate any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, the DCO may issue an order to the discharger directing the discharger to cease and desist all such violations and directing the discharger to:
 - (1) Immediately comply with all requirements; and
 - (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
- (B) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

Sec. 173.20. - Emergency and Suspension of Utility Services and MS4 Access.

- (A) The DCO may, without prior notice, suspend water service, sanitary sewer service, and/or MS4 discharge access to a person discharging to the MS4, surface water in the state, waters of the U.S., or POTW when such suspension is necessary to stop an actual or threatened discharge which:
 - (1) Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or

- (2) Presents or may present imminent and substantial danger to the MS4, surface water in the state or the waters of the U.S.
- (B) When the DCO determines that city-provided water and/or sanitary sewer service /or MS4 access needs to be suspended pursuant to Section 173.18 (A), the DCO shall suspend the service or access as soon as practicable.
- (C) As soon as is practicable after the suspension of service or MS4 discharge access, the DCO must notify the discharger of the suspension in person or by certified mail, return receipt requested, and shall order the discharger to cease the discharge immediately.
- (D) The City shall not reinstate suspended services or MS4 access to the discharger until:
 - (1) The discharger presents proof, satisfactory to the DCO, that the non-complying discharge has been eliminated and its cause determined and corrected;
 - (2) The discharger pays the City for all costs the City incurred in responding to, abating, and remediating the discharge or threatened discharge; and
 - (3) The discharger pays the City for all costs the City has incurred to suspend the services and will incur in reinstating service or access, including any reconnection fees and account balances that are due.
- (F) A discharger whose service or access has been suspended or disconnected may appeal such enforcement action to the DCO, in writing, within ten (10) days of notice of the suspension in accordance with Sections 173.24 and 173.25 of this ordinance.
- (G) The remedies provided by this Section 173.20 are in addition to any other remedies set out in this ordinance. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a discharger.

Sec. 173.21. - Non-emergency suspension of Utility Service and MS4 Access.

- (A) The DCO may terminate the city-provided water supply, sanitary sewer connection, and/or MS4 access of any person discharging to the MS4 in violation of this Section 173.21, if such termination would abate or reduce the illicit discharge.
- (B) The DCO will notify a discharger of the proposed termination of its water supply, sanitary sewer connection, and/or MS4 access. The discharger may petition the DCO for a reconsideration and hearing pursuant 173.24 and 173.25 of this ordinance.
- (C) The City shall not reinstate suspended services or MS4 access to the discharger until:
 - (1) The discharger presents proof, satisfactory to the DCO, that the non-complying discharge has been eliminated and its cause determined and corrected;
 - (2) The discharger pays the City for all costs the City has incurred to suspend the services and will incur in reinstating service or access, including any reconnection fees and account balances that are due.

- (D) The remedies provided by this Section 173.21 are in addition to any other remedies set out in this ordinance. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a discharger.
- (E) A person commits an offense if the person reinstates water service, sanitary sewer service, and or MS4 access to premises terminated pursuant to this Section 173.21, without the prior approval of the DCO.
- (F) A person commits an offense if he utilizes the water service, sanitary sewer service or MS4 access of another person or premises, without their permission, or in violation of an order from the City.
- (G) A person commits an offense if he causes a violation on the property of any other person, and shall be responsible for the corrective actions to abate the problem, and any other costs or expenses incurred by the other person as a result of the violator's actions.

Sec. 173.22. Abatement, Remediation, and Restoration Orders.

- (A) When the DCO finds that a person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, and that such violation has adversely affected the MS4, the surface water in the state, or the waters of the U.S., the DCO may require the discharger to undertake and implement any appropriate action to abate and/or remediate any adverse effects of the violation upon the MS4, the surface water in the state, or the waters of the U.S., and/or to restore any part of the MS4, the surface water in the state, or the waters of the U.S.
- (B) Such abatement, remedial, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of any public or private property or natural resources damaged by the violation.
- (C) If no person is found to have caused the violation, the owner of any property where the violation occurred and consequent contamination, shall be the responsible person for the required abatement, cleanup, and/or remediation.
- (D) The City may, at its discretion, perform such abatement, cleanup and/or remediation, and collect from the responsible person, all expenses incurred during such activities.
- (E) The DCO may require that the abatement, remediation, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Section 173.20 does not relieve the discharger of liability for any violation, including any continuing violation. Issuance of an order under this section shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

Sec. 173.23. - Stop Work Orders.

- (A) When the DCO finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of Sections 173.07 to 173.08 of this ordinance, or any order issued hereunder, the DCO may issue a stop work order to the operator, and require that a copy of the stop work order be posted at the construction site and distributed to all City departments and divisions whose decisions affect any activity at the site.
- (B) Unless express written exception is made by the DCO, the stop work order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the discharger.

RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

Sec. 173.24. - Reconsideration and Hearing.

- (A) Any person subject to any enforcement action under Sections 173.18, 173.21, 173.22, or 173.23 of this ordinance may petition the DCO to reconsider the basis for his/her order within fifteen (15) calendar days of the affected person's notice of issuance of such an order.
- (B) Failure to submit a timely written petition for reconsideration will be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
- (C) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.
- (D) The effect of any enforcement action under Sections 173.18, 173.22, or 173.23 shall be stayed pending the DCO's reconsideration of the petition, and any hearing thereon, unless the DCO expressly makes a written determination to the contrary. The effectiveness of any cease and desist order, emergency and non-emergency suspension of utility services and MS4 access under Sections 173.19, 173.20 and 173.21 shall not be stayed pending the DCO's reconsideration, or any hearing thereon, unless the DCO expressly and in writing stays his/her suspension order.
- (E) Within thirty (30) calendar days of the submittal of a petition for reconsideration, the DCO may either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.
- (F) Written notice of any hearing set by the DCO pursuant to Section 173.24 (E) above must be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

- (G) The DCO may conduct the hearing and take evidence, or designate any employee of the City or any specially-designated attorney or engineer to:
- (1) Issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
 - (2) Take evidence;
 - (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the DCO for action thereon.

At any hearing held pursuant to this Section 173.24, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

- (H) After the DCO has reviewed the evidence, he/she may either:
- (1) Grant the petition;
 - (2) Deny the petition; or
 - (3) Grant the petition in part and deny it in part.

The DCO may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

Sec. 173.25. - Appeal.

Any person whose petition for reconsideration by the DCO has not been granted in its entirety and who remains adversely affected by the DCO's order, or who is subject to an order of the DCO issued following a show cause hearing under Section 173.17, may challenge the final action of the DCO in an appropriate court of competent jurisdiction.

JUDICIAL ENFORCEMENT REMEDIES

Sec. 173.26. Injunctive Relief.

- (A) When the DCO finds that any person has violated, or continues to violate any provision of this ordinance, or any order issued hereunder, the DCO may petition the Municipal Court through the City Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of a permit, order, or other requirement imposed by this ordinance on activities of the discharger.
- (B) The DCO may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation.

- (C) A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a discharger.

Sec. 173.27. - Civil Penalties.

- (A) A person who has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, may be liable to the city for the maximum civil penalty allowed by law, per violation, per day. Penalties may accrue for each day during the period of the violation.
- (B) The DCO may enter into a consent decree agreement with a discharger, when a discharger is willing to correct noncompliance while agreeing with the City on the penalty (which may be for previous and future violations). The agreement is a court supervised settlement.
- (C) The DCO may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, environmental remediation, and the cost of any actual damages incurred by the City.
- (D) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the discharger, the compliance history of the discharger, the knowledge, intent, negligence, or other state of mind of the discharger, and any other factor as justice requires.
- (E) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a discharger.

Sec. 173.28. - Criminal Penalties.

- (A) Any person who violates any provision of this ordinance, or order issued hereunder, is guilty of a misdemeanor, and upon conviction is punishable as set forth in §10.99 of the Carrollton Code of Ordinances, for each day or part of a day during which the violation is committed, continued, or permitted.
- (B) Any person who makes any false statement, representation, or certification in any investigation, or in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, or any order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance, upon conviction, is guilty of a misdemeanor, and upon conviction is punishable as set forth in § 10.99 of the Carrollton Code of Ordinances.
- (C) **CRIMINAL RESPONSIBILITY.** A culpable mental state is not required to prove an offense under this ordinance. A person is criminally responsible for a violation of this ordinance if the person:

- (1) Suffers, commits or assists in the commission of the violation or causes or permits another person to commit the violation; or
- (2) Owns, operates, or manages a site or facility determined to be the cause of the violation.

Sec. 173.29. - Remedies Nonexclusive.

- (A) The remedies provided for in this ordinance are not exclusive. The DCO may take any, all, or any combination of these actions against a discharger.
- (B) The DCO is empowered to take more than one enforcement action against any discharger. These actions may be taken concurrently.

SUPPLEMENTAL ENFORCEMENT ACTION

Sec. 173.30. - Performance and Maintenance Bonds.

- (A) The DCO may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the DCO to be necessary to achieve consistent compliance with this ordinance, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site.
- (B) The City may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

Sec. 173.31. - Liability Insurance.

The DCO may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the DCO, that is sufficient to abate, remediate, and restore any damage to the MS4, the surface water in the state or the waters of the U.S., or any other aspect of the environment that is affected by the discharge.

Sec. 173.32. - Public Nuisances.

A violation of any provision of this ordinance, or any order issued hereunder, is hereby declared a public nuisance and must be corrected or abated as directed by the DCO. Any person(s) creating a public nuisance may be required to reimburse the City for any costs incurred in removing, abating, or remedying said nuisance.

MISCELLANEOUS PROVISIONS

Sec. 173.33. - Charges and Fees.

The City may charge fees, as adopted in the Carrollton Code of Ordinances, Chapter 31 Comprehensive Fee Schedule, for reimbursement of costs for constructing, operating, and maintaining the City's MS4, and for reimbursement of costs of implementing its stormwater management program as required by EPA or the State, and the cost of implementing this ordinance, which costs may include, but not be limited to, the following:

- (A) Fees for monitoring, inspection, and surveillance procedures including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;
- (B) Fees for spill and release reports and responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and
- (C) Other fees as the DCO may deem necessary to carry out the requirements contained in this ordinance.

Section 3.

That conviction of a violation of the provisions of this ordinance is punishable as provided in Section 10.99 of the Carrollton Code of Ordinances.

Section 4.

That the provisions of this ordinance are severable in accordance with Section 10.07 of the Carrollton Code of Ordinances.

Section 5.

That this ordinance repeals Chapter 173 of the Carrollton Code of Ordinances in its entirety and its repeal is in accordance with Section 10.16 of the Carrollton Code of Ordinances.

Section 6.

That this ordinance shall become and be effective on and after its adoption and publication.

DULY PASSED AND APPROVED by the City Council of the City of Carrollton, Texas, this _____ day of _____, 2015.

Matthew Marchant, Mayor

ATTEST:

Krystle Nelinson, City Secretary

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Meredith A. Ladd
City Attorney

Scott Hudson
Director Environmental Services