

## **ORDINANCE 2021-10-20**

### **AN ORDINANCE OF THE CITY OF ELSA TO REGULATE AND REDUCE POLLUTION THAT ENTERS THE SURFACE WATER IN THE STATE OF TEXAS AND WATERS OF THE UNITED STATES FROM DISCHARGES INTO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM, BY PROVIDING FOR THE DETECTION AND ELIMINATION OF ILLICIT CONNECTIONS TO THE STORM SEWER SYSTEM AND REQUIRING EROSION CONTROL AND POLLUTION PREVENTION AT CONSTRUCTION SITES, AND TO ESTABLISH PENALTIES AND AN EFFECTIVE DATE**

**WHEREAS**, the City of Elsa, a home-rule city of the State of Texas, may adopt and enforce ordinances necessary to protect health, life, property and the general welfare of the City and its residents and visitors; and

**WHEREAS**, pursuant to the Clean Water Act and Texas Pollution Discharge Elimination System General Permit TXR040000, as it may be amended, the City of Elsa is required to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants into the City's streets, guttas, ditches, and storm drains, and to the Surface Water in the State, and the Waters of the United States, to the maximum extent practicable; and,

**WHEREAS**, the City's stormwater management program must include six minimum control measures: (1) public education and outreach on storm water impacts; (2) public involvement and participation; (3) illicit discharge detection and elimination; (4) construction site storm water runoff control; (5) post-construction storm water management in new development and redevelopment; and (6) pollution prevention and good housekeeping for municipal operations; and,

**WHEREAS**, implementation of best management practices consistent with the provisions of the City's storm water management program constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable;"

**WHEREAS**, the City of Elsa and its planning area are within the watershed of the Arroyo Colorado, and is, all stormwater run-off from the City of Elsa and its planning area flows into the Arroyo Colorado; and the Arroyo Colorado flows into Laguna Madre; and,

**WHEREAS**, Texas Commission on Environmental Quality (TCEQ) has determined that the Arroyo Colorado is an impaired water body that does not meet its aquatic life use primarily due to low dissolved oxygen, but also due to high levels of nutrients and sedimentation and suspended solids; and,

**WHEREAS**, TCEQ in 2003 estimated that a ninety percent (90%) reduction in nitrogen, phosphorous, biological oxygen demanding substances and sediment will be necessary for the Arroyo Colorado to meet aquatic life water quality standards; and

**WHEREAS**, the City has exercised leadership in reducing the amount of point-source pollutants entering the Arroyo Colorado from its wastewater plant by constructing a new state-of-the-art wastewater treatment plant; and,

**WHEREAS**, the City has also demonstrated leadership in non-point source pollution the Arroyo Colorado from on-site sewer facilities by providing first-time public wastewater collection and treatment services to households in ten colonias; and,

**WHEREAS**, other sources of pollution that may contaminate storm water include erosion of disturbed land at construction sites, the deliberate or inadvertently discharge of material or substances other than storm water directly or indirectly into storm drains, and stormwater run-off from roof tops, parking lots, and yards and lawns treated with excess fertilizer and pesticides;

**WHEREAS**, natural materials such as leaves and grass clippings are beneficial to gardens and soil as mulch and a soil amenity but constitute pollution when they enter waterways because the decomposition of these materials consumes oxygen in the water that is needed by fish; and,

**WHEREAS**, improper management of stormwater and control of erosion reduces capacity of the City's drainage infrastructure and causes additional maintenance needs and expenses, and,

**WHEREAS**, the City of Elsa recognizes that protecting and improving water quality in the Arroyo Colorado will contribute to an improved quality of life and the general welfare of the residents of La Feria;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELSA, THAT:**

The City of Elsa Ordinance shall be titled Pollution Prevention in Stormwater, as follows.

**General Provisions**

It is the policy of the City of Elsa, and the intent of this ordinance, to reduce pollution and contamination entering the City's separate stormwater sewer system (MS4) to the greatest extent practicable Discharges to the City's MS4 that cause or contribute to a violation of water quality standards or that fail to protect and maintain the aquatic life use of the Arroyo Colorado are hereby prohibited. New sources or new discharges to the City's MS4 of the oxygen-demanding substance, nutrients and sediments are not authorized by this ordinance unless otherwise allowable under NPDES, TPDES, and the Texas Administrative Code.

Best Management Practices activities, prohibitions, maintenance procedure, structural control, local ordinances, and other management practices to prevent or reduce the discharge of pollutants,

Clean Water Act - The Federal Water Pollution Control Act, as codified at 33 U.S.C. 1251 — 1376.



Common Plan of Development or Sale - A construction activity that is completed in separate stages or phases or in combination with other construction activities. A common plan of development or sale is identified by plats, blueprints, marketing plans, contracts, building permit applications, a public notice or hearing, zoning requests, or other similar documentation.

Construction Activity (Small) - Construction activities including clearing, grading, and excavating that result in land disturbance of one or more but less than five acres of land. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb one or more but less than five acres of land.

Construction Activity (Large) - Construction activities that result in land disturbance of five or more acres of land. Large construction activity also includes the disturbance of less than five acres of land area that is part of a common plan of development or sale that will ultimately disturb five or more of land.

Construction Site Operator The person or persons associated with a small or large construction project that is either:

- (1) the person or persons that have operational control over construction plans and specifications including approval of revisions to the extent necessary to meet the requirements and conditions of state and federal law, including TPDES or NPDES permits allowing stormwater discharge; or
- (2) the person or persons that have day-to-day operational control of those at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan for the site.

Conveyance — Streets, curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for drainage or control or to otherwise transport storm water runoff.

Discharge — the drainage, release, or disposal of pollutants in storm water and certain non<sup>e</sup> storm water from areas where land disturbing activities, construction materials, equipment storage or maintenance, or other industrial activities are located.

Soil Disturbing where the following conditions are met:

- (a) All soil disturbing activities have been completed and a uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (b) For individual lots in a residential construction site either:
  - (i) the homebuilder completes final stabilization as specified in (a) above; or

- (ii) 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 informs the homeowner of the need for, and benefits of, final stabilization.
- (c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction 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.

Ground Water Infiltration - Groundwater that enters the MS4 (including storm sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.

Illicit Connection - Any human-made conveyance connecting an illicit discharge directly to the MS4.

Illicit Discharge - Any discharge to the MS4 that is not entirely composed of storm water, except discharges allowed pursuant to state or federal law, including TPDES or NPDES permits allowing stormwater discharge or a separate authorization.

Industrial Activities - manufacturing, processing, material storage and disposal areas, and similar areas where storm water can contact industrial pollutants related to the industrial activity at an industrial facility described by the TPDES Multi-Sector General Permit, TXR050000, as it may be amended, or by another TPDES or NPDES permit.

Land Disturbance (or Soil Disturbance) — Any activity which involves the physical improvement or disturbance of earth material by mechanized means. This includes excavating, filling, stockpiling, clearance of vegetation, grading, compaction of soil, creation of borrow pits, or combination thereof. Land disturbance does not include plowing, seeding, planting, cultivating, or harvesting on a farm, including lands that have been lying fallow as part of a conventional rotational cycle. Land disturbance does not include routine maintenance performed to maintain the original line and grade, hydraulic capacity and purpose of a ditch, channel or other similar storm water conveyance. Land disturbance does not include routine grading of existing dirt roads, asphalt overlays of existing roads, routine clearing of existing tight-of-ways or other similar maintenance activities.

Maximum Extent Practicable The technology-based discharge standard for MS4s to reduce pollutants in storm water discharges established by the Clean Water Act.

C) Municipal separate storm water system {MS4} — The conveyance or system of conveyances including roads, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are owned or operated by the City of Elsa, the Hidalgo Cameron Water District #9, Hidalgo County Drainage District or the Texas Department of Transportation and that are designed or used for collecting or stormwater; but which are not a combined sewer (sanitary sewer and stormwater) and are not part of the City's sanitary sewer collection system.



MS4 Operator — For the purpose of this ordinance, The City of Elsa.

NPDES — National Pollution Discharge Elimination System

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

Pollutants of Concern those pollutants identified as a cause of impairment of the Arroyo Colorado and including biochemical oxygen (BOD), and sediment or parameters that address sediment such as total suspended solids, turbidity or siltation.

Release any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into ground-water, subsurface soils, surface soils, the MS4, the Surface Water of the State, or the Waters of the United States.

Site Development Permit — A permit issued by the City for the alteration of the ground for the construction or installation of utilities, streets, sidewalks, structures designed to control erosion and run-off and other grading activities that are not a part of a project that requires a building permit.

Storm Water Runoff- Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Management Program (SWMP) - A comprehensive program to manage the quality of discharges into and from Elsa's MS4.

Structural Controls A pollution prevention practice that requires the construction or use of a device to capture or prevent pollution in storm water runoff. Structural controls and practices may include but are not limited to: wet ponds, infiltration basins, storm water wetlands, silt fences, earthen dikes, drainage swales, lined ditches vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

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

TPDES — Texas Pollution Discharge Elimination System

## Waters of the United States -

- a) 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 Ob and flow of the tide;
- b) all interstate waters, including interstate wetlands;
- c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (iii) which are used or could be used for industrial purposes by industries in interstate commerce;
- d) all impoundments of waters otherwise defined as waters of the U.S.;
- e) tributaries of waters identified in paragraphs (a) through (d) of this definition;
- f) the territorial sea; and
- g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.
- h) Waste treatment systems, including man made treatment ponds, lagoons or wetlands designed to meet the requirements of CWA are not waters of the United States.

Wetland an area that is inundated or saturated by surface or ground-water 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.

## **Pollution prevention and erosion control at construction sites**

### **General provisions**

The intent of this section is to implement and enforce a program to reduce pollutants in storm water runoff from construction activities. To that end, dl construction site operators, at a minimum, must:

- I. As a pre-condition to receiving a building permit for a small construction site, prepare and submit a stormwater pollution prevention plan (SWP3).
2. For projects that do not require a building permit, but will require excavation, fill or grading or than one acre of such as the construction or installation of utilities, new drainage ways, streets, or sidewalks, apply for a site development permit and prepare and submit a SWP3.



3. Except, no SWP3 is required to perform emergency work needed to life or property.
4. For construction sites that will disturb less than one acre of land, the following provisions apply:
  - a) No SWP3 need be prepared or submitted.
  - b) Construction site operators are responsible for retaining all soil and sediment on-site and off adjacent properties and the public right-of-way. This includes dust control and control of vehicle tracking of dirt off-site.
  - c) Soil and sediment that the construction site must be cleaned-up daily.
  - d) Proper provision for solid waste, construction debris and sanitary waste must be made and maintained.
5. The operator of a construction site, required to have a TPDES permit to discharge stormwater shall submit a copy of the Notice of Intent to the City at the same time the operator submits the original Notice of Intent (NOI) to the TCEQ. The copy of the NOI may be delivered to the City either in person or by mailing it to: Planning Director, City of Elsa, 102 Diana Street, Elsa, TX 78538-0427.

#### **Storm Water Pollution Prevention Plan (SWP3)**

1. Prior to commencing any construction activity and prior to receiving a building or site development permit from the City, construction site operators that are required by the o NPDES or the TPDES to obtain a permit to discharge stormwater must:
  - a) develop and submit for review and approval a SWP3 that covers the entire site;
  - b) post a signed copy of the notice (Attachment I or 2) at the construction site where it can be readily viewed;
  - c) ensure the project specifications allow or provide that adequate BMPs will be developed and modified as necessary to meet the requirements of the SWP3; and,
  - d) ensure all contractors and sub-contractors are aware of the requirements of the SWP39 that on-site personnel are responsible for the day-to-day implementation of and adherence to the SWP3, and to contact concerning SWP3 compliance; and
2. The SWP3 must:
  - a) be completed and initially implemented prior to commencing activities that result in land disturbance;
  - b) provide for compliance with the terms and conditions of this ordinance and the NPDES and TPDES for stormwater,
  - c) be available at the construction site or readily available at the time of an on-site inspection to TCEQ; the EPA, or City personnel;
  - d) be amended whenever there is a change in design, construction, operation, or maintenance that may have a significant effect on the discharge of pollutants or that was not been

previously addressed in the SWP3; or because inspections by the site operator, TCEQ, EPA or City indicate the SV, Q3 is ineffective in eliminating or minimizing pollutants in discharges.

- e) identify the person or persons responsible for implementation of the plan.

#### **Issuance of a building permit or site development permit**

Before authorizing the issuance of a building permit or a site development permit, the City will review the proposed site plan and SWP3, as well as construction documents, Be compliance with this ordinance and the NPDES and TPDES for stormwater;

#### **City Inspection of Construction Sites**

City building inspection, code enforcement public works staff and the city engineer are hereby authorized to inspect construction sites for the purpose of ensuring compliance and enforcement of control measures contained in the SWP3s and this ordinance.

#### **Contents of Stormwater Pollution Prevention Plan**

The Stormwater Pollution Prevention Plan (SWP3) pursuant to this ordinance, the Clean Water Act, NPDES, and TPDES must include the following information.

- (l) The SWPS must include a project description which includes the following:
  - (a) the nature of the construction activity, potential pollutants and sources;
  - (b) the intended schedule or sequence of major activities that will disturb soils;
  - (c) the number of acres of the entire construction site property and the total number of acres of the site where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;
  - (d) the soil type and the quality of any existing discharge from the site;
  - (e) a map showing the general of the site (e.g. a portion of a city or county map);
  - (f) a detailed site map indicating the following:
    - i. drainage patterns and approximate slopes anticipated after major grading activities;
    - ii. areas where soil disturbance will occur;
    - iii. areas which will not be disturbed;
    - iv. locations of all major structural controls either planned or in place;
    - v. locations where stabilization practices expected to be used; vi. locations of off-site material, waste, borrow or equipment storage areas;



- vii. surface waters (including wetlands) either adjacent or in close proximity; and
  - viii. locations where storm water discharges from the site directly to a surface water body.
  - (g) the location and description of asphalt plants and concrete plants (if any) providing support to the construction site and that are also authorized under the General Permit TXR 150000, as it may be amended, and,
  - (h) the name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project.
- (2) The following records must be either attached to or referenced in the SWP3 and made readily available upon request to the City of Elsa, TCEQ or the EPA:
- a) the dates when major grading activities occur;
  - b) the dates when construction activities temporarily or permanently cease on a portion of the site; and,
  - c) the dates when stabilization measures are initiated.
- (3) The SWP3s must identify and describe the best management practices (BMPs) that will be used, the general timing or sequence for implementation of such BMP\* and the party responsible for implementation. At a minimum, the description must include erosion and sediment controls designed to drain sediment on-site to the maximum extent practicable with due consideration for local topography and rainfall.
- a) Control measures must be selected, installed, and maintained according to the manufacturer's or designer's specifications.
  - b) must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.
  - c) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.
  - d) Controls must be specified that limit offsite transport of litter, construction debris and construction materials.
- (4) The SWP3 must describe interim and permanent stabilization practices and a schedule of when the stabilization practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.
- a) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, and protection of existing trees and vegetation.
  - b) Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and except as provided in

(i) and (ii) below, must be initiated no more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.

- i. Where the initiation of stabilization measures is precluded by seasonably arid O conditions, drought, excessive rainfall, or other weather or climatic conditions, stabilization measures must be initiated as soon as practicable.
- ii. Where construction activity on a portion of the site is temporarily ceased but earth disturbing activities will be resumed within twenty-one (21) days, temporary stabilization measures do not have to be initiated on that portion of site.

(5) The SWP3 must include a description of any structural controls that will be used to divert flows away from exposed soils, to limit the control of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.

(a) Sediment basins are required, where feasible, for common drainage locations that serve an area with ten or more acres that are disturbed at any one time. Sediment basins may be either temporary or permanent, but must be designed to store either the calculated volume of runoff from a 2-year, 24-hour storm, or designed to provide 3,600 cubic feet of storage per acre drained. When calculating the volume of run off from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone final stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area on-site, and public safety. Where sediment basins are not feasible, equivalent control measures, which may include a series of smaller sediment basins, must be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries and for those side slope boundaries as dictated by individual site conditions of the construction area.

(b) Sediment traps and sediment basins may be used to control solids in storm water runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, hay bales, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction. Alternatively, a sediment basin providing storage for a calculated volume of runoff from these areas for a 2-year, 24- hour storm or 3,600 cubic feet of storage per acre drained may be provided.

(6) Other Controls

(a) The SWP3 must describe how off-site vehicle tracking of sediment and the generation of dust will be minimized.

(b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to reduce pollutants from these materials.



- (c) The SWP3 must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges,
- (6) The SWP3 must commit to ongoing maintenance to keep all erosion and sediment control and other protective measures identified in the SWP3 in effective operating condition.
- (7) Site Inspections
  - (a) The construction site operator shall provide for regular inspections by persons familiar with the SWP3 of the disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, all structural control measures, and locations where vehicles enter or exit the site for evidence of effectiveness and necessary maintenance. Inspections must occur at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater.
  - (b) As an alternative, the SWP3 may require that inspections will occur at least once every seven calendar days; in which case additional inspections are not required following each qualifying storm event. If this alternative schedule is developed, the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

- (c) The construction site operator must inspect all accessible discharge locations to determine if erosion control measures are effective in preventing visually noticeable changes to receiving waters, including persistent cloudy appearance in water color and noticeable accumulation of sediments. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. The frequency for these inspections must be established in the SWP3 with consideration for local rainfall and soil, but must occur at least once during the construction activity if a discharge occurs.
  - (d) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in an amendment to the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.
  - (e) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include:
    - i. the locations of discharges of sediment or other pollutants from the site;
    - ii. locations of BMPs that need to be maintained;
    - iii. locations of BMPs that failed to operate as designed or proved inadequate for a particular location
    - iv. locations where additional BMPs are needed; and,
    - v. identification and location of the BNQs that are working effectively.
  - (f) Actions taken as a result of inspections must be within. and retained as an amendment to the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit.
- (8) The SWP3 must identify and ensure the implementation of pollution prevention measures for all eligible non-storm water components of the discharge. This ordinance prohibits, and all SWP3s will be presumed to prohibit:
- (a) The discharge from a construction site of any water or other liquid having a pH value lower than 6.0 or higher than 10.5;
  - (b) The discharge of any type of industrial waste from construction sites;



- c) The deposit of any garbage, rubbish, or yard waste other than at a facility licensed to receive such debris
- d) The discharge of paint or paint brush cleaning water or solvents, thinners or turpentine or any combination thereof,
- e) Unused construction materials or used construction materials or debris remaining on the site after construction is completed. All on-site debris shall be properly disposed of in the landfill within thirty (30) days from the occupancy of the structures; and
- f) The washing of any type of trucks, including, but not limited to, ready mix trucks or material supply trucks on or around the construction site.

#### **Effective Date of Coverage**

Operators of construction activities eligible for coverage under TXRI 50000, as it may be amended, are authorized to discharge storm water associated with construction activity upon issuance by the City of Elsa the building permit or site development permit.

#### **Retention of Records**

The construction site operator must retain a copy of the SWP3 and all reports and actions required by this ordinance and state and federal law, including NPDES, TPDES and General Permit No. 150000, for a minimum period of three years from the date that final stabilization has been achieved on all portions of the site.

#### **Illicit Discharges**

The intent of this section of the ordinance is to prohibit, detect, and eliminate illicit discharges to Elsa MS4.

#### **Allowable Non-Storm Water Discharges**

The following non-storm water sources are not illicit discharges to the MS4:

- 1) discharges from firefighting activities (but excluding washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- 2) uncontaminated fire hydrant flushing from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (but excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life and excluding flushing where recycled wastewater is used);

- 3) water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;
- 4) uncontaminated water used to control dust;
- 5) potable water including waterline flushing (but excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges are not to adversely affect aquatic life);
- 6) uncontaminated air conditioning condensate;
- 7) uncontaminated ground water or spring water, including foundation or footing drains and water from crawl space pumps where flows are not contaminated with industrial materials such as solvents; and
- 8) runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- 9) diverted stream flows;
- 10) uncontaminated ground water Infiltration;
- 11) uncontaminated pumped ground water;
- 12) individual residential vehicle washing;
- 13) flows from and riparian habitats;
- 14) dechlorinated swimming pool discharges;
- 15) street wash water.

### **Prohibited Discharges**

- (l) No person shall deposit, release, throw, drain, cause or allow to be deposited, released thrown, drained or discharged, or otherwise cause to enter the MS4, or any other drainage device which connects with the MS4, any of the following described materials or substances:
  - (a) Any acidic waste materials (having a pH value lower than 6);
  - (b) Any alkaline waste materials (having a pH value higher than 10.5);
  - (c) Any water or waste containing free-floating, or insoluble oil;
  - (d) gasoline, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;
  - (e) Any noxious, malodorous, poisonous, or reactive substance which, either singularly or by interaction with other substances, or by its accumulation in the MS4 becomes injurious or



potentially injurious to human, plant or animal life, or property; or (f) Any domestic wastewater or industrial wastewater.

- 2 It shall be a defense to prosecution under this section that such person was authorized to commit any act, under a valid permit from the TCEQ or the US EPA, which would otherwise constitute a violation at the time of commission.
- 3 No person shall place or (imp or cause or allow to be placed or dropped, brush cuttings, clippings, or rubbish within the MS4 or on any street in the City in such a manner that the same may be washed by the flow of water into the MS4.
- 4 No person shall connect a line conveying sanitary sewage, domestic waste, or industrial effluent to the MS4 or allow such a connection to continue.
- 5 No person shall discharge or release, or allow or permit the discharge or release of any of the following substances in a manner or location by which such substance may enter the City's MS4:
  - i. any wash water or wastewater from the washing or cleaning of pavement, o including but not limited to parking lots. driveways or carports, that contains soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other cleaning substance other than water.
  - ii. any wash water or wastewater from cleaning of any pavement where a spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed or pretreated.
  - iii. any wash water 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;
  - iv. gasoline, motor oil, used oil filters, wax, grease, antifreeze or any other motor vehicle fluids;
  - v. any contaminated water or waste from a commercial car wash facility, from any vehicle washing, cleaning, or maintenance area any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, maintenance facility, or from any washing, cleaning, or maintenance area of any commercial or public service vehicle, including any truck, bus, or piece of heavy equipment, by any business or public entity;

- vi. any contaminated water or waste from commercial establishments including but not limited to gas stations, service stations, and auto repair shops with areas exposed to conditions;
  - vii. Material from an oil/water separator or an oil/water interceptor, grit trap or grease trap. Any oil/water separator or interceptor users who are discharging to the MS4 shall notify the city of the existence of such connections to the MS4 within sixty (60) days of the effective date of this ordinance. If such notification is not made during the allocated sixty (60) days, then the detected connections to MS4 of an oil water separator or interceptor shall be considered an illicit connection and the city reserves the right to terminate such connection immediately, without prior notice;
  - viii. any release from a petroleum underground storage tank (PUST), or any leachate or cut off from soil contaminated by a leaking PUST, or any discharge of pumped, confined, or partially treated wastewater from the remediation of any such PUST unless release satisfies all of the following criteria: (a) is in compliance with all municipal, state, and federal laws; (b) no discharge contains any harmful quantity of any pollutant; and (c) the discharge shall not have a pH value lower than 6.0 or higher than 10.5;
  - ix. any public or private underground utility manhole, including but not limited to electric power, gas pipeline, cable companies, telephone companies, the collected water, due to rain, surface runoff cross connection, or illegal discharge,
  - x. any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
  - xi. any type of wastewater from residential, commercial or industrial sources, any domestic sewage or septic tank waste,
  - xii. any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area.
  - xiii. any swimming pool water or filter backwash from a swimming pool or fountain, discharge from a water line if it has been disinfected by super chlorination or other means and the total residual chlorine exists in any harmful quantity or any other chemical has been in line disinfection.
- (6) No person shall apply used oil or other vehicle fluid to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil contamination into the environment;



- (7) No person shall introduce any type of hazardous waste generated in and around a household including, but not limited to batteries, used paints, solvents, used pesticide, and used toiletries into the MS4;
- (8) No person shall use, dispose of, discards store, or transport an insecticide, herbicide, or fertilizer, in a manner inconsistent with the proper usage, storage, transport and disposal set out in the labeling in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), such that a harmful quantity of the pesticide, herbicide, or fertilizer may enter the MS4.
- (9) No person shall wash a commercial dumpster, or residual ready-mix concrete from concrete mixing trucks, in an area where it discharges into MS4.

#### **Mandatory Reporting and Clean-up of Any Discharge or Release**

- (1) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, disposing, or any other release of any of the following quantities of any of the following substances that may enter the MS4, Surface Water of the State or Waters of the U.S., shall immediately notify by telephone the La Feria police department concerning the incident:
  - (a) An amount equal to or in excess of a reportable quantity of any hazardous or extremely hazardous substance, as established under 40 CFR Parts 302 and 355, respectively;
  - (b) 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; or
  - (c) Any harmful quantity of any pollutant.
- (2) The immediate notification required shall include the following information:
  - (a) The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
  - (b) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
  - (c) The time and duration (thus far) of the release;
  - (d) An estimate of the quantity and concentration (if known) of the substance released; (e) The source of the release;

- (f) Any known or anticipated health risks associated with the release and, where appropriate advice regarding medical attention that may be necessary for exposed individuals;
  - (g) Any precautions that should be taken as a result of the release;
  - (h) Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and
  - (1) The names and telephone numbers of the person or persons to be contacted for further information.
- (3) Within fifteen (15) days following such reportable release, the responsible person in charge of the facility, vehicle, or other source of the release shall submit, unless waived by the city, a written report containing the information specified above in (2)(a) through (i) as well as the following additional information:
- (a) The ultimate duration, concentrations, and quantity of the release;
  - (b) All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
  - (c) Any known or anticipated acute or chronic health risks associated with the release;
  - (d) The identity of any governmental/private sector representatives responding to the release; and
  - (e) The measures taken or to be taken by the responsible persons to prevent similar future occurrences.
- (4) The notifications required by subsections (2) and (3) shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to city ordinance, or state or federal law.
- (5) Any person responsible for any release as described in this subsection shall comply with all state, federal, and local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
- (6) Any person responsible for a release described in this subsection shall reimburse the city for any cost incurred by the city in responding to the release.

#### **Abatement of Illicit Conditions and Assessment and Collection of Expenses**

The City may abate illicit discharges in the same manner and according to the expenses incurred.



## **Right of Entry, Inspection, and Sampling**

- (1) City code enforcement, public works, building inspection staff and the city engineer are authorized to enter and inspect sites and facilities subject to regulation under this chapter or discharging stormwater to the City's MS4 to determine if the discharger is complying with all requirements of this chapter and any state or federal discharge permit, limitation, or requirement.
- (2) Facility operators shall allow such city staff access to all parts of the premises for the purposes of inspection, sampling, records examination, photo recording, and copying of records that must be kept under this ordinance, NPDES, TPDES or TXR 150000, as it may be amended, permit to discharge stormwater, including pollution control measures or modifications thereto. self-inspection reports, monitoring records, compliance evaluations, notices of Intent, and any other records, reports, or documents related to compliance with this chapter and with any state or federal stormwater discharge permit.
- (3) City staff shall have the right to set-up on any permitted facility such devices as are necessary in the opinion of the staff to monitor and/or sample the facility's or the site's stormwater discharge.
- (4) Any temporary or permanent obstruction to safe and easy access to the facility or site to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City staff and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (5) The city may require, at its reasonable discretion, any discharger to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges, and may specify the frequency and parameters of any such required monitoring.
- (6) The city may require, at its reasonable discretion, the discharger to install monitoring equipment at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow, wastewater and quality shall be calibrated to ensure their accuracy.

Where a discharger has security measures force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements so that, upon presentation of suitable identification, the city staff will be permitted to enter without delay for the of implementing and enforcing this ordinance.

## **Enforcement and Penalties**

### **Penalty for Violation**

- (1) Any person, firm, corporation or business entity that violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, fined as provided in this Ordinance of the City of Elsa. Each day that the violation continues shall constitute a separate offense. A culpable mental state is not required to prove an offense under this chapter
- (2) The penal provisions imposed by this chapter shall not preclude the City from filing a suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law. The city may, at its discretion, report alleged noncompliance to the EPA, the TCEQ, US Fish and Wildlife Service, Texas Parks and Wildlife, the US Army Corps of Engineers, or any other state or federal agency.

### **Violations**

- (1) It is a violation of this chapter to engage in construction activity without complying with this Chapter.
- (2) It is a violation of this Chapter to discharge any substance, other than stormwater or those discharges listed in 515.01.004B, to the City's MS4 in violation of any provision in this Chapter.
- (3) The operator of a facility or site with a TPDES permit to discharge stormwater associated with industrial or construction activity commits an offense if the person denies city staff reasonable access to the permitted facility for the purpose of conducting any activity or required by this chapter. Unreasonable delays in allowing the city access to a permitted facility or site is a violation of this ordinance.
- (4) A person commits an offense if the person operates a facility or site that is discharging stormwater associated with industrial or construction activity without having submitted a copy of the notice of intent to do so to the City.
- (5) A facility shall be operated in strict compliance with the requirements of its TPDES permit to discharge stormwater associated with industrial or construction activity. A person commits an offense if the person operates a facility or construction activity in violation of a requirement of the facility's TPDES permit to discharge stormwater.



- (6) The City may require any operator of a facility to modify the facility's or the site's SWP3 if in the best professional judgment of the City staff, the SWQ3 does not comply with the requirements of the facilities or the site's TPDES permit to discharge stormwater.

#### **Notices of Violations and Stop Work Orders**

- (1) Notice of the deficiencies in a facility's or a site's SWP3 will be made in writing, and the City will give the facility or construction site operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the SWP3.
- (2) Noncompliance flag and stop work orders. If the city staff determines that activities are being carried out in violation of this chapter, a notification of noncompliance shall be issued. In addition to the notification, if the violation continues beyond five days, a noncompliance flag will be posted at the site. Finally, if the violation continues after three days after the "noncompliance flag" is posted, the city may stop all work until corrective measures have been completed. The site shall be posted with a "stop work order." No other permits may be issued or inspections conducted by the city until corrections have been made to the satisfaction of the city. To move or interfere with a "noncompliance flag" or a stop work order shall constitute a violation of this article.
- (3) Any person alleged to be in violation of the provisions of this chapter shall be to correct the problem upon written notification from the city. Such written notification may require that certain conditions be adhered to in the correction of the problem. These may include, but are not limited to, the following
- a. Use of specific pollution prevention measures and techniques;
  - b. Use of pretreatment procedures;
  - c. Modification of existing SWP3,
  - d. Completion of work within a specified time period; and
  - e. Submission of SWP3.
- (11) Appeals. Any person permission to discharge to MS4 shall have the right to appeal such to the board of adjustment or other board established by the city within forty- five (45) days of the date of such denial.

### Severability

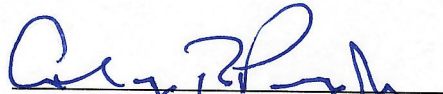
If any provision of this article or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this article and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city commission hereby declares that this chapter would have been enacted without such invalid provision.

### Effective Date


PASSED AND APPROVED, first reading this 20<sup>th</sup> day of October, 2020.

PASSED AND APPROVED, second and final reading this 17<sup>th</sup> day of November, 2020


APPROVED:

  
Alonzo R. Perez, Mayor

ATTEST:

  
Delmira Y. Olivarez, City Secretary

APPROVED AS TO FORM:

  
Gus Acevedo, City Attorney





CONSTRUCTION SITE NOTICE  
TCEQ Storm Water Program  
TPDES GENERAL PERMIT **TXR040000**

This information is posted in compliance the TCEQ TPDES General Permit #TXR040000 for discharges of storm water runoff from construction sites into small municipal separate storm sewer system. Additional information regarding the TCEQ storm water permit program may be found at; [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

Permit Number:	TXR04
Contact Name and Phone Number:	
Project Description: (Including start date and end date or date that disturbed soils will be finally stabilized)	
Location of Storm Water Pollution Prevention Plan (SWP3):	

I, \_\_\_\_\_ (Printed Name), under penalty of law that I have read and understand the eligibility requirements for claiming authorization under Part II of TPDES General Permit TXR040000. A storm water pollution prevention plan has been developed and will be implemented according to permit requirements. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature

Date