
CITY COUNCIL WORKSHOP AGENDA

Notice is hereby given that the Rockport City Council will hold a workshop meeting on Tuesday, April 26, 2016, at 1:30 p.m. The meeting will be held at Rockport City Hall, 622 E. Market, Rockport, Texas. The matters to be discussed and acted upon are as follows:

Opening Agenda

1. Call meeting to order.

Joint Workshop Agenda

2. Call to Order – Rockport Park & Leisure Services Advisory Board.
3. Hear and deliberate with Park & Leisure Services Advisory Board on goals and objectives for park planning for the new property at 1501-1505 Broadway.
4. Adjourn – Rockport Park & Leisure Services Advisory Board.

Regular Agenda

5. Hear and deliberate on presentation by Republic Services concerning options for sanitation services.
6. Hear and deliberate on level of service and contract terms for sanitation services.
7. Hear and deliberate on a presentation of a Stormwater Ordinance replacing City of Rockport Code of Ordinances Chapter V. Erosion and Sediment Control.
8. Adjournment.

Special Accommodations

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (361) 729-2213, ext. 225 or FAX (361) 790-5966 or email citysec@cityofrockport.com for further information. Braille is not available. The City of Rockport reserves the right to convene into executive session under Government Code 551.071-551.074 and 551.086.

Certification

I certify that the above notice of meeting was posted on the bulletin board at City Hall, 622 E. Market Street, Rockport, Texas on Friday, April 22, by 5:00 p.m. and on the City's website at www.cityofrockport.com. I further certify that the following News Media were properly notified of this meeting as stated above: *The Rockport Pilot*, *Coastal Bend Herald*, and *Corpus Christi Caller Times*.


Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Workshop Meeting: Tuesday, April 26, 2016

AGENDA ITEM: 3

Hear and deliberate with Park & Leisure Services Advisory Board on goals and objectives for park planning for the new property at 1501-1505 Broadway.

SUBMITTED BY: Tom Staley, Director of Parks & Leisure

APPROVED FOR AGENDA: PKC

BACKGROUND: The Parks Advisory Board was given direction to develop a plan for development of the newly acquired property at 1501-1505 Broadway. The 8.85 acres includes a cluster of wind-sculptured Live Oak trees and an active, federally protected Great Blue Heron/Great Egret rookery. At the March 28, 2016, Parks Advisory Board meeting members were divided over the development strategy for the property, and requested direction from the City Council. The Board is divided on the question of “naturalness” versus “social enhancements” desired.

FISCAL ANALYSIS:

STAFF RECOMMENDATION: Not an action item.

CITY COUNCIL AGENDA
Workshop Meeting: Tuesday, April 26, 2016

AGENDA ITEM: 5

Hear and deliberate on presentation by Republic Services concerning options for sanitation services.

SUBMITTED BY: City Manager Kevin Carruth

APPROVED FOR AGENDA: PKC

BACKGROUND: The Council has discussed level of service options for sanitation services multiple times over the last 3-4 years, with a focus on automation. Republic's Municipal Services Manager Mike Reeves will give a presentation on service options and be available to answer questions.

See the accompanying PowerPoint presentations for more information.

FISCAL ANALYSIS:

STAFF RECOMMENDATION: Not an action item.

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Every year, Americans create
251 million tons of trash.



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164 million tons
ends up in landfills.



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Introducing All-in-One Office™



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All-in-One Office™

New in-office recycling program

Effortlessly make a difference

Promote environmental sustainability

Provided by All-in-One Recycling™ from Republic Services



We'll handle it from here.™

How it works

Place all your recyclables in the containers – no sorting necessary



Paper



Plastic



Cardboard



Cans (aluminum & metal)



Glass



We'll handle it from here.™

How it works

New recycling containers are located around the office



7-gallon container



7-gallon container
with lid



Standard 55-gallon
recycling container



Premium 32-gallon
recycling and waste
containers



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Additional materials

Look for these materials around the office – they'll help promote this new program



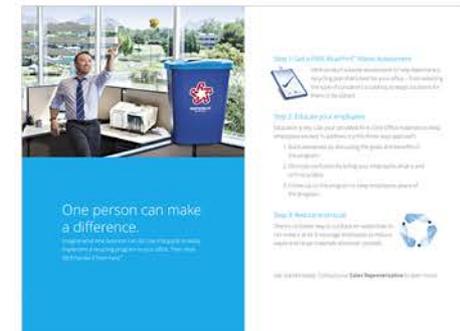
Poster



Decal



eBlast



User Guide



We'll handle it from here.™

Quick Facts

Paper accounts for more than half of all recyclables collected in the US¹

An aluminum can is recycled and remade in just 60 days²

Making glass from recycled material cuts related water pollution by 50%³

One ton of paper recycled saves the energy equivalent of 165 gallons of gasoline⁴

Americans throw away about 28 billion bottles and jars every year⁵

1. EPA. "Paper Recycling." Facts and figures. 2012.
2. Can Manufacturers Institute. "Recycling facts." By the Numbers. 2013.
3. WWF Global. "Recycling Glass – How It Helps The Environment." Year Unknown.
4. EPA. "MSW in the United States 2012 Infographic." 2012.
5. EPA. "10 Fast Facts on Recycling." 2013.



We'll handle it from here.™

Let's work together to make the planet better.



We'll handle it from here.™

Automation..it's for you!



Mike Reeves
361-549-3097



Municipal Services Manager
Coastal Bend & South Texas



Topics to Cover

- Proposed options of service
- Challenges with Manuel Collection
- Next Steps



Options to Consider

- **Option A- 1X week waste/EOW recycling**
- **Option B- 1X week waste/1X week recycling**





Challenges



Estimated Pricing

- Option A- 1X waste, EOW recycle- Flat
- Option B- 1X waste, 1X recycle- \$2 more



Next Steps

- Determine needs
- Discuss any concerns
- Take Action
- Timeline of roll-out



The equipment

Cart Size

- Carts have 96 gallon capacity.
- Ample space for weekly service



Changes with Automation

- All bags must go in Cart(s)
- No outside waste
- Recycle bins replaced with Carts
- Curb appeal changes
- Zone/Route Changes



Roll-Out Timeline

- **City approves automation**
- **We verify house count with meter list**
- **We order all capital needed (Carts, trucks)**
- **We update maps for services**
- **Educational literature is created**
- **City advertises changes**
- **Roll-out occurs- 8-12 months**



CITY COUNCIL AGENDA
Workshop Meeting: Tuesday, April 26, 2016

AGENDA ITEM: 6

Hear and deliberate on level of service and contract terms for sanitation services.

SUBMITTED BY: City Manager Kevin Carruth

APPROVED FOR AGENDA: PKC

BACKGROUND: The City's current agreement with Republic Services (formerly Allied Waste) began on August 1, 2007, with an initial term of five years and two five year renewal options. The agreement was amended in 2012 to allow for unlimited five year renewal options.

Notice not to renew the agreement for another five year term must be given a minimum of 120 days prior to expiration of the current term, which is April 3, 2017. If Council desires to make changes to the level of service, intends not to renew, or consider other changes, staff needs direction in order to give Council adequate lead time for consideration.

See the accompanying agreement for details on the service.

FISCAL ANALYSIS:

STAFF RECOMMENDATION: Not an action item.

CONTRACT

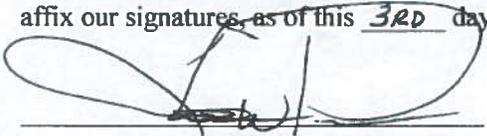
THIS CONTRACT, made and entered into this 1st day of August, 2007 by and between the City of Rockport, Texas (hereinafter called the "City"), and Allied Waste Services of Corpus Christi (hereinafter called "Contractor").

WITNESSES, THAT In consideration of the covenants and agreements, to be performed by the parties hereto and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

1. The Contractor is hereby granted the sole and exclusive franchise, license and privilege within the territorial jurisdiction of the City and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide Residential Solid Waste & Yard Waste Collection and Disposal, Recycling Collection Services as specified and to perform all of the work called for and described in the Contract Documents.
2. The Contractor Documents shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract:
 - a. The Contract
 - b. The General Specifications
 - c. Any addenda or changes to the forgoing documents agreed to by the parties hereto.
3. All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties, which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.
4. This Contract is entered into subject to the following conditions:
 - a. The Contractor shall procure and keep in full force and effect throughout the term of this Contract all of the insurance policies specified in, and required by, the Contract Documents.
 - b. Neither the Contractor nor the City shall be liable for the failure to perform their duties if such is caused by a catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond reasonable control of the Contractor.
 - c. In the event that any provision or portion thereof any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Documents.

- d. The failure or delay on the part of either party to exercise any right, power, privilege or remedy under this Contract shall not constitute a waiver thereof. No modification or waiver by either party of any provision shall be deemed to have been made unless made in writing. Any waiver by a party for one or more similar events shall not be constructed to apply to any other events whether similar or not.
- e. This Contract shall be interpreted and governed by the laws of the state where the work is performed.
- f. This Contract sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this Contract.
- g. If any litigation is commenced under this Contract, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses and court or other costs incurred in such litigation or proceeding.

IN WITNESS WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures, as of this 3RD day of JULY, 2007



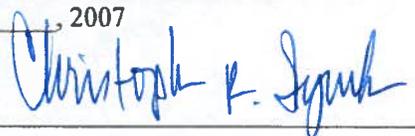
CITY OF ROCKPORT

Todd W Pearson

PRINTED NAME



WITNESSES



ALLIED WASTE SERVICES

CHRISTOPHER R. SYNEK

PRINTED NAME



WITNESS

ON: 17th July, 2007

CITY OF ROCKPORT

August 1, 2007

EXHIBIT A

<u>Residential Hand Collection</u>	\$18.75
City retains: 6% gross revenue fee	-\$1.13
2% bad debt allowance	-\$0.38
City billing fee	<u>-\$0.40</u>
Net amount paid to BFI/Allied Waste	\$16.84 per resident/ monthly

PER UNIT AS OUTLINED IN SPECIFICATION

Residential Unit Rate: \$18.75

Curbside Residential Garbage Collection – Twice a week pick-up

Curbside Residential Recycling Collection – Once a week pick up
Items for recycling: Aluminum Cans, Newspaper, Plastic #1 & #2, Tin

Curbside Residential Bundle Brush Pick-up
Cut and bundle brush tied in four-foot lengths second and forth
Wednesday and Saturday of the month

<u>Commercial Hand Collection:</u>	\$26.41
City retains: 6% gross revenue fee	-\$1.58
2% bad debt allowance	-\$0.53
City billing fee	<u>-\$0.40</u>
Net amount paid to BFI/Allied Waste	\$23.90

Commercial Hand Collection Rate: \$26.41
1 to 6 (30 gallon) containers picked up twice a week

NOTE: The City of Rockport will be responsible for billing all residential and commercial accounts within the City limits.

CITY OF ROCKPORT

PRICE MATRIX

AUGUST 1,2007

COMMERCIAL CONTAINER CUSTOMERSFREQUENCY PER WEEK

<u>Container Size</u>	<u>1X</u>	<u>2X</u>	<u>3X</u>	<u>4X</u>	<u>5X</u>	<u>6X</u>
2 cu yd	\$64.11	\$130.05	\$163.27	\$199.27	\$255.48	\$293.27
3 cu yd	\$76.32	\$155.79	\$194.71	\$231.69	\$268.95	\$321.44
4 cu yd	\$89.48	\$172.16	\$245.27	\$342.12	\$422.39	\$524.23
6 cu yd	\$103.10	\$201.29	\$300.15	\$395.18	\$507.03	\$594.13
8 cu yd	\$130.53	\$257.91	\$356.37	\$457.60	\$565.20	\$677.92

EACH ADDITIONAL CONTAINER PRICE

2 cu yd	\$48.08	\$87.01	\$114.47	\$149.48	\$191.69	\$220.01
3 cu yd	\$57.27	\$106.46	\$129.48	\$161.95	\$201.75	\$241.16
4 cu yd	\$67.06	\$127.37	\$187.90	\$256.59	\$315.70	\$393.17
6 cu yd	\$77.37	\$157.85	\$217.21	\$296.39	\$380.28	\$445.60
8 cu yd	\$98.00	\$180.01	\$262.54	\$323.11	\$423.90	\$508.44

CITY OF ROCKPORT, TEXAS
2007
CONTRACT DOCUMENTS
&
SPECIFICATIONS
SOLID WASTE COLLECTION AND DISPOSAL

SOLID WASTE COLLECTION AND DISPOSAL

GENERAL SPECIFICATIONS

1.00 DEFINITIONS

- 1.01 Bags
- 1.02 Bulky Waste
- 1.03 Bundle
- 1.04 City
- 1.05 Commodity
- 1.06 Commodity Buyer
- 1.07 Construction Debris
- 1.08 Container or (Bin)
- 1.09 Contract Documents
- 1.10 Contractor
- 1.11 Dead Animals
- 1.12 Disposal Site
- 1.13 Garbage
- 1.14 Hazardous Waste and Biohazard Medical Waste
- 1.15 Producer
- 1.16 Recyclable Materials
- 1.17 Refuse
- 1.18 Residential Refuse
- 1.19 Residential Unit
- 1.20 Commercial Refuse
- 1.21 Commercial Unit
- 1.22 Rubbish
- 1.23 Stable Matter

2.00 SCOPE OF WORK

- 2.01 General
- 2.02 Storms and Other Disasters

3.00 TYPE OF COLLECTION

- 3.01 Service Provided
- 3.02 Location of Containers, Bags and Bundles for Collection

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- 4.02 Routes of Collection
- 4.03 Holidays
- 4.04 Complaints
- 4.05 Collection Equipment
- 4.06 Office
- 4.07 Hauling
- 4.08 Disposal

- 4.09 Delivery
- 4.10 Notification
- 4.11 Point of Contact

- 5.00 COMPLIANCE WITH LAWS

- 6.00 EFFECTIVE DATE

- 7.00 NONDISCRIMINATION

- 8.00 INDEMNITY

- 9.00 LICENSES AND TAXES

- 10.00 TERM

- 11.00 INTERRUPTION OF SERVICE & DEFAULT

- 12.00 INSURANCE

- 13.00 BOND
 - 13.01 Performance Bond
 - 13.02 Power of Attorney

- 14.00 BASIS AND METHOD OF PAYMENT
 - 14.01 Rates
 - 14.02 Modification to Rates
 - 14.03 Documentation
 - 14.04 Contractor Billings to City
 - 14.05 Rolloff Dumpsters

- 15.00 TRANSFERABILITY OF CONTRACT

- 16.00 EXCLUSIVE CONTRACT

- 17.00 DAMAGE TO PROPERTY

- 18.00 ATTORNEYS' FEES

- 19.00 INDEPENDENT CONTRACTOR

1.00 DEFINITIONS

- 1.01 Bags - Plastic sacks designed to store Refuse with sufficient wall strength to maintain physical integrity when lifted by top. Total weight of a bag and its contents shall not exceed 35 lbs.
- 1.02 Bulky Waste – Stoves, refrigerators and air conditioning units which are de-energized of chlorofluorocarbons (CFCs); water tanks, washing machines, furniture and other waste materials other than Construction Debris, Dead Animals, Hazardous Waste or Stable Matter with weights or volumes greater than those allowed for Containers.
- 1.03 Bundle – Tree, shrub and brush trimmings or newspaper and magazines securely tied together forming an easily handled package not exceeding three feet in length or 35 lbs. in weight.
- 1.04 City – City of Rockport, Texas
- 1.05 Commodity- Material that can be sold in a spot or future market for processing and use or reuse. Each Commodity shall retain its own identity and be kept separate.
- 1.06 Commodity Buyer- A buyer or processor, selected by the Contractor.
- 1.07 Construction Debris - Waste building materials resulting from construction, remodeling, repair or demolition operations at a Residential Unit or Municipal Facility.
- 1.08 Container or (Bin) – A receptacle designed for the purpose of curbside collection Recyclable Material. The receptacle shall be one made of plastic that has been accepted by other cities with experience in curbside recycling.
- 1.09 Contract Documents – This contract and any changes to it agreed to be the City and the Contractor in writing.
- 1.10 Contractor – The person, corporation or partnership performing collection under contract with the City.
- 1.11 Dead Animals – Animals or portions thereof equal to or greater than 10 lbs. in weight that have expired from any cause, except those slaughtered or killed for human use or consumption.
- 1.12 Disposal Site – A Refuse depository including, but not limited to, sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive Refuse and Dead Animals for processing or final disposal.
- 1.13 Garbage – Any and all dead animals of less than 10 lbs. weight, except those slaughtered for human consumption; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing,

consumption, dealing in, handling, packaging, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers: and all put rescible or easily decomposable animal or vegetable waste matter which is likely to attract flies or rodents): except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, Hazardous Waste, Rubbish or Stable Matter.

- 1.14 Hazardous Waste – Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law. For purposes of this Contract, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans.
Biohazard Medical Waste – Waste in any amount is defined characterized or designated as Biohazard Medical Waste by the Occupational Safety & Health Administration or appropriate State or Federal agency.
- 1.15 Producer – An occupant of a residential or commercial unit who generates refuse.
- 1.16 Recyclable Materials- Those commodities which are collected by Contractor pursuant to the Contract Documents such as newsprint, aluminum, and metal cans, plastics, or any other Commodity set forth in this Contract.
- 1.17 Refuse – The term shall refer to Residential and Commercial Refuse and Bulky Waste, Commercial Debris and Stable Matter generated at a residential or commercial unit unless context otherwise requires.
- 1.18 Residential Refuse – All Garbage and Rubbish generated by a Producer at a Residential Unit.
- 1.19 Residential Unit – A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water, sewer or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four or less contiguous or separate single-family dwelling units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential unit.
- 1.20 Commercial Refuse – All Garbage and Rubbish generated by a Producer at a Commercial Industrial Unit.
- 1.21 Commercial Unit – A Commercial establishment within the corporate limits of the City occupied by a person or persons who are engaged in the business of selling, or offering for sale, any goods or services. A Commercial Unit shall be deemed occupied when either water, sewer or electricity services are being supplied thereto.

- 1.22 Rubbish – All waste wood, wood products, tree trimmings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweeping, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, Dead Animals, Garbage, Hazardous Waste or Stable Matter.
- 1.23 Stable Matter – All manure and other matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

2.00 SCOPE OF WORK

2.01 General

- (a) The work under this Contract shall consist of all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the Contract Documents. The work under this Contract does not include the collection of any increased volume resulting from a flood, hurricane, or similar or different act of God over which the Contractor has no control.
- (b) It is the intent under this Contract for the Contractor to collect certain source separated Commodities to be recycled. The Contractor will not be required to collect those Commodities which are mixed with garbage, trash and rubbish normally collected by sanitation crews. The Contractor will tag the container as being unacceptable for collection.

- 2.02 Storms and Other Disasters – In case of a storm, flood, hurricane or other disaster or other Acts of God, the City shall grant the Contractor reasonable variances from regular schedules and routes. In case of a storm or other disaster or other Acts of God where it is necessary for the Contractor to perform services beyond the scope of this Contract, the Contractor and the City shall negotiate the amounts to be paid to the Contractor.

3.00 TYPE OF COLLECTION

3.01 Service Provided

- (a) Contractor shall provide curbside collection service for the collection of Residential Refuse and Hand Collected Commercial Refuse to each such Residential and Commercial Unit 2 time(s) per week. With a maximum of (6) six thirty (30) gallon containers or 30 gallon trash bags per collection. Containers and bags shall be placed at curbside by 7:00 a.m. on the designated collection day.

(b) Contractor shall provide curbside collection service for the collection of Recyclable Material from each Residential Unit one (1) time each week. Containers shall be placed at curbside by 7:00 a.m. on the designated collection day.

(c) Contractor shall not provide for the collection from Residential or Hand Collected Commercial Units Construction Debris, non containerized Rubbish and Stable Matter.

(d) Hand Collected Commercial Units shall be entitled to same services (without recycling or brush collection) as a Residential Unit. Collection shall be twice a week but shall not exceed 6 (30 gallon) containers per pickup. Businesses that exceed the 6 can limit will be required to contract for a dumpster and choose a size and pickup schedule as outlined in the bid tabulation.

(e) Each dumpster Bin shall be placed in an accessible outside location on a hard surface on the private property of the customer according to individual agreement. Such locations must not interfere with or endanger the movement of vehicles, pedestrians, or obstructed alleys. Contractor may decline to collect Refuse in Bins not so placed.

3.02 Location of Containers, Bags and Bundles for Collection

(a) Each Container, Bag or Bundle shall be placed at curbside for collection: Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. Containers, Bags and Bundles shall be placed as close to the roadway as possible without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Containers, Bags and Bundles shall be placed as close as possible to an access point for the collection vehicle. Contractor may decline to collect any Container, Bag or Bundle not so placed. EXCEPT those containers located at the dwelling of a handicapped or disabled person, (in those instances, a suitable location agreed upon by the person and Contractor shall be used).

4.00 OPERATION

4.01 Hours of Operation - Collection of Residential Refuse and Hand Collected Commercial Refuse shall not start before 7:00 a.m. or continue after 7:00 p.m. on the same day. Exceptions to collection hours shall be effected only upon the mutual agreement of the City and Contractor or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances. Collection of Commercial Refuse in Bins shall take place according to individual agreement between Contractor and Commercial customer. Contractor shall notify City of rates to be charged to Commercial Customers in a timely fashion so that said rate can be incorporated into the applicable utility billing statement that the City provides to customers.

4.02 Routes of Collection - Collection routes shall be established by the Contractor. Collection routes shall be modeled as closely as possible to existing routes to minimize customer confusion. Contractor shall submit a map designating the collection routes to the City for their approval, which approval shall not be unreasonably withheld. The Contractor may from time to time propose to City for approval changes in routes or days of collection, which approval shall not be unreasonably withheld. Notice of changes in collection routes and annual Holiday schedule will be the responsibility of the contractor and will be done in a timely fashion.

4.03 Holidays – The following shall be holidays for purposes of this Contract. No collection will be provided on holidays.

New Year's Day
 Memorial Day
 Independence Day
 Labor Day
 Thanksgiving Day
 Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension of collection service on the holiday, but such decision in no manner relieves Contractor of its obligation to provide collection service at Residential Units and Hand Collected Commercial Units at least one time per week.

4.04 Complaints – All complaints shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of alleged missed scheduled collection, the Contractor shall investigate and, if such allegations are verified, shall arrange for the collection of the Refuse not collected within 24 hours after the complaint is received. Contractor shall maintain effective telecommunications contact with their personnel during the scheduled route hours in order to minimize complaints. The Contractor will supply the City a monthly report summarizing customer complaints and problems.

4.05 Collection Equipment - The Contractor shall provide an adequate number of vehicles and equipment for regular collection services. All vehicles and other equipment shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side vehicle number along with the identity and telephone number of the Contractor. Dumpsters and trucks shall be cleaned on a regular basis to prevent offensive odors from accumulating. All trucks fully loaded will comply with the City's street weight limit of 56,000 lb per vehicle. No trucks that are equipped with automatic driver release braking will be permitted.

4.06 Office – The Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. The Contractor shall provide a local access or toll free phone number where the contractor maybe contacted.

- 4.07 Hauling - All Refuse hauled by the Contractor shall be so contained, tied or enclosed that leaking, spilling or blowing are prevented.
- 4.08 Disposal - All Refuse collected for disposal by the Contractor shall be hauled to a Disposal Site as designated by the Contractor. The charges for disposal shall be included in the rate set forth in the Proposal for each Commercial and Industrial Unit and Residential unit serviced by the Contractor. During the Term of the contract, any future increase in disposal cost shall be amended with new rates reflection the actual net change in such cost in accordance with Section 14.02 (d).
- 4.09 Delivery - All Commodities collected for delivery and sale by the Contractor shall be hauled to an Intermediate Processing Facility operated by the Contractor, where he shall prepare the commodities for sale.
- 4.10 Notification - The City shall notify all Producers about complaint procedures, sorting, preparing for collection, regulations, and day(s) for scheduled Recyclable Materials collection. The Contractor shall also inform the public of any condition and form required of materials to be collected. Recycle materials for collection will be newspaper, aluminum, tin cans, and plastics #1 & #2. Any changes to the items collected must have prior approval by Council.
- 4.11 Point of Contact - All dealings, contracts, etc., between the Contractor and the City shall be directed to the Contractor's Operations Manager and to the City's Utility Customer Service Supervisor.

5.00 COMPLAINCE WITH LAWS

The Contractor shall conduct operations under this Contract in compliance with all applicable laws; provided, however, that the General Specifications shall govern the obligations of the Contractor where there exists conflicting ordinances of the City on the subject.

6.00 EFFECTIVE DATE

This Contract shall be effective upon the execution of the Contract and performance of such Contract shall begin within 30 days or a date agreed upon by both parties.

7.00 NONDISCRIMINATION

The Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

8.00 INDEMNITY

The Contractor will indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees to the extent resulting from the sole negligent or willful misconduct of the Contractor, its officers, agents, servants, and employees in the performance of this Contract; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages,

costs, expenses and attorneys' fees arising out of the award of this Contract or a willful or negligent act or omission of the City, its officers, agents, servants and employees.

9.00 LICENSES AND TAXES

The Contractor shall obtain all licenses and permits (other than the licenses and permits granted by the Contract) and promptly pay all taxes required by the City or other taxing entity.

10.00 TERM

The Contract shall be for a period beginning upon the date specified in section 6 and ending five (5) years thereafter. The term of this Contract shall be automatically extended for two successive (5) five year term, unless either party notifies the other party in writing, not less than one hundred and twenty (120) days prior to the expiration of the existing term of its intention to terminate this Contract. Any such written notice shall be served by certified or registered mail, return receipt requested.

11.00 INTERRUPTION OF SERVICE AND DEFAULT

11.01 Interruption in Service – In the event that the collection and disposal of garbage and refuse should be interrupted by any reason for more than forty-eight (48) hours, the City shall have the right to make temporary independent arrangements for the purpose of maintaining this necessary service to its residents in order to provide and protect the public health and safety.

11.02 Excessive Interruption in Service – If the interruption continues for a period of seventy- two (72) hours, then the City shall have the right to terminate this contract without in any manner affecting the Contractor's liability to the City hereunder for such breach and any damages, whether direct or consequential, arising from such breach, and/or the right to expect performance of the Contractor's responsibilities under the term of the Surety Bond required under section 13 OR, AT THE CITY'S CHOOSING, MAY OPT TO HAVE SOLID WASTE COLLECTION AND DISPOSAL SERVICES PERFORMED BY ANOTHER CONTRACTOR AND CHARGE THE ORIGINAL CONTRACTOR FOR SAID SERVICES.

11.03 Default – Contractor shall faithfully perform said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the Contractor to be observed and performed, and according to the true intent and meaning of said contract. Failure to comply with this section of said contract, unless otherwise excepted, shall be considered default of the contract.

11.04 Force Majeure – Should contractor be prevented from complying with any term or condition of this contract by operation of force majeure, any federal or state law, or any order, rule or regulation of governmental authority or otherwise beyond Contractor's control, except lack of equipment, financial or labor dispute then while so prevented, Contractor's obligation to comply with said term and/ or condition shall be suspended and Contractor shall not be liable for damage for failure to comply therewith, but for a period not to exceed ninety (90) days in the

aggregate, at which time the City may elect but shall not be required to declare Contractor in default of this contract.

12.00 INSURANCE

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provision of Section 8.00. All insurance shall be by insurers and for policy limits reasonably acceptable to the City and before commencement of work hereunder the Contractor agrees to furnish the city certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

“ This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation affecting the certificate holder, thirty (30) days prior to written notice will be given the certificate holder.”

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverages</u>	<u>Limits of Liability</u>
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability Except Automobile	\$500,000 each occurrence \$1,000,000 aggregate
Property Damage Liability Except Automobile	\$500,000 each occurrence \$500,000 aggregate
Automobile Bodily Injury Liability	\$500,000 each person \$1,000,000 each occurrence
Automobile Property Damage Liability	\$500,000 each occurrence
Excess Umbrella Liability	\$500,000 each occurrence

To the extent permitted by law, all or any part of any required insurance coverage may be provided under a plan or plans of self-insurance. The coverage may be provided by the Contractor's parent corporation.

13.00 BOND

13.01 Performance Bond

- (a) The Contractor will be required to furnish a corporate surety bond as security for the performance of this Contract. Said surety bond must be in the amount

of \$100,000.00 over the term of the Contract. The bond shall be in place prior to operation by the contractor.

- (b) The premium for the bond described above shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.
- (c) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Texas.

13.02 Power of Attorney – Attorneys-in-fact who sign performance bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

14.00 BASIS AND METHOD OF PAYMENT

14.01 Rates

- (a) For collection and disposal services required to be performed pursuant to Section 3.01 (a)-(b), the charges shall not exceed the rates as fixed by the Contract Documents, as adjusted in accordance with Section 14.02.
- (b) For special collection provided by the Contractor pursuant to Section 3.01 (d), the charges are to be negotiated between the Contractor and Producer prior to collection. If agreement cannot be reached, the matter may be submitted to the City for determination of a reasonable fee.
- (c) The rates to be charged under Section 3.01 (a)-(b) shall include all disposal and related costs and shall be modified as set forth in Section 14.02. If the Contractor receives notification of a disposal fee increase at a Disposal Site, then the Contractor shall promptly notify the City of said disposal fee increase. See Section 14.02.
- (d) Rates: The rates to be charged by Contractor for refuse collection will be those set forth in Exhibit "A" attached hereto and incorporated herein for all purposes. These rates will be binding and considered part of this contract.
- (e) Gross Revenue: For and in consideration of the City granting Contractor a contract within the city limits for commercial and residential refuse collection. Contractor hereby agrees to pay the City a six percent (6%) fee on all commercial and residential billings, calculated on the basis of gross billings within the City.
- (f) Billing: The City hereby designated as the billing and collection agent for all refuse services provided herein. The City shall receive a fee from Contractor equal to forty cents (\$0.40) for its billing and collection of funds for all refuse services. The City agrees to provide Contractor with a computer printout establishing the amount of all

billings by the City each month, said printout and any amounts due to be provided to Contractor no later than the twentieth (20) day of the month following the month billed.

14.02 Modification to Rates

- (a) The fees or compensation payable to the Contractor for the second and subsequent years of the term hereof, shall be adjusted upward or downward to reflect the percentage change in the cost of operations, as reflected by fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditures Category "Gasoline," both as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- (b) In addition to the foregoing the fees which may be charged by the Contractor shall be increased to reflect increases in disposal cost, as well as increases in the number and type of Commodities that the Contractor is required to collect. All fee increases will be submitted to the City for approval by Council.
- (c) If any tax, fee, levy, host fee, charge or surcharge is imposed by the governmental or regulatory agency, body, or authority, on or with respect to any of the services provided herein. Contractor shall pass these expenses on in an equal amount.
- (d) In addition to the above, the Contractor may petition the City at any time for additional rate and price adjustments at reasonable times on the basis of unusual changes in its cost of operations, such as revised laws, ordinances, or regulations; changes in location of disposal sites; an increase in the number of Residential Units as set forth in paragraph 14 of the Instructions to Proponents, such as City growth or annexation; and for other reasons.

14.03 Documentation – The Contractor shall be responsible for the cost inherent in documenting and reporting all Recyclable Material volumes collected and shall report these results to the City along with the Monthly Complaint Report.

14.04 Contractor Billings to City – The Contractor shall collect for all residential and commercial sanitation collection along with the monthly water and sewer bills. The Contractor shall bill the City for service rendered within ten (10) days following the end of the month and the City shall pay the Contractor on or before the 20th day following the end of such month. Such billing and payment shall be based on the rates and schedules set forth in the Contract Documents. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the City collects from the customer for such services.

14.05 Rolloff Dumpsters – Due to the complicated process associated with rolloff dumpsters, the City will direct all such calls to the Contractor for service and billing. The charges collected from these services will be subject to a City franchise fee and will be reported as a part of the Monthly Report from the



City of Rockport

Collection and Disposal of Solid Waste Contract

Amendment of Contract

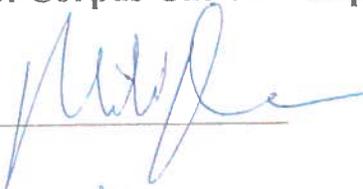
The following is an extension of the Contract dated and approved July 3, 2007 with the proposed changes: The effective date of the current base Contract was August 1, 2007.

Section One: Extension of Contract: BFI Waste Services of Texas LP d/b/a Allied Waste Services of Corpus Christi // Republic Services of Corpus Christi and the City of Rockport, Texas have agreed to extend the initial term of Contract from July 31, 2012 for a period of five (5) years. The new term will be August 1, 2012 through July 31, 2017. The extension of the five (5) year term of this Contract shall automatically be extended for successive additional five (5) year terms, unless either party notifies the other party in writing, not less than one hundred and twenty (120) days prior to the expiration of the initial five (5) year extension or of an successive five (5) year term, of its intentions to terminate this Contract. Any such written notice shall be serviced by certified or registered mail, return receipt requested.

Section Two: Service Changes

In the event the City of Rockport requests a change in frequency of service and/or requires an enhancement of services, the Contractor will allow these changes within the current term of the Contract provided both parties agree upon services and pricing. Any changes agreed upon by both parties may take 90-180 days to be implemented depending on the scope of work, capital investment, and equipment involved.

Allied Waste Services of Corpus Christi // Republic Services of Corpus Christi

By: Mike Reeves 

Title: Municipal Marketing Manager
P.O. Box 9236
Corpus Christi, Texas 78469



City of Rockport

By:

Charles J. Wap
Title: *Mayor City of Rockport*
622 E. Market St,
Rockport, Texas 78382



CITY COUNCIL AGENDA
Workshop Meeting: Tuesday, April 26, 2016

AGENDA ITEM: 7

Hear and deliberate on a presentation of a Stormwater Ordinance replacing City of Rockport Code of Ordinances Chapter V. Erosion and Sediment Control.

SUBMITTED BY: Public Works Director Michael S. Donoho Jr.

APPROVED FOR AGENDA: PKC

BACKGROUND: City of Rockport Environmental Compliance Officer Kendra Baird will present a review of the proposed stormwater ordinance to replace the current City Erosion and Sediment Control Ordinance.

FISCAL ANALYSIS:

STAFF RECOMMENDATION: Not an action item.

STORMWATER ORDINANCE

Sec. 42-120. Responsibility.

Except as otherwise provided herein, the Director of Public Works (DPW) and Code Enforcement Administrator (CEA) shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon these people may be delegated to other City personnel.

Sec. 42-121. General provisions

(a) Purposes. The purposes and objectives of this Ordinance are as follows:

- (1) To maintain and improve the quality of surface water and groundwater within the City of Rockport and the State of Texas.
- (2) 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 Rockport.
- (3) To promote public awareness of the hazards 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.
- (4) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
- (5) To facilitate compliance with state and federal standards and permits by owners and operators of industrial and construction sites within the City.
- (6) To enable the City to comply with all federal and state laws and regulations applicable to stormwater discharges.

Sec. 42-122. Definitions and abbreviations.

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

Best management practices (BMP) means the schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

City means the City of Rockport, Texas, or the City Council of Rockport.

48
49 *City Inspector(s)* means the DPW or CEA who go on site to determine if the provisions of
50 this ordinance are being met.

51
52 *Code Enforcement Administrator (CEA)* means the person appointed by the City Manager to
53 enforce City codes or his/her duly authorized representative.

54
55 *Commencement of construction* means the disturbance of soils associated with clearing, grading,
56 or excavating activities or other construction activities.

57
58 *Commercial* means any business, trade, industry, or other activity engaged in for profit.

59
60 *Director of Public Works (DPW)* means the person appointed by the City Manager to manage
61 field operations and provide environmental education, or his/her duly authorized representative.

62
63 *Discharge* means any addition or introduction of any pollutant, stormwater, or any other substance
64 whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United
65 States.

66
67 *Discharger* means any person, who causes, allows, permits, or is otherwise responsible for, a
68 discharge, including, without limitation, any operator of a construction site or industrial facility.

69
70 *Domestic sewage* means human excrement, gray water (from home clothes washing, bathing,
71 showers, dishwashing, and food preparation), other wastewater from household drains, and
72 waterborne waste normally discharged from the sanitary conveniences of dwellings (including
73 apartment houses and hotels), office buildings, factories, and institutions, that is free from
74 industrial waste.

75
76 *Environmental Protection Agency (EPA)* means the United States Environmental Protection
77 Agency, the regional office thereof, any federal department, agency, or commission that may
78 succeed to the authority of the EPA, and any duly authorized official of EPA or such successor
79 agency.

80
81 *Extremely hazardous substance* means any substance listed in the Appendices to 40 CFR Part
82 355, Emergency Planning and Notification.

83
84 *Facility* means any building, structure, installation, process, or activity from which there is or
85 may be a discharge of a pollutant.

86
87 *Fertilizer* means a solid or non-solid substance or compound that contains an essential plant
88 nutrient element in a form available to plants and is used primarily for its essential plant nutrient
89 element content in promoting or stimulating growth of a plant or improving the quality of a
90 crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal,
91 plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is
92 made.

93

94

95 *Final stabilization* means the status when all soil disturbing activities at a site have been
96 completed, and a uniform perennial vegetative cover with a density of seventy (70%) percent
97 of the cover for unpaved areas and areas not covered by permanent structures has been established,
98 or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles)
99 have been employed.

100
101 *Fire Department* means the Fire Department of the City of Rockport, or any duly authorized
102 representative thereof.

103
104 *Fire protection water* means any water, and any substances or materials contained therein,
105 used by any person other than the Fire Department to control or extinguish a fire.

106
107 *Garbage* means putrescible animal and vegetable waste materials from the handling, preparation,
108 cooking, or consumption of food, including waste materials from markets, storage facilities, and
109 the handling and sale of produce and other food products.

110
111 *Harmful quantity* means the amount of any substance that will cause pollution of water in the
112 State.

113
114 *Hazardous household waste (HHW)* means any material generated in a household (including
115 single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters,
116 camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for
117 the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste
118 under 40 CFR Part 261.

119
120 *Hazardous substance* means any substance listed in Table 302.4 of 40 CFR Part 302.

121
122 *Hazardous waste*. Any substance identified or listed as a hazardous waste by the EPA pursuant to
123 40 CFR Part 261.

124
125 *Hazardous waste treatment, disposal, and recovery facility* means all contiguous land, and
126 structures, other appurtenances and improvements on the land, used for the treatment, disposal, or
127 recovery of hazardous waste.

128
129 *Herbicide* means a substance or mixture of substances used to destroy a plant or to inhibit plant
130 growth.

131
132 *Industrial waste* means any waterborne liquid or solid substance that results from any process
133 of industry, manufacturing, mining, production, trade, or business.

134
135 *Motor vehicle fuel* means any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid,
136 differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a
137 motor vehicle.

138
139 *Municipal landfill (or landfill)* means an area of land or an excavation in which municipal solid
140 waste is placed for permanent disposal, and which is not a land treatment facility, a surface
141 impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated

142 by the Texas Water Commission).

143

144 *Municipal separate storm sewer system (MS4)* means the system of conveyances (including
145 roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made
146 channels, or storm drains) owned and operated by the City and designed or used for collecting
147 or conveying stormwater, and which is not used for collecting or conveying sewage.

148

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

152

153 *NPDES General Permit for Stormwater Discharges Associated with Industrial Activity (or*
154 *Industrial General Permit)* means the Industrial General Permit issued by EPA on August 27,
155 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992,
156 and any subsequent modifications or amendments thereto.

157

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

162

163 *NPDES permit* means a permit issued by EPA (or by the State under authority delegated pursuant
164 to 33 USC § 1342(b)), as amended, that authorizes the discharge of pollutants to waters of the
165 United States, whether the permit is applicable on an individual, group, or general area-wide basis.

166

167 *Non-point source* means any source of any discharge of a pollutant that is not a "point source."

168

169 *Notice of Intent (NOI)* means the Notice of Intent that is required by either the Industrial General
170 Permit or the Construction General Permit.

171

172 *Notice of Termination (NOT)* means the Notice of Termination that is required by either the
173 Industrial General Permit or the Construction General Permit.

174

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

178

179 *Operator* means the person or persons who meet either of the following two criteria: (1) they have
180 operational control over the facility specifications (including the ability to make modifications in
181 specifications); and (2) they have the day-to-day operational control over those activities at the
182 facility necessary to ensure compliance with pollution prevention requirements and any permit
183 conditions.

184

185 *Owner* means the person who owns a facility or part of property.

186

187 *Person* means any individual, partnership, co-partnership, firm, company, corporation,
188 association, joint stock company, trust, estate, governmental entity, or any other legal entity; or

189 their legal representatives, agents, or assigns. This definition includes all federal, state, and local
190 governmental entities.

191
192 *Pesticide* means a substance or mixture of substances intended to prevent, destroy, repel, or
193 mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator,
194 defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture
195 Code, as amended).

196
197 *Petroleum product* means a petroleum product that is obtained from distilling and processing
198 crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or
199 aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene,
200 distillate fuel oil, and # 1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-
201 type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of
202 that manufacturing.

203
204 *Petroleum storage tank (PST)* means a ny one or combination of aboveground or underground
205 storage tanks that contain petroleum products and any connecting underground pipes.

206
207 *Point source* means a ny discernable, confined, and discrete conveyance, including but not
208 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
209 concentrated animal feeding operation, landfill leachate collection system, vessel or other floating
210 craft from which pollutants are or may be discharged. This term does not include return flows
211 from irrigated agriculture or agricultural stormwater runoff.

212
213 *Pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge,
214 munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded
215 equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into
216 water. The term "pollutant" does not include tail water or runoff water from irrigation or
217 rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

218
219 *Pollution* means the alteration of the physical, thermal, chemical, or biological quality of, or the
220 contamination of, any water in the State that renders the water harmful, detrimental, or injurious
221 to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or
222 impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

223
224 *Qualified personnel* means persons who possess the appropriate competence, skills, and ability
225 (as demonstrated by sufficient education, training, experience, and/or, when applicable, any
226 required certification or licensing) to perform a specific activity in a timely and complete manner
227 consistent with the applicable regulatory requirements and generally- accepted industry standards
228 for such activity.

229
230 *Registered landscape architect (RLA)* means a person who has been duly licensed and registered
231 to practice landscape architecture by the Texas Board of Architectural Examiners.

232 *Registered professional engineer (RPE)* means a person who has been duly licensed and
233 registered by the State Board of Registration for Professional Engineers to engage in the practice of
234 engineering in the State of Texas.

235

236 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
237 injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer
238 system (MS4) or the waters of the United States.

239
240 *Reportable quantity (RQ)* means for any "hazardous substance," the quantity established and
241 listed in Table 302.4 of 40 CFR Part 302, as amended; for any "extremely hazardous substance,"
242 the quantity established in 40 CFR Part 355, as amended, and listed in Appendix A thereto.

243
244 *Rubbish* means nonputrescible solid waste, excluding ashes, that consist of (A) combustible waste
245 materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard
246 trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including
247 glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn
248 at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

249
250 *Sanitary sewer (or sewer)* means the system of pipes, conduits, and other conveyances which
251 carry industrial waste and domestic sewage from residential dwellings, commercial buildings,
252 industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City
253 sewage treatment plant (and to which stormwater, surface water, and groundwater are not
254 intentionally admitted).

255
256 *Septic tank waste* means any domestic sewage from holding tanks such as vessels, chemical toilets,
257 campers, trailers, and septic tanks.

258
259 *Service station* means any retail establishment engaged in the business of selling fuel for motor
260 vehicles that is dispensed from stationary storage tanks.

261
262 *Sewage (or sanitary sewage)* means the domestic sewage and/or industrial waste that is
263 discharged into the City sanitary sewer system and passes through the sanitary sewer system to
264 the City sewage treatment plant for treatment.

265
266 *Site* means the land or water area where any facility or activity is physically located or conducted,
267 including adjacent land used in connection with the facility or activity.

268
269 *Solid waste* means any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply
270 treatment plant, or air pollution control facility, and other discarded material, including, solid,
271 liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial,
272 mining, and agricultural operations, and from community and institutional activities.

273
274 *State* means the State of Texas.

275
276 *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.

277
278 *Stormwater discharge associated with industrial activity* means the discharge from any
279 conveyance which is used for collecting and conveying stormwater and which is directly related
280 to manufacturing, processing, or raw materials storage areas at an industrial plant which is within
281 one of the categories of facilities listed in 40 CFR § 122.26(b)(14), as amended, and which is not
282 excluded from EPA's definition of the same term.

283 *Stormwater pollution prevention plan (SWPPP)* means a plan required by either the Construction
 284 General Permit or the Industrial General Permit and which describes and ensures the
 285 implementation of practices that are to be used to reduce the pollutants in stormwater discharges
 286 associated with construction or other industrial activity at the facility.

287
 288 *Uncontaminated* means not containing a harmful quantity of any substance.

289
 290 *Used oil (or used motor oil)* means any oil that has been refined from crude oil or synthetic oil
 291 that, as a result of use, storage, or handling, has become unsuitable for its original purpose
 292 because of impurities or the loss of original properties but that may be suitable for further use
 293 and is recyclable in compliance with State and federal law.

294
 295 *Water in the State (or water)* means any groundwater, percolating or otherwise, lakes, bays, ponds,
 296 impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf
 297 of Mexico, inside the territorial limits of the State, and all other bodies of surface water, natural or
 298 artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and
 299 banks of all water courses and bodies of surface water, that are wholly or partially inside or
 300 bordering the State or inside the jurisdiction of the State.

301
 302 *Water quality standard* means the designation of a body or segment of surface water in the State
 303 for desirable uses and the narrative and numerical criteria deemed by the State to be necessary
 304 to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code,
 305 as amended.

306
 307 *Waters of the United States* means all waters which are currently used, were used in the past,
 308 or may be susceptible to use in interstate or foreign commerce, including all waters which are
 309 subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other
 310 waters the use, degradation, or destruction of which would affect or could affect interstate or
 311 foreign commerce; all impoundments of waters otherwise defined as waters of the United States
 312 under this definition; all tributaries of waters identified in this definition; all wetlands adjacent
 313 to waters identified in this definition; and any waters within the federal definition of "waters of
 314 the United States" at 40 CFR § 122.2, as amended; but not including any waste treatment
 315 systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water
 316 Act.

317
 318 *Wetland* means an area that is inundated or saturated by surface or groundwater at a frequency and
 319 duration sufficient to support, and that under normal circumstances does support, a prevalence
 320 of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include
 321 swamps, marshes, bogs, and similar areas.

322
 323 *Yard waste* means leaves, grass clippings, yard and garden debris, and brush that results from
 324 landscaping maintenance and land-clearing operations.

325
 326 **Sec. 42-123. General prohibition**

327
 328 (a) No person shall introduce or cause to be introduced into the municipal separate storm
 329 sewer system (MS4) any discharge that is not composed entirely of stormwater.

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- (b) It is an affirmative defense to any enforcement action for violation of subsection (a) of this section 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
Runoff from irrigation systems using potable water is prohibited by Ordinance 1619, Drought Contingency and Emergency Plan.;
 - (3) discharges from potable water sources;
 - (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) dechlorinated swimming pool discharges;
 - (14) street wash water;
 - (15) discharges or flows from fire-fighting activities;
 - (16) other allowable non-stormwater discharges listed in 40 CFR 122.26(d)(2)(iv)(B)(1), as amended;
 - (17) non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) or the TPDES Construction General permit (CGP);

- 376
377 (18) a discharge from a temporary car wash sponsored by a civic group school
378 religious or nonprofit organization where only soap and water are used and
379 where efforts are made to minimize pollutants in the discharge.
380
381 (19) and, other similar occasional incidental non-stormwater discharges, unless
382 the TCEQ develops permits or regulations addressing these discharges.
383
384 (c) No affirmative defense shall be available under Subsection (b) of this section if the
385 discharge or flow in question has been determined by the DPW to be a source of a pollutant
386 or pollutants to the waters of the United States or to the MS4, written notice of such
387 determination has been provided to the discharger, and the discharge has occurred more
388 than fourteen (14) calendar days beyond such notice. The correctness of the DPW's
389 determination that a discharge is a source of a pollutant or pollutants may be reviewed
390 in any administrative or judicial enforcement proceeding.
391

392 **Sec. 42-124. Specific prohibitions and requirements**

- 393
394 (a) The specific prohibitions and requirements in this section are not necessarily inclusive
395 of all the discharges prohibited by the general prohibition in section 42- 123.
396
397 (b) No person shall introduce or cause to be introduced into the MS4 any discharge that
398 causes or contributes to causing the City to violate a water quality standard, the City's
399 NPDES permit, or any state-issued discharge permit for discharges from its MS4.
400
401 (c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,
402 or otherwise introduce or cause, allow, or permit to be introduced any of the following
403 substances into the MS4:
404
405 (1) Any industrial waste;
406
407 (2) Any used motor oil,
408
409 (3) Any hazardous waste, including hazardous household waste;
410
411 (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
412
413 (5) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil
414 contaminated by a leaking PST, or any discharge of pumped, confined, or treated
415 wastewater from the remediation of any such PST release, unless the discharge
416 satisfies all of the following criteria:
417
418 a. Compliance with all state and federal standards and requirements; and
419
420 b. No discharge containing a harmful quantity of any pollutant.
421
422

- 423 (d) No person shall intentionally dump, spill, leak, pump, pour, emit, empty, discharge,
424 leach, dispose, or introduce any of the following substances into the MS4 and all persons
425 shall to the maximum extent practicable under prevailing circumstances employ control
426 measures to prevent the following substances from entering into the MS4:
427
- 428 (1) Any motor oil, antifreeze, or any other motor vehicle fluid;
 - 429
 - 430 (2) Any garbage, rubbish, or yard waste;
 - 431
 - 432 (3) Any wastewater from a commercial carwash facility; from any vehicle washing,
433 cleaning, or maintenance at any new or used automobile or other vehicle dealership,
434 rental agency, body shop, repair shop, or maintenance facility; or from any washing,
435 cleaning, or maintenance of any business or commercial or public service vehicle,
436 including a truck, bus, or heavy equipment, by a business or public entity;
 - 437
 - 438 (4) Any wastewater from a commercial mobile power washer or from the washing
439 or other cleaning of a building exterior that contains any soap, detergent,
440 degreaser, solvent, or any other harmful cleaning substance;
 - 441
 - 442 (5) Any wastewater from floor, rug, or carpet cleaning;
 - 443
 - 444 (6) Any wastewater from the wash-down or other cleaning of pavement that contains
445 any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant,
446 or any other harmful cleaning substance; or any wastewater from the wash-down
447 or other cleaning of any pavement where any spill, leak, or other release of oil,
448 motor fuel, or other petroleum or hazardous substance has occurred, unless all
449 harmful quantities of such released material have been previously removed;
 - 450
 - 451 (7) Any effluent from a cooling tower, condenser, compressor, emissions scrubber,
452 emissions filter, or the blow down from a boiler;
 - 453
 - 454 (8) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro
455 mulch material, or from the cleaning of commercial vehicles or equipment
456 containing, or used in transporting or applying, such material;
 - 457
 - 458 (9) Any runoff or wash-down water from any animal pen, kennel, or fowl or livestock
459 containment area;
 - 460
 - 461 (10) Any filter backwash from a swimming pool, fountain, or spa;
 - 462
 - 463 (11) Any swimming pool water containing any harmful quantity of chlorine, muriatic
464 acid or other chemical used in the treatment or disinfection of the swimming pool
465 water or in pool cleaning;
 - 466
 - 467 (12) Any discharge from water line disinfection by super chlorination or other means if
468 it contains any harmful quantity of chlorine or any other chemical used in line

- 469 disinfection;
- 470
- 471 (13) Any water from a water curtain in a spray room used for painting vehicles or
- 472 equipment;
- 473
- 474 (14) Any contaminated runoff from a vehicle wrecking yard;
- 475
- 476 (15) Any substance or material that will damage, block, or clog the MS4;
- 477
- 478 (e) No person shall introduce or cause to be introduced into the MS4 any harmful quantity
- 479 of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation
- 480 or other construction activities, or associated with landfilling or other placement or disposal
- 481 of soil, rock, or other earth materials, in excess of what could be retained on site or
- 482 captured by employing sediment and erosion control measures to the maximum extent
- 483 practicable under prevailing circumstances.
- 484
- 485 (f) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the
- 486 MS4, or allow such a connection to continue.
- 487
- 488 (g) No person shall cause or allow any pavement wash water from a service station to be
- 489 discharged into the MS4 unless such wash water has passed through a properly functioning
- 490 and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- 491
- 492 (h) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,
- 493 or otherwise introduce or cause, allow, or permit to be introduced harmful levels of
- 494 pesticides, herbicides and fertilizers into the MS4. All persons shall to the maximum
- 495 extent practicable under prevailing circumstances employ control measures to minimize
- 496 pesticides, herbicides and fertilizers from entering the MS4. This includes the following:
- 497
- 498 (1) Applying products according to manufacture recommendations.
- 499
- 500 (2) Applying products according to all state and federal laws.
- 501
- 502 (3) Proper storage and disposal.
- 503

504 **Sec. 42-125. Release and reporting and cleanup**

505

- 506 (a) The person in charge of any facility, vehicle, or other source of any spilling,
- 507 leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping,
- 508 disposing, or any other release of any of the following quantities of any of the following substances
- 509 that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United
- 510 States, shall immediately telephone and notify the DPW concerning the incident:
- 511
- 512 (1) An amount equal to or in excess of a reportable quantity of any hazardous
- 513 substance, as established under 40 CFR Part 302, as amended;
- 514
- 515 (2) An amount equal to or in excess of a reportable quantity of any extremely

- 516 hazardous substance, as established under 40 CFR Part 355, as amended;
517
- 518 (3) An amount of oil that either (a) violates applicable water quality standards,
519 or (b) causes a film or sheen upon or discoloration of the surface of the
520 water or an adjoining shoreline or causes a sludge or emulsion to be
521 deposited beneath the surface of the water or upon an adjoining shoreline;
522 or
523
- 524 (4) Any harmful quantity of any pollutant.
525
- 526 (b) The immediate notification required by subsection (a) shall include the following
527 information:
528
- 529 (1) The identity or chemical name of the substance released, and whether the
530 substance is an extremely hazardous substance;
531
- 532 (2) The exact location of the release, including any known name of the waters
533 involved or threatened and any other environmental media affected;
534
- 535 (3) The time and duration (thus far) of the release;
536
- 537 (4) An estimate of the quantity and concentration (if known) of the substance
538 released;
539
- 540 (5) The source of the release;
541
- 542 (6) Any known or anticipated health risks associated with the release and,
543 where appropriate, advice regarding medical attention that may be
544 necessary for exposed individuals;
545
- 546 (7) Any precautions that should be taken as a result of the release;
547
- 548 (8) Any steps that have been taken to contain and/or clean up the released
549 material and minimize its impacts; and
550
- 551 (9) The names and telephone numbers of the person or persons to be contacted
552 for further information.
- 553 (c) Within fourteen (14) calendar days following such release, the responsible person
554 in charge of the facility, vehicle, or other source of the release shall, unless waived
555 by the DPW, submit a written report containing each of the items of information
556 specified above in subsection (b), as well as the following additional information:
557
- 558 (1) The ultimate duration, concentration, and quantity of the release;
559
- 560 (2) All actions taken to respond to, contain, and clean up the released
561 substances, and all precautions taken to minimize the impacts;

- 562
- 563 (3) Any known or anticipated acute or chronic health risks associated with the
- 564 release;
- 565
- 566 (4) Where appropriate, advice regarding medical attention necessary for
- 567 exposed individuals;
- 568
- 569 (5) The identity of any governmental/private sector representatives responding
- 570 to the release; and
- 571
- 572 (6) The measures taken or to be taken by the responsible person(s) to prevent
- 573 similar future occurrences.
- 574
- 575 (d) The notifications required by subsections (b) and (c) above shall not relieve the
- 576 responsible person of any expense, loss, damage, or other liability which may be
- 577 incurred as a result of the release, including any liability for damage to the City, to
- 578 natural resources, or to any other person or property; nor shall such notification
- 579 relieve the responsible person of any fine, penalty, or other liability which may be
- 580 imposed pursuant to this Ordinance or to state or federal law.
- 581
- 582 (e) Any person responsible for any release as described in subsection (a) above shall
- 583 comply with all state, federal, and any other local law requiring reporting, cleanup,
- 584 containment, and any other appropriate remedial action in response to the release.
- 585
- 586 (f) Any person responsible for a release described in subsection (a) above shall
- 587 reimburse the City for any cost incurred by the City in responding to the release.
- 588
- 589

590 **Sec. 42-126. Stormwater discharges from construction activities**

591

592 (a) General Requirements

593

594 (1) All operators of construction sites shall use best management practices to

595 control and reduce the discharge, to the MS4 and to waters of the United States, of

596 sediment, silt, earth, soil, and other material associated with the clearing, grading,

597 excavation, and other construction activities to the maximum extent practicable

598 under the circumstances. Such best management practices may include, but not

599 be limited to, the following measures:

600

- 601 a. Ensuring that existing vegetation is preserved where possible and that
- 602 disturbed portions of the site are stabilized as soon as practicable in
- 603 portions of the site where construction activities have temporarily or
- 604 permanently ceased. Stabilization measures may include: temporary
- 605 seeding, permanent seeding, mulching, geotextiles, sod stabilization,
- 606 vegetative buffer strips, protection of trees, preservation of mature
- 607 vegetation, and other appropriate measures;
- 608

- 609 b. Use of structural practices to divert flows from exposed soils, store flows,
610 or otherwise limit runoff and the discharge of pollutants from the site to
611 the extent feasible;
- 612
- 613 c. Minimization of the tracking of sediments off-site by vehicles, the
614 generation of dust, and the escape of other windblown waste from the site;
615
- 616 d. Prevention of the discharge of building materials, including cement, lime,
617 concrete, and mortar, to the MS4 or waters of the United States;
618
- 619 e. Providing general good housekeeping measures to prevent and contain spills
620 of paints, solvents, fuels, septic waste, and other hazardous chemicals
621 and pollutants associated with construction, and to assure proper cleanup
622 and disposal of any such spills in compliance with state, federal, and local
623 requirements;
624
- 625 f. Implementation of proper waste disposal and waste management
626 techniques, including covering waste materials and minimizing ground
627 contact with hazardous chemicals and trash;
628
- 629 g. Timely maintenance of vegetation, erosion and sediment control measures,
630 and other best management practices in good and effective operating
631 condition; and
632
- 633 h. Installation of structural measures during the construction process to control
634 pollutants in stormwater discharges that will occur after construction
635 operations have been completed. Structural measures should be placed on
636 upland soils to the degree attainable. Such installed structural measures
637 may include, but not be limited to, the following: stormwater detention
638 structures (including wet ponds); stormwater retention structures; flow
639 attenuation by use of open vegetative swales and natural depressions;
640 other velocity dissipation devices; infiltration of runoff on site; and
641 sequential systems which combine several practices. Operators of
642 construction sites are only responsible for the installation and maintenance
643 of stormwater management measures prior to final stabilization of the
644 site, and are not responsible for maintenance after stormwater discharges
645 associated with construction activity have terminated.
- 646
- 647 (2) The DPW may require any plans and specifications that are prepared for the
648 construction of site improvements to illustrate and describe the best management
649 practices required by section 42-126 (a) (1) above that will be implemented at the
650 construction site. The City may deny approval of any building permit, grading
651 permit, or any other City approval necessary to commence or continue construction,
652 or to assume occupancy, on the grounds that the management practices described
653 in the plans or observed upon a site inspection by the DPW are determined not to
654 control and reduce the discharge of sediment, silt, earth, soil, and other materials
655 associated with clearing, grading, excavation, and other construction activities to

656 the maximum extent practicable under the circumstances.

- 657
658 (3) All contractors wishing to receive a building permit from the City shall sign a copy
659 of the following certification statement before receiving said permit:

660
661 *I certify under penalty of law that I understand the terms and conditions of*
662 *the National Pollutant Discharge Elimination System (NPDES) permit that*
663 *authorizes the stormwater discharges associated with industrial activity*
664 *from the construction site identified as part of this certification, with the*
665 *Stormwater Ordinance of the City of Rockport and for the construction site*
666 *for which I am responsible.*

- 667
668 (4) The certification must include the name and title of the person providing the signature;
669 the name, address, and telephone number of the contracting firm; the address (or other
670 identifying description) of the site; and the date the certification is made.

- 671
672 (5) Qualified personnel (provided by the operator of the construction site) shall
673 inspect disturbed areas of any construction site that have not been finally
674 stabilized, areas used for storage of materials that are exposed to precipitation,
675 structural control measures, and locations where vehicles enter or exit the site,
676 at least once every seven calendar days and within twenty-four (24) hours of the
677 end of a storm that is 0.5 inches or greater. All erosion and sediment control
678 measures and other identified best management practices shall be observed in
679 order to ensure that they are operating correctly and are effective in preventing
680 significant impacts to receiving waters and the MS4. Based on the results of the
681 inspection, best management practices shall be revised as appropriate, and as soon
682 as is practicable.

- 683
684 (6) Upon final stabilization of the construction site, the owner (or the duly authorized
685 representative thereof) shall submit written certification to the DPW that the site has
686 been finally stabilized. (See definition of final stabilization in this Ordinance.) The
687 City may deny the approval required to assume occupancy or an additional use
688 permit for any premises constructed on the site until such certification of final
689 stabilization has been filed and the DPW has determined, following any appropriate
690 inspection, that final stabilization has, in fact, occurred and that any required
691 permanent structural controls have been completed.

- 692
693 (7) Any owner of a site of construction activity, whether or not he/she is an operator,
694 is jointly and severally responsible for compliance with the requirements in section
695 42-126 (a).

696
697 (8) Any contractor or subcontractor on a site of construction activity, who is
698 not an owner or operator, but who is responsible under his/her contract or
699 subcontract for implementing a best management practices control measure, is
700 jointly and severally responsible for any willful or negligent failure on his/her part
701 to adequately implement that control measure if such failure causes or contributes
702 to causing the City to violate a water quality standard, the City's NPDES permit,

703 or any State-issued discharge permit for discharges from its MS4.

704
705 (b) One – up to Five Acre Disturbances.

706
707 (1) All operators of sites of construction activity, including clearing, grading, and
708 excavation activities, that result in the disturbance of one or more acres of total
709 land area but less than five acres of total land area, or that are part of a common plan
710 of development or sale within which one or more but less than five acres of total
711 land area are disturbed, or who are required to obtain an NPDES permit for
712 stormwater discharges associated with construction activity, shall comply with the
713 following requirements (in addition to those in section 42-126 (a)):

714
715 a. Any operator who intends to obtain coverage for stormwater discharges
716 from a construction site under the NPDES General Permit for
717 Stormwater Discharges From Construction Sites ("the Construction
718 General Permit") shall submit a signed copy of its Construction Site
719 Notice (CSN) to the DPW at least two (2) days prior to the
720 commencement of construction activities. A signed copy of the CSN
721 shall be posted at the construction site as well. If the construction
722 activity is already underway upon the effective date of this Ordinance,
723 the CSN shall be submitted within thirty (30) days.

724
725 b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared
726 and implemented in accordance with the requirements of the
727 Construction General Permit or any individual or group NPDES permit
728 issued for stormwater discharges from the construction site, and with
729 any additional requirement imposed by or under this Ordinance and
730 any other city ordinance.

731
732 c. The SWPPP shall be completed prior to the submittal of the CSN to the
733 DPW and, for new construction, prior to the commencement of
734 construction activities. The SWPPP shall be updated and modified as
735 appropriate and as required by the Construction General Permit and
736 this Ordinance.

737
738 d. The DPW may require any operator who is required by section 42-126
739 (b) (1) (b) to prepare a SWPPP to submit the SWPPP, and any
740 modifications thereto, to the DPW for review. Such submittal and
741 review of the SWPPP may be required by the DPW prior to
742 commencement of or during construction activities at the site.

743
744 e. Upon the DPW's review of the SWPPP and any site inspection that
745 he/she may conduct, the City may deny approval of any building
746 permit, grading permit, or any other City approval necessary to
747 commence or continue construction, or to assume occupancy, on the
748 grounds that the SWPPP does not comply with the requirements of the
749 Construction General Permit, any individual or group NPDES permit

750 issued for stormwater discharge from the construction site, or any
751 additional requirement imposed by or under this Ordinance. Also, if at
752 any time the DPW determines that the SWPPP is not being fully
753 implemented, the City may similarly deny approval of any building
754 permit, grading permit, subdivision plat, site development plan or any
755 other City approval necessary to commence or continue construction,
756 or to assume occupancy, at the site.

- 757
758 f. All contractors and subcontractors identified in a SWPPP shall sign a
759 copy of the following certification statement before conducting any
760 professional service identified in the SWPPP:

761
762 *I certify under penalty of law that I understand the terms and*
763 *conditions of the National Pollutant Discharge Elimination System*
764 *(NPDES) permit that authorizes the stormwater discharges associated*
765 *with industrial activity from the construction site identified as part of*
766 *this certification, with the Stormwater Ordinance of the City of*
767 *Rockport, and with those provisions of the Stormwater Pollution*
768 *Prevention Plan (SWPPP) for the construction site for which I am*
769 *responsible.*

- 770
771 g. The certification must include the name and title of the person
772 providing the signature; the name, address, and telephone number of
773 the contracting firm; the address (or other identifying description) of
774 the site; and the date the certification is made.

- 775
776 h. The SWPPP, and the certifications of contractors and subcontractors
777 required by section 42-126 (b) (1) (f), and with any modifications
778 attached, shall be retained at the construction site from the date of
779 commencement of construction through the date of final stabilization.

- 780
781 i. The operator shall make the SWPPP and any modification thereto
782 available to the DPW upon request (as well as to EPA and State
783 inspectors).

- 784
785 j. The DPW may notify the operator at any time that the SWPPP does not
786 meet the requirements of the Construction General Permit, any
787 applicable individual or group NPDES permit issued for stormwater
788 discharges from the construction site, or any additional requirement
789 imposed by or under this Ordinance. Such notification shall identify
790 those provisions of the permit or Ordinance which are not being met
791 by the SWPPP, and identify which provisions of the SWPPP require
792 modifications in order to meet such requirements. Within seven (7)
793 days of such notification from the DPW (or as otherwise provided by
794 the DPW), the operator shall make the required changes to the SWPPP
795 and shall submit to the DPW a written certification that the requested
796 changes have been made.

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- k. The operator shall amend 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 to the waters of the United States, and which has not otherwise been addressed in the SWPPP, 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 construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.
- l. Qualified personnel (provided by the operator of the construction site) shall inspect 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, 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 and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
- As an alternative to the above-described inspection schedule of once every fourteen (14) calendar days and within twenty-four (24) hours of a storm event of 0.5 inches or greater, the SWPPP may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWPPP reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWPPP (e.g., end of “dry” season and beginning of “wet” season).
- m. Based on the results of the inspections required by section 42-126 (b)(1), the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven (7)

844 calendar days following the inspection. Such modifications shall provide
 845 for timely implementation of any changes to the SWPPP within seven (7)
 846 calendar days following the inspection.

- 847
- 848 n. A report summarizing the scope of any inspection required by section
 849 42-126 (b) (1) (l), and the name(s) and qualifications of personnel
 850 making the inspection, the date(s) of the inspection, major
 851 observations relating to the implementation of the SWPPP, and actions
 852 taken in accordance with section 42-126 (b) (1) (m) above shall be
 853 made and retained as part of the SWPPP for at least three (3) years
 854 from the date that the site is finally stabilized. Such report shall
 855 identify any incidence of noncompliance. Where a report does not
 856 identify any incidence of noncompliance, the report shall contain a
 857 certification that the facility is in compliance with the SWPPP, the
 858 facility's NPDES permit, and this Ordinance. The report shall be
 859 certified and signed by the person responsible for making it.
 860
- 861 o. The operator shall retain copies of any SWPPP and all reports required
 862 by this Ordinance or by the NPDES permit for the site, and records of
 863 all data, for a period of at least three (3) years from the date that the
 864 site is finally stabilized.
 865
- 866 p. Upon final stabilization of the construction site, the owner (or the duly
 867 authorized representative thereof) shall submit written certification to
 868 the DPW that the site has been finally stabilized. (See definition of
 869 final stabilization in this Ordinance.) The City may deny the
 870 approval required to assume occupancy or an
 871 additional use permit for any premises constructed on the site until
 872 such certification of final stabilization has been filed and the DPW has
 873 determined, following any appropriate inspection, that final
 874 stabilization has, in fact, occurred and that any required permanent
 875 structural controls have been completed.
 876
 877

878 (c) Five-Acre Disturbances.

- 879
- 880 (1) All operators of sites of construction activity, including clearing, grading, and
 881 excavation activities, that result in the disturbance of five or more acres of total
 882 land area, or that are part of a common plan of development or sale within which
 883 five or more acres of total land area are disturbed, or who are required to obtain
 884 an NPDES permit for stormwater discharges associated with construction activity,
 885 shall comply with the following requirements (in addition to those in section 42-
 886 126 (a)):
 887
- 888 a. Any operator who intends to obtain coverage for stormwater discharges
 889 from a construction site under the NPDES General Permit for
 890 Stormwater Discharges From Construction Sites shall submit a Notice of

891 Intent NOI with the Texas Commission of Environmental Quality in
892 accordance with the Construction General Permit.

893
894 b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared
895 and implemented in accordance with the requirements of the
896 Construction General Permit or any individual or group NPDES permit
897 issued for stormwater discharges from the construction site, and with
898 any additional requirement imposed by or under this Ordinance and
899 any other city ordinance.

900
901 c. The SWPPP shall be completed prior to the submittal of the NOI to the
902 D P W and, for new construction, prior to the commencement of
903 construction activities. The SWPPP shall be updated and modified as
904 appropriate and as required by the Construction General Permit and
905 this Ordinance.

906
907 d. A copy of any NOI that is required by section 42-126 (c) (1) (a) shall
908 be submitted to the City in conjunction with any application for a
909 building permit, grading permit, site development plan approval, and
910 any other City approval prior to the commencement of construction at
911 the site.

912
913 e. The DPW may require any operator who is required by section 42-126
914 (c) (1) (b) to prepare a SWPPP to submit the SWPPP, and any
915 modifications thereto, to the DPW for review. Such submittal and
916 review of the SWPPP may be required by the DPW prior to
917 commencement of or during construction activities at the site.

918
919 f. Upon the DPW's review of the SWPPP and any site inspection that
920 he/she may conduct, the City may deny approval of any building
921 permit, grading permit, or any other City approval necessary to
922 commence or continue construction, or to assume occupancy, on the
923 grounds that the SWPPP does not comply with the requirements of the
924 Construction General Permit, any individual or group NPDES permit
925 issued for stormwater discharge from the construction site, or any
926 additional requirement imposed by or under this Ordinance. Also, if at
927 any time the DPW determines that the SWPPP is not being fully
928 implemented, the City may similarly deny approval of any building
929 permit, grading permit, subdivision plat, site development plan or any
930 other City approval necessary to commence or continue construction,
931 or to assume occupancy, at the site.

932
933 g. All contractors and subcontractors identified in an SWPPP shall sign a
934 copy of the following certification statement before conducting any
935 professional service identified in the SWPPP:

936
937

938 *I certify under penalty of law that I understand the terms and*
939 *conditions of the National Pollutant Discharge Elimination System*
940 *(NPDES) permit that authorizes the stormwater discharges associated*
941 *with industrial activity from the construction site identified as part of*
942 *this certification, with the Stormwater Ordinance of the City of*
943 *Rockport, and with those provisions of the Stormwater Pollution*
944 *Prevention Plan (SWPPP) for the construction site for which I am*
945 *responsible.*

- 946
- 947 h. The certification must include the name and title of the person
948 providing the signature; the name, address, and telephone number of
949 the contracting firm; the address (or other identifying description) of
950 the site; and the date the certification is made.
- 951
- 952 i. The SWPPP, and the certifications of contractors and subcontractors
953 required by section 42-126 (c) (1) (g), and with any modifications
954 attached, shall be retained at the construction site from the date of
955 commencement of construction through the date of final stabilization.
- 956
- 957 j. The operator shall make the SWPPP and any modification thereto
958 available to the DPW upon request (as well as to EPA and State
959 inspectors).
- 960
- 961 k. The DPW may notify the operator at any time that the SWPPP does not
962 meet the requirements of the Construction General Permit, any
963 applicable individual or group NPDES permit issued for stormwater
964 discharges from the construction site, or any additional requirement
965 imposed by or under this Ordinance. Such notification shall identify
966 those provisions of the permit or Ordinance which are not being met
967 by the SWPPP, and identify which provisions of the SWPPP require
968 modifications in order to meet such requirements. Within seven (7)
969 days of such notification from the DPW (or as otherwise provided by
970 the DPW), the operator shall make the required changes to the SWPPP
971 and shall submit to the DPW a written certification that the requested
972 changes have been made.
- 973
- 974 l. The operator shall amend the SWPPP whenever there is a change in
975 design, construction, operation, or maintenance, which has a
976 significant effect on the potential for the discharge of pollutants to the
977 MS4 or to the waters of the United States, and which has not otherwise
978 been addressed in the SWPPP, or if the SWPPP proves to be
979 ineffective in eliminating or significantly minimizing pollutants, or in
980 otherwise achieving the general objective of controlling pollutants in
981 stormwater discharges associated with construction activity. In
982 addition, the SWPPP shall be amended to identify any new contractor
983 and/or subcontractor that will implement a measure in the SWPPP.
- 984

985 m. Qualified personnel (provided by the operator of the construction site)
986 shall inspect disturbed areas of the construction site that have not been
987 finally stabilized, areas used for storage of materials that are exposed
988 to precipitation, structural control measures, and locations where
989 vehicles enter or exit the site, at least once every fourteen (14) calendar
990 days and within twenty-four (24) hours of the end of the storm that is
991 0.5 inches or greater. Disturbed areas and areas used for storage of
992 materials that are exposed to precipitation shall be inspected for
993 evidence of, or the potential for, pollutants entering the drainage
994 system. Erosion and sediment control measures identified in the
995 SWPPP shall be observed to ensure that they are operating correctly.
996 Where discharge locations or points are accessible, they shall be
997 inspected to ascertain whether erosion control measures are effective in
998 preventing significant impacts to receiving waters or the MS4.
999 Locations where vehicles enter or exit the site shall be inspected for
1000 evidence of off-site sediment tracking.

1001
1002 As an alternative to the above-described inspection schedule of once
1003 every fourteen (14) calendar days and within twenty-four (24) hours of
1004 a storm event of 0.5 inches or greater, the SWPPP may be developed
1005 to require that these inspections will occur at least once every seven (7)
1006 calendar days. If this alternative schedule is developed, then the
1007 inspection must occur on a specifically defined day, regardless of
1008 whether or not there has been a rainfall event since the previous
1009 inspection. The inspections may occur on either schedule provided that
1010 the SWPPP reflects the current schedule and that any changes to the
1011 schedule are conducted in accordance with the following provisions:
1012 the schedule may be changed a maximum of one time each month, the
1013 schedule change must be implemented at the beginning of a calendar
1014 month, and the reason for the schedule change must be documented in
1015 the SWPPP (e.g., end of “dry” season and beginning of “wet” season).

1016
1017 n. Based on the results of the inspections required by section 42-126 (c)
1018 (1) (m), the site description and/or the pollution prevention measures
1019 identified in the SWPPP shall be revised as appropriate, but in no case later than
1020 seven (7) calendar days following the inspection. Such modifications shall
1021 provide for timely implementation of any changes to the SWPPP within seven
1022 (7) calendar days following the inspection.

1023
1024 o. A report summarizing the scope of any inspection required by section
1025 42-126 (c) (1) (m), and the name(s) and qualifications of personnel
1026 making the inspection, the date(s) of the inspection, major
1027 observations relating to the implementation of the SWPPP, and actions
1028 taken in accordance with section 42-126 (c) (1) (n) above shall be
1029 made and retained as part of the SWPPP for at least three (3) years
1030 from the date that the site is finally stabilized. Such report shall
1031 identify any incidence of noncompliance. Where a report does not

1032 identify any incidence of noncompliance, the report shall contain a
 1033 certification that the facility is in compliance with the SWPPP, the
 1034 facility's NPDES permit, and this Ordinance. The report shall be
 1035 certified and signed by the person responsible for making it.
 1036
 1037

1038 p. The operator shall retain copies of any SWPPP and all reports required
 1039 by this Ordinance or by the NPDES permit for the site, and records of
 1040 all data for a period of at least three (3) years from the date that the
 1041 site is finally stabilized.
 1042

1043 q. Where a site has been finally stabilized and all stormwater discharges
 1044 from construction activities that are authorized by this Ordinance and
 1045 by the NPDES permit for those construction activities are eliminated,
 1046 or where the operator of all stormwater discharges at a facility changes,
 1047 the operator of the construction site shall submit to the DPW a Notice
 1048 of Termination (NOT) in accordance with the Construction General
 1049 Permit.
 1050

1051 r. Upon final stabilization of the construction site, the owner (or the duly
 1052 authorized representative thereof) shall submit written certification to
 1053 the DPW that the site has been finally stabilized. (See definition of
 1054 final stabilization in this Ordinance.) The City may deny the
 1055 approval required to assume occupancy or an
 1056 additional use permit for any premises constructed on the site until
 1057 such certification of final stabilization has been filed and the DPW has
 1058 determined, following any appropriate inspection, that final
 1059 stabilization has, in fact, occurred and that any required permanent
 1060 structural controls have been completed.
 1061

1062 **Sec. 42-127. Compliance monitoring**

1063
 1064 (a) Right of Entry: Inspection and Sampling. City Inspectors shall have the right to enter the
 1065 premises of any person reasonably suspected by the City of discharging pollutants into the
 1066 municipal separate storm sewer system (MS4) or to waters of the United States to determine
 1067 if the discharger is complying with all requirements of this Ordinance, and with any state
 1068 or federal discharge permit, limitation, or requirement. Dischargers shall allow the City
 1069 Inspectors ready access to all parts of the premises for the purposes of inspection, sampling,
 1070 records examination and copying, and for the performance of any additional duties.
 1071 Dischargers shall make available to the City Inspector, upon request, any SWPPPs,
 1072 modifications thereto, self-inspection reports, monitoring records, compliance evaluations,
 1073 Notices of Intent, and any other records, reports, and other documents related to
 1074 compliance with this Ordinance and with any state or federal discharge permit.
 1075

1076 (1) Where a discharger has security measures in force which require proper
 1077 identification and clearance before entry into its premises, the discharger shall

1078 make necessary arrangements with its security guards so that, upon presentation
 1079 of suitable identification, the City Inspector will be permitted to enter without
 1080 unreasonable delay for the purposes of performing his/her responsibilities.

1081
 1082 (2) The City Inspector shall have the right to set up on the discharger's property, or
 1083 require installation of, such devices as are necessary to conduct sampling and/or
 1084 metering of the discharger's operations.

1085
 1086 (3) When pollutants have been discharged the DPW may require any discharger to
 1087 the MS4 or waters of the United States to conduct specified sampling, testing,
 1088 analysis, and other monitoring of its stormwater discharges, and may specify the
 1089 frequency and parameters of any such required monitoring.

1090
 1091 (4) The DPW may require that discharger to install monitoring equipment as necessary
 1092 at the discharger's expense. The facility's sampling and monitoring equipment
 1093 shall be maintained at all times in a safe and proper operating condition by the
 1094 discharger at its own expense. All devices used to measure stormwater flow and
 1095 quality shall be calibrated to ensure their accuracy.

1096
 1097 (5) Any temporary or permanent obstruction to safe and easy access to the facility
 1098 to be inspected and/or sampled shall be promptly removed by the discharger at the
 1099 written or verbal request of the City Inspector and shall not be replaced. The costs
 1100 of clearing such access shall be borne by the discharger.

1101
 1102 (6) Unreasonable delays in allowing the City Inspector access to the discharger's
 1103 premises shall be a violation of this Ordinance.

1104
 1105 (b) Search Warrants. If the City Inspector has been refused access to any part of the premises
 1106 from which stormwater is discharged, and he/she is able to demonstrate probable cause to
 1107 believe that there may be a violation of this Ordinance or any state or federal discharge
 1108 permit, limitation, or requirement, or that there is a need to inspect and/or sample as part
 1109 of a routine inspection and sampling program of the City designed to verify compliance
 1110 with this Ordinance or any order issued hereunder, or to protect the overall public health,
 1111 safety, and welfare of the community, then the City Inspector may seek issuance of a
 1112 search warrant from any court of competent jurisdiction.

1113
 1114 **Sec. 42-128. Publication**

1115
 1116 (a) Publication of Dischargers in Significant Noncompliance. The DPW may periodically
 1117 publish, in a daily newspaper generally distributed within the City, a list of owners and
 1118 operators of discharges to the MS4 or waters of the United States from sites of
 1119 construction and industrial activity which, during the previous three (3) months, were in
 1120 significant noncompliance with the requirements of this Ordinance. The term "significant
 1121 noncompliance" shall mean:

1122
 1123 (1) Introducing or causing to be introduced into the waters of the United States
 1124 any discharge that violates a water quality standard;

- 1125
1126 (2) Introducing or causing to be introduced into the MS4 any discharge that causes
1127 or contributes to causing the City to violate a water quality standard, the City's
1128 NPDES permit, or any state-issued discharge permit for discharges from the City's
1129 MS4;
1130
1131 (3) Any connection of a line conveying sanitary sewage, domestic or industrial, to
1132 the MS4, or allowing any such connection to continue;
1133
1134 (4) Any discharge of pollutants to the MS4 or waters of the United States that has
1135 caused an imminent or substantial endangerment to the health or welfare of
1136 persons or to the environment, or has resulted in the DPW's exercise of his/her
1137 emergency authority to halt or prevent such a discharge;
1138
1139 (5) Any violation that has resulted in injunctive relief, civil penalties, or criminal fine
1140 being imposed as a judicial remedy under section 42-131 of this Ordinance; or
1141
1142 (6) Any other violation(s) which the DPW determines to be chronic or especially
1143 dangerous to the public or to the environment.
1144
1145 (7) Any failure to comply with a compliance schedule, whether imposed by the City
1146 or by a court.
1147

1148 **Sec. 42-129. Administrative enforcement remedies**
1149

- 1150 (a) Warning Notice. When the DPW finds that any person has violated, or continues to violate,
1151 any provision of this Ordinance, or any order issued hereunder, the DPW may serve
1152 upon that person a written Warning Notice, specifying the particular violation believed to
1153 have occurred and requesting the discharger to immediately investigate the matter and to
1154 seek a resolution whereby any offending discharge will cease. Investigation and/or
1155 resolution of the matter in response to the Warning Notice in no way relieves the alleged
1156 violator of liability for any violations occurring before or after receipt of the Warning
1157 Notice. Nothing in this subsection shall limit the authority of the DPW to take any
1158 action, including emergency action or any other enforcement action, without first issuing a
1159 Warning Notice.
1160
1161 (b) Notification of Violation. When the DPW finds that any person has violated, or continues
1162 to violate, any provision of this Ordinance, or any order issued hereunder, the CEA may
1163 serve upon that person a written Notice of Violation. Within ten (10) days of the receipt
1164 of this notice, the violator shall take corrective action to bring the violation into
1165 compliance. If the alleged violator denies that any violation occurred and/or contends
1166 that no corrective action is necessary, an explanation of the basis of any such denial or
1167 contention shall be submitted to the CEA within ten (10) days of receipt of the notice.
1168 Submission of an explanation and/or plan in no way relieves the alleged violator of liability
1169 for any violations occurring before or after receipt of the Notice of Violation. Nothing in
1170 this section shall limit the authority of the CEA to take any action, including emergency
1171 action or any other enforcement action, without first issuing a Notice of Violation.

- 1172
- 1173 (c) Consent Orders. The CEA may enter into Consent Orders, assurances of voluntary
1174 compliance, or other similar documents establishing an agreement with any person
1175 responsible for noncompliance with any provision in this Ordinance or any order issued
1176 hereunder. Such documents may include specific action to be taken by the person to
1177 correct the noncompliance within a time period specified by the document. Such
1178 documents shall have the same force and effect as the administrative orders issued
1179 pursuant to sections 42-129 (e), (f) and (g) this Ordinance and shall be judicially
1180 enforceable.
- 1181
- 1182 (d) Show Cause Hearing. The CEA may order any person who has violated, or continues
1183 to violate, any provision of this Ordinance, or any order issued hereunder, to appear before
1184 the CEA and show cause why a proposed enforcement action should not be taken. Notice
1185 shall be served on the alleged violator specifying the time and place for the hearing, the
1186 proposed enforcement action, the reasons for such action, and a request that the alleged
1187 violator show cause why the proposed enforcement action should not be taken. The notice
1188 of the hearing shall be served personally or by registered or certified mail (return receipt
1189 requested) at least ten (10) days prior to the hearing. Such notice may be served on any
1190 authorized representative of the alleged violator. The hearing shall be conducted pursuant
1191 to the rights and procedures specified in section 42-130 (a) (7) of this Ordinance. A show
1192 cause hearing shall not be a bar against, or prerequisite for, taking any other action against
1193 the alleged violator.
- 1194
- 1195 (e) Compliance Orders. When the CEA finds that any person has violated, or continues to
1196 violate, any provision of this Ordinance, or any order issued hereunder, the CEA may
1197 issue an order to the violator directing that the violator come into compliance within a
1198 specified time limit. Compliance orders also may contain other requirements to address
1199 the noncompliance, including additional self-monitoring, and management practices
1200 designed to minimize the amount of pollutants discharged to the MS4 and waters of the
1201 United States. A compliance order may not extend the deadline for compliance established
1202 by a state or federal standard or requirement, nor does a compliance order relieve the person
1203 of liability for any violation, including any continuing violation. Issuance of a
1204 compliance order shall not be a bar against, or a prerequisite for, taking any other action
1205 against the violator.
- 1206
- 1207 (f) Remediation, Abatement, and Restoration Orders. When the CEA finds that a person has
1208 violated, or continues to violate, any provision of this Ordinance, or any order issued
1209 hereunder, and that such violation has adversely affected the MS4, the waters of the
1210 United States or any other aspect of the environment, the CEA may issue an order to the
1211 violator directing him/her to undertake and implement any appropriate action to remediate
1212 and/or abate any adverse effects of the violation upon the MS4, the waters of the United
1213 States, or any other aspect of the environment, and/or to restore any part of the MS4, the
1214 waters of the United States, or any other aspect of the environment that has been
1215 harmed. Such remedial, abatement, and restoration action may include, but not be limited
1216 to: monitoring, assessment, and evaluation of the adverse effects and determination of
1217 the appropriate remedial, abatement, and/or restoration action; confinement, removal,

1218 cleanup, treatment, and disposal of any discharged or released pollution or contamination;
 1219 prevention, minimization, and/or mitigation of any damage to the public health, welfare,
 1220 or the environment that may result from the violation; restoration or replacement of City
 1221 property or natural resources damaged by the violation. The order may direct that the
 1222 remediation, abatement, and/or restoration be accomplished on a specified compliance
 1223 schedule and/or be completed within a specified period of time. An order issued under
 1224 this Subsection does not relieve the violator of liability for any violation, including any
 1225 continuing violation. Issuance of an order under this Subsection shall not be a bar against,
 1226 or a prerequisite for, taking any other action against any responsible party.

1227
 1228 (g) Emergency Cease and Desist Orders. When the CEA finds that any person has violated,
 1229 or continues to violate, any provision of this Ordinance, or any order issued hereunder,
 1230 or that the person's past violations are likely to recur, and that the person's violation(s)
 1231 have caused or contributed to an actual or threatened discharge to the MS4 or waters of
 1232 the United States which reasonably appears to present an imminent or substantial
 1233 endangerment to the health or welfare of persons or to the environment, the CEA may
 1234 issue an order to the violator directing it immediately to cease and desist all such violations
 1235 and directing the violator to:

- 1236
 1237 (1) Immediately comply with all Ordinance requirements; and
 1238
 1239 (2) Take such appropriate preventive action as may be needed to properly address
 1240 a continuing or threatened violation, including immediately halting operations and/or
 1241 terminating the discharge.

1242
 1243 Any person notified of an emergency order directed to it under this Subsection
 1244 shall immediately comply and stop or eliminate its endangering discharge. In the
 1245 event of a discharger's failure to immediately comply voluntarily with the
 1246 emergency order, the CEA may take such steps as deemed necessary to prevent or
 1247 minimize harm to the MS4 or waters of the United States, and/or endangerment to
 1248 persons or to the environment, including immediate termination of a facility's
 1249 water supply, sewer connection, or other municipal utility services. The CEA may
 1250 allow the person to recommence its discharge when it has demonstrated to the
 1251 satisfaction of the CEA that the period of endangerment has passed, unless further
 1252 termination proceedings are initiated against the discharger under this Ordinance.
 1253 A person that is responsible, in whole or in part, for any discharge presenting
 1254 imminent endangerment shall submit a detailed written statement, describing the
 1255 causes of the harmful discharge and the measures taken to prevent any future
 1256 occurrence, to the CEA within two days of receipt of the emergency order. Issuance
 1257 of an emergency cease and desist order shall not be a bar against, or a prerequisite
 1258 for, taking any other action against the violator.

1259
 1260 (h) "Red Tags". Whenever the CEA finds that any operator of a construction site has violated,
 1261 or continues to violate, any provision of this Ordinance, or any order issued thereunder, the
 1262 CEA may order that a "Red Tag" be issued to the operator, posted at the construction site,
 1263 and distributed to all City departments and divisions whose decisions affect any activity

at the site. Unless express written exception is made by the CEA, the "Red Tag" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "Red Tag" order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Sec. 42-130. Right to reconsideration, hearing, and appeal

(a) Reconsideration and Hearing

(1) Any person subject to a Compliance Order under section 42-129 (e), a Remediation, Abatement, or Restoration Order under section 42-129 (f), an Emergency Cease and Desist Order under section 42-129 (g), or a Red Tag Order under section 42-129 (h) of this Ordinance may petition the CEA to reconsider the basis for his/her order within thirty (30) days of the affected person's notice of issuance of such an order.

(2) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

(3) 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.

(4) The effect of any Compliance Order under section 42-129 (e), Remediation, Abatement, or Restoration Order under section 42-129 (f), and any Red Tag Order under section 42-129 (h) shall be stayed pending the CEA's reconsideration of the petition, and any hearing thereon, unless the CEA expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under section 42- 1 2 9 (g) shall not be stayed pending the CEA's reconsideration, or any hearing thereon, unless the CEA expressly and in writing stays his/her emergency order.

(5) Within ten (10) days of the submittal of a petition for reconsideration, the CEA shall 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.

(6) Written notice of any hearing set by the CEA pursuant to section 42-130

(a) (5) above shall be served on the petitioning party personally or by

1310 registered or certified mail (return receipt requested) at least ten (10) days prior to
 1311 the hearing. Such notice may be served on any authorized representative of the
 1312 petitioning party.

1313
 1314 (7) The CEA may himself/herself conduct the hearing and take evidence, or he/she
 1315 may designate any employee of the City or any specially-designated attorney or
 1316 engineer to:

1317
 1318 a. issue in the name of the City notices of hearing requesting the
 1319 attendance and testimony of witnesses and the production of
 1320 evidence relevant to any matter involved in the hearing;

1321
 1322 b. take evidence;

1323
 1324 c. transmit a report of the evidence and hearing, including transcripts
 1325 and other evidence, together with recommendations to the CEA for
 1326 action thereon. At any hearing held pursuant to this Subsection,
 1327 testimony taken shall be under oath and recorded. Any party is
 1328 entitled to present his/her case or defense by oral or documentary
 1329 evidence and to conduct such cross-examination as may be required
 1330 for a full and true disclosure of the facts. A transcript will be
 1331 made available to any party to the hearing upon payment of the
 1332 usual charges thereof.

1333
 1334 (8) After the CEA has reviewed the evidence, he/she shall either (1) grant the petition;
 1335 (2) deny the petition; or (3) grant the petition in part and deny it in part. The CEA
 1336 may modify his/her order as is appropriate based upon the evidence and arguments
 1337 presented at the hearing and his/her action on the petition. Further orders and
 1338 directives as are necessary and appropriate may be issued.

1339
 1340 (b) Appeal

1341
 1342 (1) Any person whose petition for reconsideration by the CEA has not been
 1343 granted in its entirety and who remains adversely affected by the CEA's order, or
 1344 who is subject to an order of the CEA issued following a Show Cause Hearing
 1345 under section 42-129 (d), may appeal the action of the CEA to the City Council by
 1346 filing a written appeal with the City Council within ten (10) days of the person's
 1347 notice of the CEA's adverse action on the petition for reconsideration, or within
 1348 ten (10) days of the person's notice of the issuance of the order following the Show
 1349 Cause Hearing, as the case may be.

1350
 1351 (2) Failure to submit a timely written appeal to the City Council shall be deemed
 1352 to be a waiver of further administrative review.

1353
 1354 (3) In its written appeal to the City Council, the appealing party shall indicate the
 1355 particular provisions of the order objected to, the particular determinations of the
 1356 CEA that are contested, the reasons that the CEA's order and/or determinations

are contested, and any alternative order that the appealing party would accept.

- 1357
1358
1359 (4) The effect of the CEA's order, as issued or modified, shall not be stayed pending
1360 the appeal to the City Council, unless the City Council expressly so states.
1361
1362 (5) Within thirty (30) days of the submittal of a written appeal to the City Council,
1363 the City Council shall hear and consider the appeal in open meeting. The
1364 appellant shall be notified at least three (3) days in advance of the date and time of
1365 the City Council meeting at which the appeal will be heard and considered.
1366
1367 (6) The appellant shall have the right to public appearance before the City Council
1368 to present oral and written statements in support of his/her appeal. If the City
1369 Council wishes to consider testimony of witnesses or other evidence beyond that
1370 in the record of any hearing before the CEA the City Council may remand the
1371 matter to the CEA for the taking of additional testimony or other evidence.
1372
1373 (7) Upon consideration of any written and oral statements made to the City Council,
1374 as well as the record made before the CEA, the City Council shall act on the appeal
1375 by affirming, vacating, or modifying the order of the CEA, and/or by remanding
1376 the matter to the CEA for further action.
1377
1378 (8) Following final action by the City Council on the appeal, any adversely affected
1379 party may challenge such action by the City Council in an appropriate court of
1380 competent jurisdiction.
1381
1382

1383 **Sec. 42-131. Judicial enforcement remedies**

1384
1385 (a) Civil Remedies
1386

- 1387 (1) Whenever it appears that a person has violated, or continues to violate, any provision
1388 of this Ordinance that relates to:
1389
1390 a. the preservation of public safety, relating to the materials or methods used
1391 in construction of any structure or improvement of real property;
1392 b. the preservation of public health or to the fire safety of a building or other
1393 structure or improvement;
1394 c. the establishment of criteria for land subdivision or construction of buildings,
1395 including street design;
1396 d. dangerously damaged or deteriorated structures or improvements;
1397 e. conditions caused by accumulations of refuse, vegetation, or other matter
1398 that creates breeding and living places for insects and rodents; or
1399 f. point source effluent limitations or the discharge of a pollutant, other
1400 than from a non-point source, into the MS4. The City may invoke Sections
1401 54.011 - 54.017 of the Texas Local Government Code, as amended, and
1402 petition the State district court or the county court at law of Aransas County,
1403 through the City Attorney, for either the injunctive relief specified in

1404 section 42-131 (a) (2) or the civil penalties specified in section 42-131 (a)
 1405 (3) below, or both the specified injunctive relief and civil penalties.

1406
 1407 (2) Pursuant to Section 54.016 of the Texas Local Government Code, as amended,
 1408 the City may obtain against the owner or the operator of a facility a temporary
 1409 or permanent injunction, as appropriate, that:

1410
 1411 a. prohibits any conduct that violates any provision of this Ordinance that
 1412 relates to any matter specified in sections 42-131 (a) (1) (a)-(f) above; or

1413
 1414 b. compels the specific performance of any action that is necessary for
 1415 compliance with any provision of this Ordinance that relates to any matter
 1416 specified in sections 42-131 (a) (1) (a)-(f) above.

1417
 1418 (3) Pursuant to Section 54.017 of the Texas Local Government Code, as amended,
 1419 the City may recover a civil penalty of not more than one thousand dollars
 1420 (\$1,000) per day for each violation of any provision of this Ordinance that relates
 1421 to any matter specified in sections 42-131 (a)

1422 (1) (a)-(e) above, and a civil penalty of not more than five thousand
 1423 (\$5,000) per day for each violation of any provision of this Ordinance that
 1424 relates to any matter specified in section 42-131 (a) (1) (f) above, if the
 1425 City proves that:

1426
 1427 a. the defendant was actually notified of the provisions of the
 1428 Ordinance; and

1429
 1430 b. after the defendant received notice of the Ordinance provisions, the
 1431 defendant committed acts in violation of the Ordinance or failed to
 1432 take action necessary for compliance with the Ordinance.

1433
 1434 (b) Criminal Penalties
 1435

1436 (1) Any person, who has violated any provision of this Ordinance, or any order
 1437 issued hereunder, shall be strictly liable for such violation regardless of the presence
 1438 or absence of a culpable mental state, except as expressly provided herein, and
 1439 shall, upon conviction, be subject to a fine of not more than two thousand dollars
 1440 (\$2000.00) per violation, per day, or any greater fine authorized by State statute.

1441
 1442 (2) Any person who has knowingly made any false statement, representation, or
 1443 certification in any application, record, report, plan, or other documentation filed,
 1444 or required to be maintained, pursuant to this Ordinance, or any order issued
 1445 hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate
 1446 any monitoring device or method required under this Ordinance shall, upon
 1447 conviction, be subject to a fine of not more than two thousand dollars (\$2000.00)
 1448 per violation, per day, or any greater fine authorized by State statute.

1449
 1450

- 1451
1452 (3) In determining the amount of any fine imposed hereunder, the court shall take into
1453 account all relevant circumstances, including, but not limited to, the extent of harm
1454 caused by the violation, the magnitude and duration of the violation, any economic
1455 benefit gained through the violation, corrective actions by the violator, the
1456 compliance history of the violator, the knowledge, intent, negligence, or other
1457 state of mind of the violator, and any other factor as justice requires.
1458
- 1459 (c) Civil Suit Under the Texas Water Code. Whenever it appears that a violation or threat of
1460 violation of any provision of Section 26.121 of the Texas Water Code, as amended, or any
1461 rule, permit, or order of the Texas Water Commission, has occurred or is occurring
1462 within the jurisdiction of the City of Rockport, exclusive of its extraterritorial jurisdiction,
1463 the City, in the same manner as the Texas Water Commission, may have a suit instituted
1464 in a state district court through its City Attorney for the injunctive relief or civil penalties
1465 or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, as
1466 amended, against the person who committed or is committing or threatening to commit
1467 the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code,
1468 as amended. In any suit brought by the City under this section 42-131 (c), the Texas Water
1469 Commission is a necessary and indispensable party.
1470
- 1471 (d) Remedies Nonexclusive. The remedies provided for in this Ordinance are not exclusive
1472 of any other remedies that the City may have under state or federal law or other City
1473 ordinances. The City may take any, all, or any combination of these actions against a
1474 violator. The City is empowered to take more than one enforcement action against any
1475 violator. These actions may be taken concurrently.
1476
1477

1478 **Sec. 42-132. Supplemental Enforcement Action**
1479

- 1480 (a) Performance Bonds. The CEA may, by written notice, order any owner or operator of a
1481 source of stormwater discharge associated with construction or industrial activity to file
1482 a satisfactory bond, payable to the City, in a sum not to exceed a value determined by
1483 the CEA to be necessary to achieve consistent compliance with this Ordinance, any
1484 order issued hereunder, any required Best Management Practice, and/or any SWPPP
1485 provision, and/or to achieve final stabilization of the site. The City may deny approval
1486 of any building permit, grading permit, subdivision plat, site development plan, or any
1487 other City permit or approval necessary to commence or continue construction or any
1488 industrial activity at the site, or to assume occupancy, until such a performance bond has
1489 been filed.
1490
- 1491 (b) Liability Insurance. The CEA may, by written notice, order any owner or operator of a
1492 source of stormwater discharge associated with construction or industrial activity to
1493 submit proof that it has obtained liability insurance, or other financial assurance, in an
1494 amount not to exceed a value determined by the CEA, that is sufficient to remediate,
1495 restore, and abate any damage to the MS4, the waters of the United States, or any other
1496 aspect of the environment that is caused by the discharge.
1497

1498 (c) Public Nuisances. A violation of any provision of this Ordinance, or any order issued
1499 hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed
1500 by the CEA. Any person(s) creating a public nuisance shall be subject to the provisions of
1501 the City Code governing such nuisances, including reimbursing the City for any costs
1502 incurred in removing, abating, or remedying said nuisance.

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ARTICLE V. EROSION AND SEDIMENT CONTROL

Sec. 42-120. Responsibility.

It shall be joint duty and responsibility of the directors of public works and building and development or their authorized representatives to administer, implement and enforce the provisions of this article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-121. Applicability.

Only erosion and sedimentation from a construction site which impacts public property and public rights-of-way are governed by this article. It is not a violation of this article if erosion and sediment loss from a construction site occurs upon private property and is deposited upon private property unless the flow travels through the MS4.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-122. Definitions and abbreviations.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meaning hereinafter designated. Any terms not defined by this article are understood to be defined by the Texas Construction General Permit TXR150000 or its successor.

Best management practice (BMP) or control measure means the schedule of activity, prohibition, maintenance procedures, structural controls, and other management practices meant to prevent or reduce the discharge of pollutants. BMPs or control measures also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

City of Rockport Erosion and Sediment Control Manual means a document prepared by the City of Rockport that contains details on the use and maintenance of erosion and sediment controls.

Clearing or commencement of construction means the initial disturbance of soils associated with clearing, grading, or excavation, activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

Common plan of development is defined by the Texas Construction General Permit TXR150000 or its successor.

Construction general permit (CGP) means the Texas Construction General Permit TXR150000, its successor or any other state regulation to control runoff from construction sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

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Construction sites(s) means any clearing, grading, and excavating that results in land disturbance. A construction site also includes but not limited to any stockpiling or other activity that result in exposed soils. This includes the construction of pools and installation and maintenance and the installation of and maintenance of public utilities such as telephone, gas, electric, telecommunications, etc. This excludes the disturbance of soils for emergency activities that are immediately necessary for the protection of life, property, or natural resources.

CSN means construction site notice as defined by the Construction General Permit TXR150000 or its successor.

Control measure see best management practice (BMP) above.

Director means the director of public works and/or the director of building and development or their authorized representatives.

Drainage way or conveyance means curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

Erosion control means a measure that minimizes erosion to the maximum extent practicable.

Erosion and sediment control submittal packet means documents, including a set of plans prepared by or under the direction of the owner or operator of the construction site that indicate the specific measures and sequencing to be used to control erosion and sediment on a construction site during and after construction and supporting documents as specified by the City of Rockport Erosion and Control Manual.

Final stabilization means all soil disturbing activities at the site have been completed and a uniform (i.e. evenly distributed, without large bare areas) perennial vegetative cover with a density of a least 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geo-textiles) have been employed. These conditions are applicable to all construction sites, including individual residential lot construction sites.

Grading means changing elevation of a parcel of land by means of moving earthen material including excavation or fill of material, including the resulting conditions thereof.

Multi-sector general permit (MSGP) means the Texas Multi-Sector General Permit, TXR050000, its successor, or any other state regulation to control runoff from industrial sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

Municipal separate storm sewer system (MS4) means the separate storm sewer system owned and operated by the city. The MS4 includes all drainage ways, stormwater conveyances, bar ditches, swales, and streets owned and operated by the city or any private drainage way that drains to or

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contributes flow to the public drainage system and conveys stormwater discharges to the surface water of the state.

NOC means notice of change as defined by the Construction General Permit TXR150000 or its successor.

NOI means notice of intent as defined by the Construction General Permit TXR150000 or its successor.

NOT means notice of termination as defined by the Construction General Permit TXR150000 or its successor.

Operator means the person or persons who, either individually or taken together, meet either of the following two criteria: (1) has operational control over the facility specifications (including the ability to make or direct modifications in specifications); or (2) has day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner means the person who owns a facility or part of a facility.

Perimeter control means a form of erosion control that prevents sediment from leaving the site.

Person means 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.

Pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged into surface water of the state.

Sediment control means measures that minimize eroded sediment from leaving the site to the maximum extent practicable.

Secondary containment means a structure designed to capture spills or leaks, as from a container or tank, and has the capacity to hold 110 percent of the original container.

Site means a parcel of land or a contiguous combination thereof, where grading is performed as a single unified operation.

Surface water in the state as defined by the Construction General Permit TXR150000 or its successor.

Texas Surface Water Quality Standards means the standards set forth in Title 30, Chapter 307 of the Texas Administrative Code.

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Temporary stabilization means a condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include BMPs listed in the integrated stormwater management (ISWM) manual produced by the council of governments or subsequent similar documents (i.e. temporary seeding, geo-textiles, mulches, perimeter controls, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.)

Waters of the United States as defined by the Construction General Permit TXR150000 or its successor.

(Ord. No. 1460, § 1, 8-11-09)



Sec. 42-123. Applicability of article and compliance requirements.

(a) This article shall apply to all construction sites within the city limits of the City of Rockport.

(b) *Requirements for sites disturbing less than one acre or within a common plan of development that is disturbing less than one acre.*

(1) All construction sites disturbing less than one acre of land or within a common plan of development that is disturbing less than one acre of land shall comply with all sections of this article except as otherwise noted.

(2) Any construction site disturbing less than one acre may be required, if directed by director of public works, to comply with this article.

(c) *Requirements for sites disturbing more than one acre or within a common plan of development that is disturbing more than one acre:*

(1) All construction sites disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall comply with all sections of this article.

(2) The owner or operator shall ensure that copies of the notice of intent (NOI), notice of change (NOC), notice of termination (NOT), and construction site notice (CSN) are provided to the city when appropriate.

(d) *Requirement for all construction sites.*

(1) All sites shall comply with the requirements of the current construction general permit (CGP), when appropriate based upon the acreage of the construction site.

(2) *Inspections:*

i. All construction sites shall be inspected or cause to be inspected by the owner or operator of the site for evidence of or potential for violations of this article.

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Construction sites subject to the CGP shall be inspected at frequency required by the CGP or more frequently if directed by the director of public works.

ii. All construction sites shall be inspected or caused to be inspected by the owner or operator within 24 hours after all rain events exceeding two inches in addition to inspection requirements in this section. Rain events are determined by the measurement documented by the city.

iii. All owners or operators of a construction site disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall document inspections. When such a project is released for construction by the city, as described in this article, the city will provide the applicant with a number and access code for that job on the website. The applicant shall:

a. Within ten working days of receipt of the permit number and access code, enter the website and create and/or confirm a list of erosion and sediment control practices that are proposed on the approved plan.

b. Within ten working days of the actual start of work - enter the website and document that the practices have been installed in accordance with the approved plan.

c. Provide an electronic version of inspection documentation at the frequency indicated by the erosion control submittal packet and of event driven inspections. Documentation will be of the condition of the practices and will note any repairs needed and action taken.

d. Within ten working days of installation of final stabilization enter the website and note that the project has been terminated and a notice of termination (NOT) has been submitted to the TCEQ and the city, when appropriate.

e. Upon written notice by an agent of the city to the applicant or the applicant's designated representative regarding an erosion control action or repair needed to bring the site into compliance, the owner or operator shall comply with noted actions or repairs, and record such actions within 48 hours of the notification and prior to the next rain event. Failure to record such actions within 72 hours of notification shall be a violation of this article.

(3) *Erosion and sediment control measures.* Erosion and sediment control measure shall be designed and established at the construction site in a manner that minimizes erosion and retain sediment on-site to the maximum extent practicable with consideration of the topography, soil type, and rainfall. BMPs and control measures described in the Integrated Stormwater Management (ISWM) Manual produced by the Texas Council of Governments or subsequent versions are minimum control measure where appropriate; however, BMPs not listed in the ISWM Manual may be considered.

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- (4) *Preserve existing vegetation.* The owner or operator of the site shall ensure that existing vegetation is preserved to the maximum extent practicable. Should the existing vegetation not be preserved, the owner or operator shall take steps necessary to stabilize the site in order to prevent erosion.
- (5) *Stabilization.* Erosion control and stabilization measures must be initiated as soon as practicable in portions of the construction site where construction activities have temporarily ceased. These measures must be initiated no more than 14 days after the construction activity in that portion of the construction site where activity has temporarily or permanently ceased, except where earth disturbing activities will be resumed within 21 days.
- (6) *Minimize off-site tracking.* Off-site tracking of sediment, in the form of mud, rocks, dirt, etc. is not permitted. Where required to prevent off-site tracking of sediment, a construction entrance shall be established and maintained.
- (7) *Maintenance.*
- i. All temporary stabilization measures shall be maintained until final stabilization is established and a notice of termination (NOT) is filed with the TCEQ, when required by the CGP, and the finalization of a Rockport Termination Inspection has been conducted, as described in herein, or transfer of operations control has been completed, as required by the CGP, when appropriate based on the acreage of the construction site.
 - ii. The owner or operator of any site shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls with 48 hours of discovery of failure, damage, or compromise and prior to the next rain event.
 - iii. Failure to maintain BMPs in proper working order shall be a violation of this article.
- (8) *Sediment or silt accumulation.* Should the control measures at a site fail, in part or in total, the owner or the operator shall remove all sediment and siltation accumulation caused by BMP failure from the city's MS4, including streets and rights-of-way, within 48 hours of discovery or prior to the next rain event. Removal includes sweeping streets, sidewalks, and other infrastructure and removing sediment from the MS4.
- (9) *Good housekeeping measures for chemicals and wastes.* Good housekeeping measures shall be provided on-site to prevent and contain spills of paints, solvents, fuels, septic waste and other chemicals hazardous to the public or environment or might cause polluted runoff. Proper cleanup and disposal of any such spills shall be in accordance with state, federal, and local requirements.
- (10) *Waste.*

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- i. A location shall be established on-sited, or near the site, for personal and construction waste so as to prevent waste from involuntarily leaving the site.
 - ii. Proper waste disposal and waste management techniques shall be implemented, including covering waste materials, minimizing ground contact with regulated or hazardous chemicals and trash, and keeping trash receptacles off of paved surfaces or other locations that drain directly to a storm drain system or local waterway.
- (11) *Sanitary waste.* Sanitary waste facilities shall be maintained so that the waste does not create a hazard to the public or the environment. Sanitary waste facilities should not be placed over any paved surfaces.
- (12) *Dust suppression.* Techniques shall be employed to prevent air-borne dust from leaving the site.
- (13) *Street sweeping to remove sediments and siltation.*
- i. Sediments and other materials that enter the streets shall be limited to the greatest extent practicable.
 - ii. Street sweeping shall be conducted in a manner that minimizes dust, including sweeping during periods of minimal wind or using a vacuum sweeper.
 - iii. All property owners or operators within a common plan of development are expected to coordinate efforts to prevent sedimentation from entering the MS4. All owners or operators of contributing construction sites, as determined at the discretion of the city, shall be held responsible jointly and severally to remove sediments from the street.
 - iv. In absence of a coordinated effort amongst all property owners or operators, the city reserves the right to abate the problem and charge all the property owners contributing to the violation.
- (14) *Temporary concrete batch plants.* Temporary concrete batch plants shall comply with zoning requirements.
- (15) *Concrete wash-out.*
- i. An operator shall specify a containment area and/or a concrete wash-out device that will be established and maintained for all sites.
 - ii. Signs six square feet in size and emblazoned with "CONCRETE WASHOUT AREA" in both English and Spanish shall be posted in full view of any concrete delivery trucks.

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iii. Failure of concrete delivery trucks to utilize specified concrete wash-out areas shall be a violation of this article.

(16) No off street parking shall be permitted on vacant lots or where construction has commenced with the exception of short term delivery not to exceed two hours on approved surfaces. Signs six square feet in size and emblazoned with "OFF STREET PARKING PROHITED" in both English and Spanish shall be posted on vacant lots by developers and on permitted lots by the contractor.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-124. Responsibility of all on-site personnel.

It is a violation of this article for any person to damage or allow to be damaged any temporary or permanent stormwater control measures through their actions or inactions without promptly restoring the control measure to an effective and efficient state.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-125. Training required.

After 180 days of the effective date of this article:

(1) No contractor or subcontractor shall commence work on a construction site without first attending training on stormwater impacts from construction activities and maintenance of control measures.

a. Training shall be provided by the city.

b. Prior training or training provided by another entity shall be considered by city staff. Staff shall consider the merits of said alternative training and may disapprove of this training for any reason.

c. Proof of attendance of training provided by the city shall be provided in the form of a certificate.

(2) Contractors shall have proof of attendance available for inspection at any construction site. The contractor shall be responsible for ensuring that each of its employees is knowledgeable of the conditions of this article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-126. Allowable discharges.

The following non-stormwater discharges may be discharged from the construction site:

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- (1) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first de-chlorinated and discharges are not expected to adversely affect aquatic life);
- (2) Runoff or return from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater or surface water resources;
- (3) Discharges from potable water sources;
- (4) Diverted stream flows;
- (5) Rising ground waters and springs;
- (6) Uncontaminated ground water infiltration;
- (7) Uncontaminated pumped ground water;
- (8) Flows from wetlands and riparian habitats;
- (9) Discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
- (10) Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(92)(iv)(B)(1) or its successor;
- (11) Non-stormwater discharges that are specifically listed in the multi sector general permit (MSGP) and the CGP; and
- (12) Other similar occasional incidental non-stormwater discharges unless the TCEQ develops permits or regulations addressing these discharges.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-127. Prohibited discharges.

The following list of discharges from a construction site to the City of Rockport's MS4 are prohibited:

- (1) Excessive amounts of sediment that would cause accumulation of sediment in the City of Rockport's MS4.
- (2) Motor oil or other vehicle fluids;
- (3) Concrete truck wash out water;

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- (4) Rinse water or waste water from operations that are contaminated with chemicals or waste products from operations, including pool installations products;
- (5) Wash-off water associated with concrete cutting and exposed aggregate pressure washing;
- (6) Trash or debris associated with the construction site;
- (7) Runoff that would cause the City of Rockport's MS4 to discharge into the waters of the state water that would violate the Texas Surface Water Quality Standards; and
- (8) Any polluted liquids.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-128. Erosion and sediment control submittal required.

An erosion and sediment control submittal packet shall be submitted to the city and reviewed and released by the city prior to the commencement of any activity on a construction site. Commencement of activity before the submittal, review and release of an erosion and sediment control submittal packet shall be a violation of this article.

- (1) The erosion and sediment control submittal packet shall include all documentation required by the city's erosion control submittal process as defined in the city erosion and sediment control manual.
- (2) The erosion and sediment control submittal packet shall be submitted to the city no later than ten days prior to commencement of any construction activities.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-129. Review and release for implementation and responsibility.

- (a) The city shall review each erosion and sediment control submittal packet submitted for any construction site to determine its conformance with the provision of this article. The city shall, in writing:
 - (1) Acknowledge the receipt of the erosion and sediment control submittal packet and its completeness for review;
 - (2) Release for implementation the erosion and sediment control submittal packet, subject to reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and release work subject to these conditions; or

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- (3) Deny release for implementation the erosion and sediment control submittal packet, indicating the reasons and procedure for submitting a revised plan. Re-submittal and release for implementation of an erosion and sediment control submittal packet must occur before clearing or commencement of construction at a construction site.
- (b) *Temporary approval.* With approval from the director of public works, a construction site may be temporarily approved for clearing or commencement of construction before approval of the erosion and sediment control submittal packet. This temporary approval may be revoked at any time for any reason a director sees fit for revocation.
- (c) *Responsibility.* The owner or operator shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the city or its officers or agents will not be made liable for such damage, by
- (1) The release for implementation of an erosion and sediment control submittal packet under this article;
 - (2) The compliance with provisions of the erosion and sediment control submittal packet or with conditions attached to it by the city;
 - (3) Failure of city officials to observe or recognize hazardous or unsightly conditions;
 - (4) Failure of city officials to recommend denial of release for implementation of an erosion and sediment control submittal packet or to deny an erosion and sediment control submittal packet;
 - (5) Granting exemptions from the requirements of this article.
- (d) Materials used for temporary erosion control or sediment control (e.g., silt fences, inlet protection) and established in support of the construction site, shall be removed by owner or operator of the site once final stabilization has been established.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-130. Termination of operational control.

- (a) A final acceptance of public improvement associated with land development, issuance of a certificate of occupancy for a building or the issuance of a final "Green Tag" for other construction covered by this article shall be contingent upon an inspection for termination.
- (b) Submit a notice of termination (NOT):
- (1) Where an NOI has been submitted to the TCEQ, a letter of final acceptance of public improvement, a certificate of occupancy, or final "Green Tag" shall not be issued until final stabilization is established and maintained as specified in the released erosion control submittal packet. The developer for a subdivision or other large plat shall continue to

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maintain all temporary erosion and sediment control until final stabilization has been established on all those lots within the subdivision or large plat for which a building permit has not been issued or transfer of operational control has been established in compliance with the CGP.

(2) A NOT should not be submitted to the TCEQ or other regulatory agency unless all requirements for submittal have been completed, when required by the CGP.

(3) The city reserves the right to refuse issuance of the final acceptance or certificate of occupancy when in disagreement with submittal of an NOT.

(Ord. No. 1460, § 1, 8-11-09)



Sec. 42-131. Right of entry: inspection and sampling.

A director or authorized representative shall have the right to enter any site to determine if the owner or operator is complying with all requirements of this article, and with any state or federal discharge permit limitation, or requirement. Owners or operators shall allow a director ready access to all parts of the site for the purposes of inspections, sampling, records examination and taking photos, copying, and for performance of any addition duties. Owners or operator shall make available to the director, upon request, any SWPPP's modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports and other documents related to compliance with this article and with any state or federal discharge permit.

(1) Where the owner or operator has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the directors or their authorized representative(s) will be permitted to enter without delay for purposes of performing their responsibilities.

(2) A director shall have the right to set up on the site, or require installation of, such devices as are necessary to conduct sampling and/or metering of the owner or operator's operations. Operator must reimburse the city for costs related to sampling or damaged or lost equipment.

(3) A director may require any owner or operator 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.

(4) A director may require the owner or operator to install monitoring equipment as necessary at the discharger's expense. The site's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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(5) Any temporary or permanent obstruction to safe and easy access to the site to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or verbal request of a director and shall not be replaced. The costs of clearing such access shall be borne by the authorized representative.

(6) Unreasonable delays in allowing a director access to the site shall be a violation of this article

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-132. Search warrants.

If a director, or his/her authorized representative, has been refused access to any part of a site from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article or any state or federal discharge permit, limitation, or requirement, or 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 article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then a director may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this article the city manager, director of public works, the director of planning and development, the city engineer, and the duly authorized representatives of these city departmental directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-133. Warning notice.

When a director finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, a director may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the owner or operator to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-134. Notification of violation.

When a director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, a director may serve upon that person a written notice of violation. Within ten calendar days of the receipt of this notice, an explanation of the violation and

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a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the issuing director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the issuing director within ten calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violation occurring before or after receipt of the notice of violation. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a notice of violation. A director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this article or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this article and shall be judicially enforceable.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-135. Show cause hearing.

A director may order any person who has violated, or continues to violate, any provision of this article, or any order issued hereunder, to appear before the director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing for all enforcement actions shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this article. A show cause hearing shall not be a bar against or prerequisite for, taking any other action against the alleged violator.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-136. Compliance orders.

When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, the director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. 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 and waters of the state. 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 violator.

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(Ord. No. 1460, § 1, 8-11-09)



Sec. 42-137. Remediation, abatement, and restoration orders.

When a director finds that a person has violated, or continues to violate, any provision of this article or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the state, the director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the state, and/or to restore any part of the MS4, or the waters of the state. Such remedial, abatement, and restoration action may include, but not 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 city property or natural resource damaged by the violation. The order may direct that the remediate, abatement, 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 article does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this article shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

(Ord. No. 1460, § 1, 8-11-09)



Sec. 42-138. Emergency cease and desist orders.

(a) When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s), or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonable appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all requirements of this article; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(b) Any person notified of an emergency order directed to it under this article shall immediately comply and stop or eliminate its endangering discharge. In the event of a person's failure to immediately comply voluntarily with the emergency order, a director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, including immediate termination of a site's water supply, sewer connection, or other municipal utility services. A director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless

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further termination proceeding are initiated against the person. The cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the issuing director within ten calendar days of receipt of the emergency cease and desist order.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-139. Stop work orders.

Whenever a director finds that any owner or operator of a construction site has violated, threatens to violate, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue a stop work order to the owner or 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 construction site. Unless express written exception is made by the issuing director, 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 violator.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-140. Reconsideration and hearing.

(a) Any person subject to a compliance order, a remediation, abatement, or restoration order, an emergency cease and desist order, or a stop work order under this article may petition the issuing director to reconsider the basis for his/her order within 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 shall 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 compliance order, remediation, abatement, or restoration order, and any stop work order under article shall be stayed pending the issuing director's reconsideration of the petition, and any hearing thereon, unless the issuing director expressly makes a written determination to the contrary. The effectiveness of any emergency cease and desist order under this article shall not be stayed pending the issuing director's reconsideration, or any hearing thereon, unless the issuing director expressly and in writing stays his/her emergency order.

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(e) Within 30 calendar days of the submittal of a petition for reconsideration, the issuing director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition without a hearing, if no material issue of fact is raised; or if a hearing has been requested and a material issue of fact has been raised, set a hearing of the petition.

(f) Written notice of any hearing set by the issuing director pursuant to this section shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

(g) The issuing director may himself/herself conduct the hearing and take evidence, or he/she may 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 director for action thereon.

At any hearing held pursuant to this section, 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 issuing director has reviewed the evidence, he/she shall either:

- (1) Grant the petition;
- (2) Deny the petition; or
- (3) Grant the petition in part and deny it in part.

The issuing director 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.

(Ord. No. 1460, § 1, 8-11-09)



Sec. 42-141. Appeal.

Any person who remains adversely affected by a director's order after petitioning for reconsideration pursuant to this article, or who is subject to an order of a director issued following

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a show cause hearing under this article, may challenge the final action of the director in an appropriate court of competent jurisdiction.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-142. Civil remedies.

(a) Whenever it appears that a person has violated, or continues to violate, any provision of this article that relates to:

- (1) The preservation of public safety relating to the materials or methods used in construction of any structure or improvement of real property;
- (2) The preservation of public health or to the fire safety of a building or other structure or improvement;
- (3) The establishment of criteria for land subdivision or construction of buildings, including street design;
- (4) Dangerously damaged or deteriorated structures or improvements;
- (5) Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- (6) Point source effluent limitations or the discharge of a pollutant, other than from a non point source, into the MS4.

The city may invoke Sections 54.012 - 54.017 of the Texas Local Government Code and petition the state district court or the county court at law of Aransas County, through the city attorney, for either the injunctive relief specified in this article or the civil penalties specified below, or both the specified injunctive relief and civil penalties.

(b) Pursuant to Section 54.016 of the Texas Local Government Code, the city may obtain against the owner or operator of a site a temporary or permanent injunction, as appropriate, that:

- (1) Prohibits any conduct that violates any provision of this article that relates to any matter specified above; or
- (2) Compels the specific performance of any action that is necessary for compliance with any provision of this article that relates to any matter specified above.

(c) Pursuant to Section 54.017 of the Texas Local Government Code, the city may recover a civil penalty of not more that \$1,000.00 per day of reach violation of any provision of this article that relates to any matter specified above, and a civil penalty of not more than \$5,000.00 per day for each violation of any provision of this article that relates to any matter specified above, if the city proves that:

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- (1) The defendant was actually notified of the provisions of the article; and
- (2) After the defendant received notice of the provisions of this article, the defendant committed acts in violation of the article or failed to take action necessary for compliance with the article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-143. Criminal penalties.

- (a) Any person who has violated any provision of this article, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (b) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (c) In determining the amount of any fine imposed hereunder, 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 violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-144. Civil suit under the Texas Water Code.

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission of Environmental Quality, has occurred or is occurring within the jurisdiction of the city, exclusive of its extraterritorial jurisdiction, the city, in the same manner as the Texas Commission on Environmental Quality, may have a suit instituted in a state district court through its city attorney for the injunctive relief or civil penalties or both authorized in Sections 7.031 and 7.032 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 7.351 of the Texas Water Code. In any suit brought by the city under this article, the Texas Commission on Environmental Quality is a necessary and indispensable party.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-145. Remedies nonexclusive.

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The remedies provided for in this article are not exclusive of any other remedies that the city may have under state or federal law or other city ordinances. The city may take any, all, or any combination of these actions against a violator. The city is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-146. Performance and maintenance bonds.

A director 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 director to be necessary to achieve consistent compliance with this article, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. 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.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-147. Liability insurance.

A director 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 greater than or equal to a value determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the state, or any other aspect of the environment that is caused by the discharge.

(Ord. No. 1460, § 1, 8-11-09)

Secs. 42-148—42-179. Reserved.