

Chapter 34, Article VI, Division 5, Subdivision B. - Stormwater Compliance for Construction Activity

Sec. 34-801. - Statement of purpose.

The intent of the ordinance from which this subdivision derives, creating subdivision B, is to satisfy conditions imposed by the City's Texas Pollutant Discharge Elimination System (TPDES) Permit issued by the Texas Commission on Environmental Quality (TCEQ).

All construction addressed by the ordinance from which this subdivision derives is intended to conform to best management practices. Applicable best management practices (BMP) are presently outlined in the Texas Commission on Environmental Quality (TCEQ) Technical Guidance on Best Management Practices, June 1999, Document No. RG-348 (Revised July 2005). The TCEQ guidance may be updated by the agency or revised by the city for integration into the city's technical guidance manual for local construction activity. Choice of techniques is at the option of the responsible party.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-802. - Definitions.

When used in this subdivision B, the following terms shall have the following meanings:

Best management practices (BMP): A technique or series of structural and non-structural techniques and practices which, when used in an erosion control plan or considered as part of a construction site's housekeeping efforts, are proven to be effective in controlling construction-related runoff, erosion, sedimentation, and associated pollutants. Applicable BMP's can be found in TCEQ approved BMP Guidance manuals.

Construction activity: Clearing, grading or filling of land, dozing or mechanical removal of trees which dozing or mechanical removal disturbs the soil, excavation for installation of utility lines, streets, drainage facilities, and site preparation for housing and commercial development, as well as on-going construction activities which produce waste products. Land being modified by either excavation or fill of material upon an existing mantle of soils is considered a construction activity and subject to the terms of this Ordinance unless otherwise permitted under a Multi-sector Industrial Storm Water Permit. Prior to any modification to an existing mantle soil grade the owner of the property must meet City requirements for grading and drainage applicable to property modifications.

Director of public works: The director of public works of the City of San Antonio, including his/her designees.

EPA: The United States Environmental Protection Agency.

Erosion: The wearing away of the ground surface as a result of the movement of wind, water and/or ice.

Extraterritorial jurisdiction (ETJ): The un-incorporated area contiguous to corporate boundaries of the city that is located within five (5) miles of those boundaries, defined by the Texas Local Government Code and as such Code may be amended. Applicable limits of the ETJ, for enforcement purposes of this subdivision, are only those areas within the first five thousand (5,000) feet of San Antonio's corporate boundaries within the ETJ.

Final inspection: Occurs after responsible party meets definition of final stabilization and files a Notice of Termination (NOT) form, if required by state or federal law, at which time SAWS will conduct a final inspection to verify both compliance with final stabilization and removal of the temporary BMP's from the site has occurred. Final inspections will be required at both small construction sites and large construction Sites. Secondary operators are required to complete site notices and complete a NOT form as required under the TPDES permit.

Final stabilization: Reference to standards in the TCEQ TPDES general permit for storm water discharges for construction activities concerning development acreage that:

- (1) Where state or federally regulated development acreage is concerned, all soil disturbing activities at the site have been completed, and a uniform perennial vegetative cover, with a density of seventy (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 have been employed and
- (2) Where local, individual lots associated with residential or commercial construction are concerned, by either (a) the responsible party complying with cover requirements guided by federal or state standards recited above, or (b) the responsible party establishing temporary stabilization including perimeter controls and informing the home buyer or commercial purchaser in writing of the need for and benefits of final stabilization.

Grade: The vertical location of the ground surface.

Grading: Any land disturbance or land fill, or combination thereof including land development, fill material sites or demolition sites.

Improved: Altered by man-made conditions.

Land disturbance/land-disturbing activities: Any moving or-removing or filling by manual or mechanical means of the soil mantle or top six (6) inches of soil, whichever is shallower, including but not limited to excavations. Any planned disturbance of an existing land grade (fill or excavation) is considered a land disturbing activity. Prior to any modifications to existing mantle soil grade, the owner of the property must meet City requirements for grading and drainage on property modifications.

Land fill: Any human activity involving the disposition of soil, earth, or other earthen or aggregate materials.

Municipal separate storm sewer system (MS4): All natural and man-made collection and conduit facilities within the corporate limits of the city and within applicable limits of its extraterritorial jurisdiction, and for which MS4 protection the City of San Antonio has been issued a Texas Pollutant Discharge Elimination System (TPDES) Permit by TCEQ, which collection and conduit facilities constitute a system of conveyances, including but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, creeks, streams, tributaries, man-made channels, or storm drains, which provide collection or conveyance of storm water, rain water, flood water, or other surface water, and may be located on public property, drainage easements, or other property, and are not designated and intended to be part of the collection system of a sanitary sewer system utilized by a publicly owned treatment works (POTW) as defined by federal regulation at 40 CFR 122.2.

NOI: Notice of intent filed by a responsible party with EPA or TCEQ. This NOI is required under state regulation for certain construction activity. The NOI is part of the state general permit process for construction activity concerning projects or runoff deemed to potentially impact waters of the State of Texas and of the United States of America.

NOT: Notice of termination. The notice required by the EPA or TCEQ for permitted projects within the jurisdiction of either agency, which notice verifies "final stabilization" of the site has been achieved, as described above; EPA form 3510-7 terminating coverage under the TPDES general permit or corresponding TCEQ form for the TPDES Texas Pollutant Discharge Elimination System general permit.

NPDES: National Pollutant Discharge Elimination System.

Ordinance: This ordinance in its entirety, pertaining to new subdivision B, under article VI, Division 5, chapter 34, Code of Ordinances of the City of San Antonio.

Person: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or the legal representatives, agents, or assigns thereof.

Pollutant: Any substance introduced into the environment that adversely affects a resource. Pollutant includes, but is not limited to, soil, soil material, sediment, human waste, other wastes and debris generated at construction sites.

Responsible party: Any person or legal entity, individual or corporate, including an owner, operator, contractor, or subcontractor, any or all of whom may be engaged in, consent to, or actually perform a construction project or construction activity.

SAWS: The San Antonio Water System, a municipally owned utility, a co-permittee to the city's MS4 Permit and one of the city's enforcement and compliance arms for water quality, pollution control and prevention.

Sediment: Earth material deposited by water or wind.

Site: The location of construction activity, subject of this subdivision B, being within the corporate limits of the city and within the first five thousand (5,000) feet, outside such limits, within the ETJ.

Soil and/or soil material: Naturally occurring superficial deposits of earth mantle overlaying bedrock or clay; any naturally occurring surface deposit of sand, gravel, silt, clay, or any mixture thereof.

Storm water: Storm water runoff, snow melt runoff, and surface runoff and drainage, as per TPDES Permit Construction General Permit No.TXR1500000.

SWPPP: Storm Water Pollution Prevention Plan: The state or federally required plan for identifying and implementing appropriate measures to reduce pollutants in storm water discharges into the city's municipal separate storm water sewer systems (MS4), which pollutants include eroded sediments. Protective measures include, but are not limited to, natural and man-made collection components, good house-keeping for site maintenance, and other common sense actions, all frequently referred to as best management practices (BMP).

TCEQ: Texas Commission on Environmental Quality.

Unimproved: Natural conditions, unaltered.

Water Pollution Abatement Plan (WPAP): The State required plan that is described in 30 Texas Administrative Code, chapter 213 for identifying and implementing appropriate measures to reduce pollutants in Storm Water Discharges into identified sensitive areas of the Edwards Aquifer. The TCEQ TPDES Construction General Permit TXR150000, page 12, Item 5 " Discharge to the Edwards Aquifer Recharge Zone" identifies the requirement of protective measures of the Edwards Aquifer.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-803. - Applicability of Subdivision B entitled "Storm Water Compliance for Construction Activity," and declaration of nuisance for violation.

Within the corporate limits of the city and within applicable limits of the city's extraterritorial jurisdiction (ETJ), no person shall perform construction activity that violates provisions of this subdivision. Construction activity in violation of this subdivision is hereby declared unlawful.

Violations committed within the corporate limits and within five thousand (5,000) feet outside the city's corporate limits shall also constitute public nuisance, as further provided below at section 34-809, Violations of any provision of this subdivision within the city's corporate limits shall be deemed a criminal Class C misdemeanor. Violations of any provision of this subdivision within the city's corporate limits or any part of the applicable ETJ shall be further subject to a civil enforcement option, more particularly described in section 34-808 (b) below.

Some of the requirements of this subdivision may be generally characterized as good house-keeping protocols, those expected to be employed by a reasonably prudent contractor, operator, owner, or other person having responsibilities for various activities on a construction site. Where state or federal permits require the site operator, owner, or other responsible party, to make a storm water pollution prevention plan (SWPPP), such plans must be readily available on the site for city inspection.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-804. - General prohibition against construction pollution of the municipal separate storm sewer; measurable volumes for violation; required TCEQ TPDES permit; SWPPP and WPAP (as applicable).

- (a) It is unlawful for any person to engage in construction activity which activity results in a measurable volume of sediment, soils, soils material, or pollutants entering the city's municipal separate storm sewer system (MS4).
- (b) "Measurable volume" of sediment, soil, soil material, or pollutant, for purposes of determining a violation, shall be such volume as is capable of being truly and correctly depicted in a photograph, motion picture, or video recording of the sediment, soil, soil material, or pollutant in question.
- (c) Nothing in this section shall diminish or change the general prohibitions against MS4 pollution found in section 34-702, subdivision A, Division 5, of this chapter 34, Prohibited discharges into the municipal separate storm sewer system. SAWS shall continue to exercise all enforcement powers set out in this chapter 34, and to gather such evidence as may include, but not be limited to, samples and analysis appropriate to enforcement of chapter 34 provisions.
- (d) The responsible party shall use best management practices (BMP) to prevent sediment, soils, soils materials, and pollutants from entering the city's MS4.
- (e) It is unlawful for any person to engage in construction activity without employing BMP necessary to protect the city's MS4 from run-off or other media capable of transporting sediment, soil, soil material, and pollutants into the city's MS4.
- (f) The responsible party shall post at the main entrance of the site all operator notices including without limitation, such as notice of construction, construction site notice, contact information and WPAP notice of construction (as examples).
- (g) Portions of the Edwards Aquifer Recharge Zone and Edwards Aquifer Contributing Zone within the city extraterritorial jurisdiction shall be considered inclusive in this section.
- (h) The operator shall have available and maintain on the construction site a copy of the SWPPP and where applicable, the WPAP.
- (i) It is unlawful for any person to engage in construction activity without a complete SWPPP (as defined in TCEQ TXR 150000 or WPAP (as applicable) available on the construction site

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-805. - Additional federal and state requirements generally applicable to responsible parties associated with TPDES Regulated Projects: proper custody of federal or state storm water pollution prevention plans (SWPPP); applicable to parties required to provide TPDES notice of intent (NOI) or Small Construction Site Notice (CSN) to EPA or TCEQ and San Antonio Water System (SAWS); requirement to post TPDES Notices at site; requirement to make SWPPP available to city inspector; copy of Notice of Termination (NOT) or small construction site or large construction site secondary operator completed site notices required by TCEQ or SAWS.

- (a) Concerning projects for which the EPA or TCEQ or the City have permitting authority, the responsible party shall post at the site, as required by federal or state regulations, a true and correct copy of the NOI, Permit Number, large construction site notice or small construction site notice. A copy of the NOI, Permit number, large construction site notice or small construction site notice and the WPAP Notice of construction shall also be sent to SAWS resource protection and compliance department at the same time it is sent to EPA or TCEQ when applicable. (b) The responsible party shall have available for city inspection, on site, the storm water pollution prevention plan (SWPPP) imposed by EPA or TCEQ, when the site in question is subject to such plans imposed by federal or state law.

- (c) The responsible party shall make the SWPPP available to the city inspector, on reasonable request made during normal working hours.
- (d) Failure, refusal, or inability to provide such plan for inspection, when the plan is required under state or federal law, constitutes a violation of this subdivision.
- (e) It shall be unlawful for any person to engage in construction activity in violation of the elements of an applicable SWPPP and applicable WPAP.
- (f) The responsible party shall provide SAWS a true and correct copy of any notice of termination (NOT), small construction site completed site notice or large construction site secondary operator completed site notice necessary to close out a project regulated by EPA or TCEQ. This copy shall be sent to SAWS, to the attention of SAWS Resource Protection and Compliance Department, at the time it is sent to EPA or TCEQ.
- (g) Where permanent improvements have been constructed, the final inspection shall verify whether or not the "final stabilization" criteria have been met.
- (h) Where no permanent improvements are planned, temporary BMPs shall continue to be maintained until site has reached final stabilization.
- (i) A site shall continue to be regulated and maintain an open, active permit until final stabilization is achieved; and, where applicable to state and federally regulated sites, until a "notice of termination" (NOT) or small construction site completed site notice or large construction site secondary operator completed site notice has been filed. A copy of the NOT, if applicable, will also be filed with the SAWS as described above at subsection (t).
- (k) Where the site has met final stabilization requirements, but the controls or measures implemented thereafter fail, each discharge of construction related contamination by the responsible party shall constitute a violation of this subdivision B.
- (l) Removal of temporary BMPs shall be required after the site achieves final stabilization.
- (m) The responsible party shall have available for City inspection on the construction site, a true copy of an approved master plan of development.
- (n) The responsible party shall have available on the construction site the water pollution abatement plan (WPAP) and WPAP approval notice imposed by TCEQ when the site in question is subject to such plans required by TCEQ in 30 Texas Administrative Code, Chapter 213.
- (o) The responsible party shall have available for city inspection all records and documents required by the EPA or TCEQ SWPPP and TCEQ WPAP (as applicable).
- (p) All SWPPP documents shall be designed and signed by a licensed professional engineer (Texas) with competence in this area as required by Texas Engineering Practice Act, Section 137, or a Certified Professional in Erosion and Sedimentation Control (CPESC), (q) To assure continued effective compliance with best management practice methodology on the construction/development site, an engineer or CPESC, Certified Erosion, Sediment and Storm Water Inspector (CESSWI) or Certified Inspector of Sediment and Erosion Control (CISEC), , shall conduct ongoing inspections of all erosion/sedimentation controls and direct the person or firm responsible for maintenance to make any repairs or modifications necessary within 48 hours of the initial notification.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-806. - Best management practices (BMP) guidelines; compliance with this subdivision should not be relied upon by the regulated community to automatically effect compliance with what may be more stringent federal or state regulations pertaining to EPA/ TCEQ permitted construction sites; explanation of federal jurisdiction.

- (a) BMP applications recommended to responsible parties are those techniques described in TCEQ's "Technical Guidance on Best Management Practices," document no. RG-348, Revised July- 2005, as such document may be updated and revised, or when available, the city's technical guidance manual for construction activity.
- (b) Responsible parties are advised that the city's recognition of BMP and other good house-keeping protocols are not necessarily synonymous with federal standards directly associated with EPA's construction general permit for other construction sites regulated under federal law or the TCEQ's construction general permit. Some sites will be federally regulated construction sites while most construction sites will be permitted by the State of Texas under guidelines similar to those of EPA. Responsible parties whose projects of scale fall within state or federal parameters are responsible to EPA or TCEQ to fulfill requirements that may differ from or may be more stringent than the provisions of this article applying to local, individual construction sites of a scale not regulated by state or federal authorities.
- (c) In contrast, the purpose of this subdivision and its requirements for BMP are to satisfy the city's own state permit which specifically requires the city to adopt a construction site regulation. Consequently, the intent of this subdivision is to protect MS4 from pollutants generated from local construction sites. Federal and state jurisdiction to support this directive is found in the conduit of urban runoff traversing the San Antonio area into rivers, streams, and especially bays regulated as "waters of the United States of America" and "waters of the State of Texas". Hence, storm water generated in the area of San Antonio may enter into and impact state and federal waters.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-807. - Enforcement procedures.

- (a) The director of public works may designate additional field enforcement staff to supplement SAWS resource protection and compliance department staff, here designated and referred to above and hereafter as city inspectors (inspectors).
- (b) Upon observation of an alleged violation or condition an inspector believes constitutes a violation of this subdivision, the inspector shall issue a field correction notice (FCN) to a responsible party. The field correction notice shall be personally delivered to a responsible party, if such person is available on site; or, in the absence of such person, shall be posted at the construction site and mailed by U.S. Mail or by electronic e-mail. Field correction notices shall afford two (2) 24-hour periods to correct the violation alleged. The first 24-hour period should be used to remediate and remove the offending material, if any, from the city's MS4, or obtain and post permit documents and/or provide a copy of a complete SWPPP and WPAP (as applicable). A second 24-hour grace period shall follow immediately to allow the responsible party to appropriately install or repair corrective BMP which was lacking or failed to protect city property.
- (c) If the violation is cured within forty-eight (48) hours, as described above, no further city action is required.
- (d) If correction is not made timely, the inspector may issue a stop work order.
- (e) If a stop work order is not honored at the site and/or corrective action is not timely accomplished to protect the city's MS4, citations may be issued or civil injunctive remedies with appropriate penalties may be pursued.
- (f) Additional or cumulative enforcement action may be taken as the seriousness of the alleged pollutant encroachment in the MS4 may warrant.
- (g) Additional compliance time may be afforded, if within the judgment and discretion of the inspector, municipal obligations to environmental health and safety and municipal stormwater compliance obligations to enforcement agencies are not compromised.

- (h) Upon observation of an alleged violation or condition an inspector believes constitutes a violation of a water pollution abatement plan within the Edwards Aquifer Recharge Zone, the inspector shall have the authority to issue a field correction notice (FCN) to a responsible party. Delivery of the FCN shall be in accordance with the process as identified in paragraph (b) of this section. The field correction notice shall require immediate correction of the violation alleged or within 24 hours of observation of alleged violation as specified and documented by the inspector on the FCN. If correction is not made timely, the inspector may issue a Stop Work Order.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-808. - Criminal and civil enforcement.

- (a) A penalty is hereby established whereby any person who shall violate any provision of this subdivision shall be deemed to be guilty of a misdemeanor and shall upon conviction be fined a minimum amount of not less than two hundred dollars (\$200.00) per violation and a maximum amount of not more than two thousand dollars (\$2,000.00) per violation. Each day of violation shall constitute a separate offense for purposes of the enforcement of this subdivision.
- (b) The city attorney has authority to pursue all legal, equitable, and criminal remedies appropriate to enforce all provisions of this subdivision, including, but not limited to, authority under the Texas Local Government Code, chapter 54, providing for injunctive relief and court imposed civil penalties up to five thousand dollars (\$5,000.00) a day for violation of ordinances relating to discharge of a pollutant into a storm sewer system controlled by a municipality.
- (c) Upon the written direction of the director of public works, advising of an alleged violation of any section of this subdivision, the city attorney, pursuant to subsection (d) above, is authorized to petition any court of competent jurisdiction for an injunction to enjoin the continuance of such violation and to secure any and all civil penalties within the jurisdiction of the appropriate court. This remedy shall be cumulative of and to all other enforcement remedies available to the city.
- (d) The authority set out above shall in no way diminish the authority and responsibility of the city attorney to diligently prosecute violations of this subdivision through the municipal prosecutor's office.
- (e) The SAWS is a co-permittee, under the federal permit, and a contractual enforcement arm of the city. In consultation with the city attorney, SAWS legal officers may exercise all or specific enforcement options enumerated in this subdivision B on behalf of the city.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Sec. 34-809. - Declaration of nuisance within applicable limits of the city's ETJ; city's authority to enforce within five thousand (5,000) feet outside the city limits.

Under authority of the Texas Local Government Code, section 217.042 (a) (b), noncompliance with provisions of this subdivision B, or violation of its provisions, is here declared a nuisance and by authority of the enabling statute such declaration of nuisance extends to and shall be applicable within both the corporate limits of the city and within five thousand (5,000) feet outside the limits. Accordingly, summary abatement authority rests in the city's enforcement officials when imminent threat to the public health, safety, or welfare may arise.

(Ord. No. 94002, § 1, 5-24-01; Ord. No. [2014-06-19-0472](#), § 1(Exh. A), 6-19-14)

Secs. 34-810—34-849. - Reserved.