

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, ADOPTING ARTICLE IX (STORMWATER DISCHARGE) TO CHAPTER 34 (ENVIRONMENT) OF THE FRISCO CODE OF ORDINANCES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (the “City Council”) has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas (the “City”) to adopt an ordinance establishing regulations to protect the property, prevent damage to the environment in the City, and promote public health, safety and general welfare by implementing regulations for stormwater discharge in the City; and

WHEREAS, additionally, the City’s state issued stormwater permit requires the City to implement an ordinance which prohibits illicit discharges in to the storm sewer; and

WHEREAS, the City Council has further investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco to adopt Article IX (Stormwater Discharge) to Chapter 34 (Environment) of the Frisco Code of Ordinances; and

WHEREAS, the City Council has investigated and determined that the above-referenced regulations are necessary to protect the health, life and property of the citizens in the City and comply with state regulations as set forth below.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Adopting Article IX (Stormwater Discharge) to Chapter 34 (Environment) of the Frisco Code of Ordinances. Article IX (Stormwater Discharge) is hereby adopted to Chapter 34 (Environment) of the Frisco Code of Ordinances, as attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 3: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00) if the violation relates to the public health, sanitation or dumping of refuse, otherwise the fine shall be a sum not exceeding Five Hundred Dollars (\$500.00). The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall become effective from and after its passage and publication as required by the City Charter and law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 15th day of November, 2011.

Maher Maso

Maher Maso, Mayor

**ATTESTED AND
CORRECTLY RECORDED**



Jenny Page

Jenny Page, City Secretary

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorney

DATE(s) OF PUBLICATION: November 18 and 25, 2011, *FRISCO ENTERPRISE*

Exhibit “A”
(Stormwater Discharge)

Sec. 34-330. 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 Frisco, the North Central Texas Region, 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 Frisco.
 - (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.
- (b) Administration. Except as otherwise provided herein, the Director of Engineering Services (DES), 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.
- (c) Abbreviations. The following abbreviations when used in this Ordinance shall have the designated meanings:
- BMP - Best Management Practices
 - BTEX - Benzene, Toluene, Ethyl benzene, and Xylene
 - CEA - Code Enforcement Administrator
 - CFR - Code of Federal Regulations
 - DES - Director of Engineering Services

- DPW - Director of Public Works
- EPA - U.S. Environmental Protection Agency
- HHW - Hazardous Household Waste
- mg/l - Milligrams per liter
- MS4 - Municipal Separate Storm Sewer System
- NOI - Notice of Intent
- NOT - Notice of Termination
- NPDES - National Pollutant Discharge Elimination System
- Ppb - Parts per billion
- PST - Petroleum Storage Tank
- RLA - Registered Landscape Architect
- RPE - Registered Professional Engineer
- RQ - Reportable Quantity
- SWPPP - Stormwater Pollution Prevention Plan
- TPH - Total Petroleum Hydrocarbons
- USC - United States Code

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

- (1) Agricultural stormwater runoff. Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.
- (2) Best management practices (BMP). Schedules 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.
- (3) City. The City of Frisco, Texas, or the City Council of Frisco.
- (4) City Inspector(s) shall refer the DES, DPW or CEA who go on site to determine if the provisions of this ordinance are being met.
- (5) Director of Engineering Services DES. The person appointed to the position of DES by the City Manager to provide engineering and technical services, or his/her duly authorized representative.

- (6) Coal pile runoff. The rainfall runoff from or through any coal storage pile.
- (7) Code Enforcement Administrator (CEA). The person appointed by the City Manager to enforce City codes or his/her duly authorized representative.
- (8) Commencement of construction. The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
- (9) Commercial. Pertaining to any business, trade, industry, or other activity engaged in for profit.
- (10) Director of Public Works (DPW). The person appointed by the City Manager to manage field operations and provide environmental education, or his/her duly authorized representative.
- (11) Discharge. Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
- (12) Discharger. Any person, who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.
- (13) Domestic sewage. Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.
- (14) Environmental Protection Agency (EPA). The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.
- (15) Extremely hazardous substance. Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.
- (16) Facility. Any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
- (17) Fertilizer. A solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used

primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

- (18) Final stabilization. The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of seventy (70%) percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (19) Fire Department. The Fire Department of the City of Frisco, or any duly authorized representative thereof.
- (20) Fire protection water. Any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.
- (21) Garbage. Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.
- (22) Harmful quantity. The amount of any substance that will cause pollution of water in the State.
- (23) Hazardous household waste (HHW). Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.
- (24) Hazardous substance. Any substance listed in Table 302.4 of 40 CFR Part 302.
- (25) Hazardous waste. Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
- (26) Hazardous waste treatment, disposal, and recovery facility. All contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

- (27) Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.
- (28) Industrial waste. Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.
- (29) Motor vehicle fuel. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.
- (30) Municipal landfill (or landfill). An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Water Commission).
- (31) Municipal separate storm sewer system (MS4). The system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.
- (32) Municipal solid waste. Solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.
- (33) NPDES General Permit for Stormwater Discharges Associated with Industrial Activity (or Industrial General Permit). The Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.
- (34) NPDES General Permit for Stormwater Discharges from Construction Sites (or Construction General Permit). The Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.
- (35) NPDES permit. A permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)), as amended, that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

- (36) Non-point source. Any source of any discharge of a pollutant that is not a "point source."
- (37) Notice of Intent (NOI). The Notice of Intent that is required by either the Industrial General Permit or the Construction General Permit.
- (38) Notice of Termination (NOT). The Notice of Termination that is required by either the Industrial General Permit or the Construction General Permit.
- (39) Oil. Any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.
- (40) Operator. The person or persons who, either individually or taken together, meet the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.
- (41) Owner. The person who owns a facility, part of property,
- (42) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.
- (43) Pesticide. A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code, as amended).
- (44) Petroleum product. A petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and # 1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

- (45) Petroleum storage tank (PST). Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.
- (46) Point source. Any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
- (47) Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.
- (48) Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (49) Qualified personnel. Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.
- (50) Registered landscape architect (RLA). A person who has been duly licensed and registered to practice landscape architecture by the Texas Board of Architectural Examiners.
- (51) Registered professional engineer (RPE). A person who has been duly licensed and registered by the State Board of Registration for Professional Engineers to engage in the practice of engineering in the State of Texas.
- (52) Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the

municipal separate storm sewer system (MS4) or the waters of the United States.

- (53) Reportable quantity (RQ). For any "hazardous substance," the quantity established and listed in Table 302.4 of 40 CFR Part 302, as amended; for any "extremely hazardous substance," the quantity established in 40 CFR Part 355, as amended, and listed in Appendix A thereto.
- (54) Rubbish. Nonputrescible solid waste, excluding ashes, that consist of (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).
- (55) Sanitary sewer (or sewer). The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).
- (56) Septic tank waste. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- (57) Service station. Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.
- (58) Sewage (or sanitary sewage). The domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the City sewage treatment plant for treatment.
- (59) Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
- (60) Solid waste. Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.

- (61) State. The State of Texas.
- (62) Stormwater. Stormwater runoff, snow melt runoff, and surface runoff and drainage.
- (63) Stormwater discharge associated with industrial activity. The discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR § 122.26(b)(14), as amended, and which is not excluded from EPA's definition of the same term.
- (64) Stormwater pollution prevention plan (SWPPP). A plan required by either the Construction General Permit or the Industrial General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity at the facility.
- (65) Uncontaminated. Not containing a harmful quantity of any substance.
- (66) Used oil (or used motor oil). Any oil that has been refined from crude oil or synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with State and federal law.
- (67) Water in the State (or water). Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.
- (68) Water quality standard. The designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by the State to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code, as amended.
- (69) Waters of the United States. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of

the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR § 122.2, as amended; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

- (70) Wetland. An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- (71) Yard waste. Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Sec. 34-331. General Prohibition

- (a) No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of stormwater.
- (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:
(As found in the permit)
 - (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 09-04-21, Water Management 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 (fire-fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar 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);
 - (18) a discharge from a temporary car wash sponsored by a civic group school religious or nonprofit organization where only soap and water are used and where efforts are made to minimize pollutants in the discharge.
 - (19) and, other similar occasional incidental non-stormwater discharges, unless the TCEQ develops permits or regulations addressing these discharges.
- (c) No affirmative defense shall be available under Subsection (b) of this section if the discharge or flow in question has been determined by the DES to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than fourteen (14) calendar days beyond such notice. The correctness of the DES's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

Sec. 34-332. Specific Prohibitions and Requirements

- (a) The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in section 34-331.
- (b) No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from its MS4.
- (c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:
 - (1) Any industrial waste;
 - (2) Any used motor oil,
 - (3) Any hazardous waste, including hazardous household waste;
 - (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - (5) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:
 - a. Compliance with all state and federal standards and requirements; and
 - b. No discharge containing a harmful quantity of any pollutant.
- (d) No person shall intentionally dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or introduce any of the following substances into the MS4 and all persons shall to the maximum extent practicable under prevailing circumstances employ control measures to prevent the following substances from entering into the MS4:
 - (1) Any motor oil, antifreeze, or any other motor vehicle fluid;
 - (2) Any garbage, rubbish, or yard waste;

- (3) Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity;
- (4) Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
- (5) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
- (6) Any wastewater from floor, rug, or carpet cleaning;
- (7) Any wastewater from the wash-down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
- (8) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
- (9) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
- (10) Any runoff or wash-down water from any animal pen, kennel, or fowl or livestock containment area;
- (11) Any filter backwash from a swimming pool, fountain, or spa;
- (12) Any swimming pool water containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
- (13) Any discharge from water line disinfection by super chlorination or other means if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;

- (14) Any fire protection water containing oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire-fighting by the Fire Department.);
- (15) Any water from a water curtain in a spray room used for painting vehicles or equipment;
- (16) Any contaminated runoff from a vehicle wrecking yard;
- (17) Any substance or material that will damage, block, or clog the MS4;
- (e) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with landfilling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.
- (f) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.
- (g) No person shall cause or allow any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- (h) Pesticides, Herbicides, and Fertilizers.
No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced harmful levels of pesticides, herbicides and fertilizers into the MS4 . All persons shall to the maximum extent practicable under prevailing circumstances employ control measures to minimize pesticides, herbicides and fertilizers from entering the MS4. This includes the following:
 - (1) Applying products according to manufacture recommendations.
 - (2) Applying products according to all state and federal laws.
 - (3) Proper storage and disposal.

Sec. 34-333. Release and Reporting and Cleanup

- (a) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching,

dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall immediately telephone and notify the DES concerning the incident:

- (1) An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302, as amended;
 - (2) An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355, as amended;
 - (3) An amount of oil that either (a) violates applicable water quality standards, or (b) causes a film or sheen upon or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or
 - (4) Any harmful quantity of any pollutant.
- (b) The immediate notification required by subsection (a) shall include the following information:
- (1) The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
 - (2) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
 - (3) The time and duration (thus far) of the release;
 - (4) An estimate of the quantity and concentration (if known) of the substance released;
 - (5) The source of the release;
 - (6) Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
 - (7) Any precautions that should be taken as a result of the release;
 - (8) Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and

- (9) The names and telephone numbers of the person or persons to be contacted for further information.
- (c) Within fourteen (14) calendar days following such release, the responsible person in charge of the facility, vehicle, or other source of the release shall, unless waived by the DES, submit a written report containing each of the items of information specified above in subsection (b), as well as the following additional information:
 - (1) The ultimate duration, concentration, and quantity of the release;
 - (2) All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
 - (3) Any known or anticipated acute or chronic health risks associated with the release;
 - (4) Where appropriate, advice regarding medical attention necessary for exposed individuals;
 - (5) The identity of any governmental/private sector representatives responding to the release; and
 - (6) The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.
- (d) The notifications required by subsections (b) and (c) above shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this Ordinance or to state or federal law.
- (e) Any person responsible for any release as described in subsection (a) above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
- (f) Any person responsible for a release described in subsection (a) above shall reimburse the City for any cost incurred by the City in responding to the release.

Sec. 34-334. Stormwater Discharges from Construction Activities

- (a) General Requirements
 - (1) All operators of construction sites shall use best management practices to control and reduce the discharge, to the MS4 and to waters of the United

States, of sediment, silt, earth, soil, and other material associated with the clearing, grading, excavation, and other construction activities to the maximum extent practicable under the circumstances. Such best management practices may include, but not be limited to, the following measures:

- a. Ensuring that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Stabilization measures may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures;
- b. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;
- c. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;
- d. Prevention of the discharge of building materials, including cement, lime, concrete, and mortar, to the MS4 or waters of the United States;
- e. Providing general good housekeeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;
- f. Implementation of proper waste disposal and waste management techniques, including covering waste materials and minimizing ground contact with hazardous chemicals and trash;
- g. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices in good and effective operating condition; and
- h. Installation of structural measures during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such

installed structural measures may include, but not be limited to, the following: stormwater detention structures (including wet ponds); stormwater retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site, and are not responsible for maintenance after stormwater discharges associated with construction activity have terminated.

- (2) Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four (24) hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be revised as appropriate, and as soon as is practicable.
- (3) The DES may require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required by section 34-334 (a) (1) above that will be implemented at the construction site. The City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the DES are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable under the circumstances.
- (4) Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in section 34-334 (a).
- (5) Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent

failure on his/her part to adequately implement that control measure if such failure causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any State-issued discharge permit for discharges from its MS4.

(b) Five-Acre Disturbances.

- (1) All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of five or more acres of total land area, or that are part of a common plan of development or sale within which five or more acres of total land area are disturbed, or who are required to obtain an NPDES permit for stormwater discharges associated with construction activity, shall comply with the following requirements (in addition to those in section 34-334 (a)):
 - a. Any operator who intends to obtain coverage for stormwater discharges from a construction site under the NPDES General Permit for Stormwater Discharges From Construction Sites ("the Construction General Permit") shall submit a signed copy of its Notice of Intent (NOI) to the DES at least two (2) days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this Ordinance, the NOI shall be submitted within thirty (30) days. For stormwater discharges from construction sites where the operator changes, an NOI shall be submitted at least two (2) days prior to when the operator commences work at the site.
 - b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Construction General Permit or any individual or group NPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this Ordinance and any other city ordinance.
 - c. The SWPPP shall be completed prior to the submittal of the NOI to the DES and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and this Ordinance.
 - d. A copy of any NOI that is required by section 34-334 (b) (1) (a) shall be submitted to the City in conjunction with any application for a building permit, grading permit, site development plan approval, and any other City approval necessary to commence or continue construction at the site.

- e. The DES may require any operator who is required by section 34-334 (b) (1) (b) to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the DES for review. Such submittal and review of the SWPPP may be required by the DES prior to commencement of or during construction activities at the site.
- f. Upon the DES's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this Ordinance. Also, if at any time the DES determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, grading permit, subdivision plat, site development plan or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.
- g. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

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

- h. The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- i. The SWPPP, and the certifications of contractors and subcontractors required by section 34-334 (b) (1) (i), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.
- j. The operator shall make the SWPPP and any modification thereto available to the DES upon request (as well as to EPA and State inspectors).

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

- n. Based on the results of the inspections required by section 34-334 (b) (1) (m), 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) calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven (7) calendar days following the inspection.
- o. A report summarizing the scope of any inspection required by section 34-334 (b) (1) (m), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with section 34-334 (b) (1) (n) above shall be made and retained as part of the SWPPP for at least three (3) years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES permit, and this Ordinance. The report shall be certified and signed by the person responsible for making it.
- p. The operator shall retain copies of any SWPPP and all reports required by this Ordinance or by the NPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three (3) years from the date that the site is finally stabilized.
- q. Where a site has been finally stabilized and all stormwater discharges from construction activities that are authorized by this Ordinance and by the NPDES permit for those construction activities are eliminated, or where the operator of all stormwater discharges at a facility changes, the operator of the construction site shall submit to the DES a Notice of Termination (NOT) in accordance with the Construction General Permit.

- r. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit written certification to the DES that the site has been finally stabilized. (See definition of final stabilization in this Ordinance.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the DES has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

Sec. 34-335. Compliance Monitoring

- (a) Right of Entry: Inspection and Sampling. City Inspectors shall have the right to enter the premises of any person reasonably suspected by the City of discharging pollutants into the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this Ordinance, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the City Inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the City Inspector, upon request, any SWPPPs, 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 Ordinance and with any state or federal discharge permit.
 - (1) Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City Inspector will be permitted to enter without unreasonable delay for the purposes of performing his/her responsibilities.
 - (2) The City Inspector shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.
 - (3) When pollutants have been discharged the DES may require any discharger to the MS4 or waters of the United States 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) The DES may require that discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper

operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the City Inspector and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
 - (6) Unreasonable delays in allowing the City Inspector access to the discharger's premises shall be a violation of this Ordinance.
- (b) Search Warrants. If the City Inspector has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Inspector may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 34-336. Publication

- (a) Publication of Dischargers in Significant Noncompliance. The DES may periodically publish, in a daily newspaper generally distributed within the City, a list of owners and operators of discharges to the MS4 or waters of the United States from sites of construction and industrial activity which, during the previous three (3) months, were in significant noncompliance with the requirements of this Ordinance. The term "significant noncompliance" shall mean:
- (1) Introducing or causing to be introduced into the waters of the United States any discharge that violates a water quality standard;
 - (2) Introducing or causing to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from the City's MS4;
 - (3) Any connection of a line conveying sanitary sewage, domestic or industrial, to the MS4, or allowing any such connection to continue;
 - (4) Any discharge of pollutants to the MS4 or waters of the United States that has caused an imminent or substantial endangerment to the health or

welfare of persons or to the environment, or has resulted in the DES's exercise of his/her emergency authority to halt or prevent such a discharge;

- (5) Any violation that has resulted in injunctive relief, civil penalties, or criminal fine being imposed as a judicial remedy under section 34-339 of this Ordinance; or
- (6) Any other violation(s) which the DES determines to be chronic or especially dangerous to the public or to the environment.
- (7) Any failure to comply with a compliance schedule, whether imposed by the City or by a court.

Sec. 34-337. Administrative Enforcement Remedies

- (a) Warning Notice. When the DES finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the DES may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger 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 relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the DES to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.
- (b) Notification of Violation. When the DES finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the CEA may serve upon that person a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and 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 CEA. 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 CEA within ten (10) days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the CEA to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.
- (c) Consent Orders. The CEA 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 Ordinance 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 sections 34-337 (e), (f) and (g) this Ordinance and shall be judicially enforceable.

- (d) Show Cause Hearing. The CEA may order any person who has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, to appear before the CEA 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 shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) 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 section 34-338 (a) (7) of this Ordinance. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.
- (e) Compliance Orders. When the CEA finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the CEA may issue an order to the violator directing that the violator come into compliance within a specified time limit. 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 United States. 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.
- (f) Remediation, Abatement, and Restoration Orders. When the CEA finds that a person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, and that such violation has adversely affected the MS4, the waters of the United States or any other aspect of the environment, the CEA 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, the waters of the United States, or any other aspect of the environment, and/or to restore any part of the MS4, the waters of the United States, or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement,

removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, 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 Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

- (g) Emergency Cease and Desist Orders. When the CEA finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the CEA 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 Ordinance requirements; 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.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the CEA may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The CEA may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the CEA that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Ordinance. 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 CEA within two days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

- (h) "Red Tags". Whenever the CEA finds that any operator of a construction site has violated, or continues to violate, any provision of Section V of this Ordinance, or any order issued thereunder, the CEA may order that a "Red Tag" be issued to the operator, posted at the construction site, 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. 34-338. Right to Reconsideration, Hearing, and Appeal

(a) Reconsideration and Hearing

- (1) Any person subject to a Compliance Order under section 34-337 (e), a Remediation, Abatement, or Restoration Order under section 34-337 (f), an Emergency Cease and Desist Order under section 34-337 (g), or a Red Tag Order under section 34-337 (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 34-337 (e), Remediation, Abatement, or Restoration Order under section 34-337 (f), and any Red Tag Order under section 34-337 (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 34-337 (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 34-338 (a) (5) above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.
- (7) The CEA 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:
 - a. 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;
 - b. take evidence;
 - c. transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the CEA for action thereon.

At any hearing held pursuant to this Subsection, 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.

- (8) After the CEA 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 CEA 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.

(b) Appeal

- (1) Any person whose petition for reconsideration by the CEA has not been granted in its entirety and who remains adversely affected by the CEA's order, or who is subject to an order of the CEA issued following a Show

Cause Hearing under section 34-337 (d), may appeal the action of the CEA to the City Council by filing a written appeal with the City Council within ten (10) days of the person's notice of the CEA's adverse action on the petition for reconsideration, or within ten (10) days of the person's notice of the issuance of the order following the Show Cause Hearing, as the case may be.

- (2) Failure to submit a timely written appeal to the City Council shall be deemed to be a waiver of further administrative review.
- (3) In its written appeal to the City Council, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the 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.
- (4) The effect of the CEA's order, as issued or modified, shall not be stayed pending the appeal to the City Council, unless the City Council expressly so states.
- (5) Within thirty (30) days of the submittal of a written appeal to the City Council, the City Council shall hear and consider the appeal in open meeting. The appellant shall be notified at least three (3) days in advance of the date and time of the City Council meeting at which the appeal will be heard and considered.
- (6) The appellant shall have the right to public appearance before the City Council to present oral and written statements in support of his/her appeal. If the City Council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the CEA the City Council may remand the matter to the CEA for the taking of additional testimony or other evidence.
- (7) Upon consideration of any written and oral statements made to the City Council, as well as the record made before the CEA, the City Council shall act on the appeal by affirming, vacating, or modifying the order of the CEA, and/or by remanding the matter to the CEA for further action.
- (8) Following final action by the City Council on the appeal, any adversely affected party may challenge such action by the City Council in an appropriate court of competent jurisdiction.

Sec. 34-339. Judicial Enforcement Remedies

(a) Civil Remedies

- (1) Whenever it appears that a person has violated, or continues to violate, any provision of this Ordinance that relates to:
 - a. the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
 - b. the preservation of public health or to the fire safety of a building or other structure or improvement;
 - c. the establishment of criteria for land subdivision or construction of buildings, including street design;
 - d. dangerously damaged or deteriorated structures or improvements;
 - e. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
 - f. 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 54.011 - 54.017 of the Texas Local Government Code, as amended, and petition the State district court or the county court at law of Collin or Denton County, through the City Attorney, for either the injunctive relief specified in section 34-339 (a) (2) or the civil penalties specified in section 34-339 (a) (3) below, or both the specified injunctive relief and civil penalties.

- (2) Pursuant to Section 54.016 of the Texas Local Government Code, as amended, the City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:
 - a. prohibits any conduct that violates any provision of this Ordinance that relates to any matter specified in sections 34-339 (a) (1) (a)-(f) above; or
 - b. compels the specific performance of any action that is necessary for compliance with any provision of this Ordinance that relates to any matter specified in sections 34-339 (a) (1) (a)-(f) above.
- (3) Pursuant to Section 54.017 of the Texas Local Government Code, as amended, the City may recover a civil penalty of not more than one thousand dollars (\$1,000) per day for each violation of any provision of this Ordinance that relates to any matter specified in sections 34-339 (a) (1) (a)-(e) above, and a civil penalty of not more than five thousand (\$5,000) per day for each violation of any provision of this Ordinance that relates to any matter specified in section 34-339 (a) (1) (f) above, if the City proves that:

- a. the defendant was actually notified of the provisions of the Ordinance; and
- b. after the defendant received notice of the Ordinance provisions, the defendant committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance.

(b) Criminal Penalties

- (1) Any person, who has violated any provision of this Ordinance, or any order issued hereunder, shall be strictly liable for such violation regardless of the presence or absence of a culpable mental state, except as expressly provided herein, and shall, upon conviction, be subject to a fine of not more than two thousand dollars (\$2000.00) per violation, per day, or any greater fine authorized by State statute.
- (2) 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 Ordinance, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be subject to a fine of not more than two thousand dollars (\$2000.00) per violation, per day, or any greater fine authorized by State statute.
- (3) 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.

- (c) 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, as amended, or any rule, permit, or order of the Texas Water Commission, has occurred or is occurring within the jurisdiction of the City of Frisco, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the Texas Water Commission, 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 Subsection (a) of Section 26.123 of the Texas Water Code, as amended, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 26.124 of the Texas Water

Code, as amended. In any suit brought by the City under this section 34-339 (c), the Texas Water Commission is a necessary and indispensable party.

- (d) Remedies Nonexclusive. The remedies provided for in this Ordinance 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.

Sec. 34-340. Supplemental Enforcement Action

- (a) Performance Bonds. The CEA 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 CEA to be necessary to achieve consistent compliance with this Ordinance, any order issued hereunder, any required Best Management Practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. 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 bond has been filed.
- (b) Liability Insurance. The CEA may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the CEA, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.
- (c) Public Nuisances. A violation of any provision of this Ordinance, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the CEA. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.