ARTICLE XII. STORM WATER DISCHARGES*

DIVISION 1. IN GENERAL

Sec. 47-601. Definitions.

As used in this article, the following terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

Accessory structure shall mean a non-commercial structure of the type typically associated with a single-family residential dwelling unit, including, but not limited to, a garage, carport or barn.

Applicant shall mean the owner of the land on which new development or significant redevelopment will occur or his authorized agent.

CFR shall mean the Code of Federal Regulations, as it may be amended from time to time.

Clean Water Act shall mean the federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended from time to time.

Commercial activity shall mean any profit or not-for-profit activity involved in the manufacture, storage, transportation, distribution, exchange or sale of goods or commodities, or the sale or lease of real property in the provision of professional or nonprofessional services, or in the use of property for residential purposes other than single-family residential purposes.

Construction permit shall mean an official document or certification issued by either the building official or the city engineer authorizing performance of a specified construction activity, including, but not limited to, building permits, plumbing permits, electrical permits, HVAC permits, lateral storm sewer permits, excavation permits, utility construction permits, paving permits, demolition permits, and development permits required by section 19-17 of this Code.

Design manual shall mean the Department of Public Works and Engineering Design Manual for Wastewater Collection Systems, Water Lines, Storm Drainage and Street Paving, as it may be amended from time to time.

Developed parcel shall mean a parcel that is not undeveloped.

Development shall mean (i) any activity that requires a subdivision plat or development plat pursuant to Chapter 42 of this Code; (ii) the further subdivision of any reserve tract that is part of a subdivision plat approved by the city planning commission or pursuant to article II of Chapter 42 of this Code; or (iii) any activity that requires a construction permit.

Discharge shall mean the introduction or addition of any pollutant, storm water or other substance into the MS4, or to allow, permit or suffer any such introduction or addition.

Discharger shall mean a person who causes or threatens to cause a discharge.

Dwelling unit shall mean a structure, or a portion of a structure, that has independent living facilities including provisions for nontransient sleeping, cooking and sanitation.

*Editor's note—Section 11 of Ord. No. 01-800 states that this article shall take effect at 12:01 a.m. on October 1, 2001.

EPA shall mean the Federal Environmental Protection Agency and any successor agency thereto.

Home occupation shall mean a commercial activity conducted entirely in a dwelling unit or accessory structure by a resident thereof that is incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

Homeowners' association shall mean an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by a dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the single-family residential subdivision that has as one of its purposes the continued care and maintenance of all commonly-owned properties within the subdivision, particularly the areas established for storm water quality controls, and the authority and means to impose binding assessments upon the lot owners for that purpose.

Impervious surface shall mean any area that does not readily absorb water including, but not limited to, building roofs, parking and driveway areas, compacted or rolled areas, sidewalks, and paved recreation areas.

Industrial activity certification or *IAC* shall mean a certification filed with the city pursuant to section 47-633 of this Code.

Lot shall mean an undivided tract of land intended for single-family residential use contained within a block and designated on a subdivision plat by alphabetical or numerical designation.

Municipal separate storm sewer system or *MS4* shall mean the system of conveyances owned and operated by the city that is designed or used for collecting or conveying storm water and is not used for collecting or conveying sewage.

New development shall mean development of an undeveloped parcel of land five acres or larger without regard to the amount of land that will actually be disturbed. The term does not include development on an undeveloped and undivided parcel of five acres or more of one dwelling unit and one or more accessory structures.

Non-structural control shall mean a maintenance or operational practice designed to prevent or reduce the potential of storm water runoff contact with pollution-causing activities.

Notice of intent or *NOI* shall mean a notice of intent that is required by the TPDES General Permit No. TXR050000, the EPA NPDES General Permit for Storm Water Discharges From Construction Activities in Region 6, or any similar general permit to discharge storm water associated with industrial or construction activity that is issued by the EPA or TNRCC.

Notice of termination or *NOT* shall mean the notice of termination that is required by the TPDES General Permit No. TXR050000, the EPA NPDES General Permit for Storm Water Discharges From Construction Activities in Region 6, or any similar general permit to discharge storm water associated with industrial or construction activity that is issued by the EPA or TNRCC.

NPDES shall mean National Pollutant Discharge Elimination System.

NPDES permit shall mean a permit issued by the EPA (or by the state under authority assumed pursuant to Section 1342(b) of Title 33 of the United States Code) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general basis.

Parcel shall mean a contiguous piece of land that is under common ownership or control or that is part of a larger common plan of development or sale.

Person shall mean an individual, corporation, organization, governmental entity, business trust, partnership, association, or other legal entity, or an agent or an employee thereof.

Pollutant shall mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock,

sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the MS4 or any waters of the United States.

Pollution shall mean the alteration of the physical, thermal, chemical or biological quality of, or the contamination of, any waters of the United States that renders the water harmful, detrimental or injurious to humans, animal life, vegetation or property or to public health, safety or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

Public utility shall mean a water line, sanitary sewer, storm sewer, pump station or lift station in a public right-of-way that is or will be owned and operated by the city or other political subdivision of the state for public purposes.

Publicly owned treatment works or *POTW* shall mean any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by the state or a municipality, and includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

Representative storm event shall mean a storm event that is greater than one-tenth of an inch in magnitude and that occurs at least 72 hours after the previously measurable (greater than one-tenth of an inch rainfall) storm event.

Significant redevelopment shall mean changes of one acre or more to the impervious surface on a five acre or larger developed parcel.

Single-family residential shall mean the use of a lot with one building designed for and containing not more than two dwelling units.

Storm water management handbook for construction activities shall mean the Storm Water Management Handbook for Construction Activities promulgated by the city, Harris County and Harris County Flood Control District, as it may be amended from time to time.

Storm water discharges associated with construction activity shall mean storm water discharges from construction activity, including clearing, grading, excavation and demolition activities, but not including operations that result in the disturbance of less than five acres of total land area that are not part of a larger common plan of development or sale. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122 of Title 40 of the CFR.

Storm water discharges associated with industrial activity shall have the meaning provided in Section 122.26(b)(14) of Title 40 of the CFR, other than subsection (x) of that Section.

Storm water quality management plan or *SWQMP* shall mean a plan prepared pursuant to the requirements of division 2 of this article and the design manual.

Storm water quality permit or *SWQ permit* shall mean a current, valid permit issued pursuant to division 2 of this article.

Structural control shall mean a structure or vegetative practice that is generally designed to reduce pollutant levels in storm water runoff.

Structural control maintenance agreement shall mean an agreement entered into pursuant to section 47-674 of this Code.

Structure shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work, including, but not limited to, a paved surface, that is artificially built up or composed of parts joined together in some definite manner. The term does not include a street or a public utility.

Substantial deviation shall mean a deviation that:

(1) Increases the designed flow rate by more than five percent;

(2) Increases or decreases the designed storage volume by more that five percent;

(3) Increases or decreases the designed water surface elevation by more than six inches; or

(4) Increases the risk of flooding caused by a 100-year storm event as that term is defined in chapter 19 of this Code.

SWQ permittee shall mean the holder of a SWQ permit.

Third-party agreement shall mean an agreement that satisfies the requirements of section 47-673(b) of this Code.

TNRCC shall mean the Texas Natural Resource Conservation Commission and any successor agency thereto.

TPDES means the Texas Pollutant Discharge Elimination System that was assumed by the state from the EPA pursuant to Section 1342(b) of Title 33 of the United States Code.

TPDES permit shall mean a permit issued by the TNRCC that authorizes the discharge of pollutants to water in the state, whether the permit is applicable on an individual, group, or general basis.

Type 1 facility shall mean a municipal landfill, a hazardous waste treatment, disposal and recovery facility, a facility that is subject to Section 11023 of Title 42 of the United States Code, as it may be amended from time to time, or any other industrial facility that the city determines is contributing a substantial pollutant loading to the MS4.

Type 2 facility shall mean any other municipal waste treatment, storage or disposal facilities (including, but not limited to, POTWs, transfer stations, and commercial incinerators) or any other industrial or commercial facility the city believes is contributing a pollutant to the MS4.

Undeveloped parcel shall mean a parcel on which there are no structures at the time that a construction permit, subdivision plat or other city approval is applied for or required.

Waters of the United States shall mean all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; 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 water identified in this definition; all wetlands adjacent to waters identified in this definition; and any other waters within the federal definition of "waters of the United States" in Section 122.2 of Title 40 of the CFR; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

Wetlands shall mean an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (Ord. No. 01-800, § 3, 8-29-01; Ord. No. 02-399, § 95, 5-15-02)

Sec. 47-602. Penal provisions applicable.

(a) Any person who violates any provision of this article shall be guilty of an offense and upon conviction thereof, shall be punished by a fine of not less than $250.00 nor more than $2,000.00 for each violation. Each day in which any violation shall occur shall constitute a separate offense. Prosecution or conviction under this section shall not preclude any civil remedy or relief for a violation of this article.

(b) In addition to criminal prosecution, where applicable, the city shall have the right to seek the judicial remedies provided in section 47-603 of this Code for any violation of this article. (Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-603. Judicial provisions applicable.

The city, acting through the city attorney or any other attorney representing the city, is hereby authorized to file an action in a court of competent jurisdiction to:

(1) Enjoin any person from violating or threatening to violate the terms, conditions and restrictions of any permit issued under this article;

(2) Enjoin the violation or threatened violation of the provisions of this article; or

(3) Recover damages from the owner of a parcel in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with this chapter.

This authority is in addition to all provisions of this Code relative to the definition of offenses and the provision of penalties for violations of such offenses.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-604. Stop orders.

(a) Whenever any work authorized by a construction permit is being performed contrary to the provisions of divisions 2 or 3 of this article, or other pertinent laws or ordinances implemented through the enforcement of this article, the building official or the city engineer may order the work (other than work to cure a violation) stopped by notice in writing served on any persons performing the work or causing the work to be performed, and any such persons shall forthwith stop the work until authorized by the building official or the city engineer to proceed with the work.

(b) At the time a stop order is issued, the person performing the work and the permit holder shall be given notice of a right to a hearing on the matter pursuant to section 116.2 of the Building Code for permits authorized by that code or pursuant to section 47-608 of this Code for all other construction permits. Upon request, such a hearing shall be held within three business days unless the permit holder or person who was performing the work requests an extension of time. Any stop order that has been issued shall remain in effect pending any hearing that has been requested unless the stop order is withdrawn by the building official or the city engineer.
(Ord. No. 01-800, § 3, 8-29-01; Ord. No. 02-399, § 96, 5-15-02)

Sec. 47-605. Nuisances.

An actual or threatened discharge to the MS4 that violates or would violate this article is hereby declared to be a nuisance and shall be subject to enforcement pursuant to chapter 10 of this Code.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-606. Emergency suspension of utility service and MS4 access.

(a) When the director or a deputy director of the department of public works and engineering determines that a person is causing or threatening to cause a discharge to the MS4 or a publicly owned treatment work in violation of this article that:

(1) Presents or may present an imminent and substantial danger to the environment or to the health or welfare of persons; or

(2) Presents or may present an imminent and substantial danger to the MS4 or waters of the United States;

the director or deputy director may, without prior notice, suspend city water service, sanitary sewer service, and MS4 discharge access to the person causing or threatening to cause the discharge when the director or a deputy director of the department of public works and engineering determines that the service or access is an instrumentality of or contributes to the unlawful discharge and suspension is necessary to stop the actual or threatened discharge.

(b) As soon as practicable after the suspension of service or MS4 discharge access, the city engineer shall notify the discharger of the suspension of service or access by delivering notice by hand to the person in charge of the premises for which service is terminated or access denied if such person is present on the premises. The city engineer shall send a notice by certified mail, return receipt requested, to the person and address identified in the city's water service records for the account at the property for which service is suspended or access denied. If there is no water service account, the city engineer shall send notice to the address of the owner of the property as shown on the Harris County Appraisal District's appraisal roll. The notice shall specify the basis for the suspension of service or access and shall order the discharger to cease the discharge or threatened discharge immediately.

(c) If the discharger fails to comply with an order issued under subsection (b), the city engineer may take such steps as the city engineer deems necessary to prevent or minimize damage to the MS4 or waters of the United States or to minimize the danger to persons.

(d) The city shall not reinstate suspended services or MS4 access to the discharger until:

(1) The discharger presents proof that the noncomplying discharge or threatened discharge has been eliminated and its cause determined and corrected;

(2) The discharger pays the city for all costs the city incurred in responding to, abating, and remediating the discharge or threatened discharge or otherwise provides financial assurance to cover such expenses; and

(3) The discharger pays the city for all costs the city will incur in reinstating service or access or otherwise provides financial assurance to cover such expenses.

(e) A discharger whose service or access has been suspended or disconnected may appeal such enforcement action pursuant to section 47-608 by filing a written request with the city engineer not later than the tenth day after the day the service is suspended or the access denied.

(f) If the discharger does not pay the costs as provided by this section, the city shall be entitled to a lien against the property that is the subject of the suspension of service or access to recover its response costs pursuant to the procedures set out in section 10-457 of this Code.

(g) The remedies provided in this section are in addition to any other remedies set out in this article. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a discharger.

(h) A person commits an offense if the person reinstates water service, sanitary sewer service or MS4 access that has been terminated pursuant to this section without the prior written approval of the city engineer.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-607. Non-emergency suspension of utility service and MS4 access.

(a) When the city engineer determines that a person is discharging or threatening to discharge to the MS4 in violation of this article, the city engineer may terminate city water supply, sanitary sewer connection and MS4 access to the person discharging or threatening to discharge to the MS4 if the city engineer determines that:

(1) The service or access is an instrumentality of or contributes to the unlawful discharge or threatened discharge; and

(2) Termination would prevent, abate or reduce:

a. The discharge of a pollutant; or

b. The commission of any other act or activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or may cause pollution of any of the waters of the United States.

(b) The city engineer shall notify a discharger of the proposed suspension of its water supply, sanitary sewer connection or MS4 access pursuant to this section before the service is suspended or access denied. Notice shall be mailed, certified mail, return receipt requested, to the name and address on the city water service records for the account of the property where service is proposed to be suspended or access denied. If there is no water service account, the city engineer shall send notice to the address of the owner of the property as shown on the Harris County Appraisal District's appraisal roll. The notice shall specify the basis for the proposed suspension of service or access and shall order the discharger to cease the discharge or threatened discharge immediately. The discharger may request a hearing prior to termination pursuant to section 47-608 by filing a written request with the city engineer not later than the tenth day after the day the notice is deposited in the mail. Upon timely receipt of a request for a hearing, the city shall not suspend service or deny access until after the hearing officer renders a decision authorizing the suspension of service or denial of access. If the discharger does not request a hearing within the time specified, the city shall suspend the service or deny the access as described in the notice.

(c) The city shall not reinstate suspended services or MS4 access to the discharger until:

(1) The discharger presents proof that the unlawful discharge or threatened discharge has been eliminated and its cause determined and corrected; and

(2) The discharger pays the city for all costs the city will incur in reinstating service or MS4 access or otherwise provides financial assurance to cover such expenses.

(3) The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a discharger.

(e) A person commits an offense if the person reinstates water service, sanitary sewer service or MS4 access suspended pursuant to this section without the prior approval of the city engineer.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-608. Appeals; hearing.

Any person whose permit is denied or revoked, whose water supply, sanitary sewer connection or MS4 access has been terminated or may be terminated, or who is otherwise aggrieved by a notice, action or decision by the city engineer or planning official undertaken pursuant to this article shall, upon written request, be entitled to a hearing to be conducted by a hearing officer designated by the city engineer, who shall promulgate rules for hearings. The decision of the hearing officer shall be final. For an appeal filed pursuant to section 47-607, the hearing officer shall render a decision within five days after the close of the hearing. Where time is of the essence, the aggrieved person may so advise and state the reason therefor in the request and, to the extent reasonably warranted and allowed by the circumstances, an expedited hearing of and decision on the issue shall be afforded.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-609. Monitoring methods.

All monitoring required by this article shall be performed in accordance with the methodologies and protocols established in Chapter 319 of Title 30 of the Texas Administrative Code, as amended from time to time.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-610. Regulations and forms authorized.

The city engineer and the planning official shall jointly promulgate regulations and forms regarding compliance with the requirements of this article. Such regulations and forms shall be available:

(1) At the office of the city engineer; and

(2) At the office of the planning official.

The regulations and forms established hereunder may be amended or supplemented from time to time as is mutually agreeable to the city engineer and the planning official.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-611. Cumulative effect.

(a) This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern.

(b) Any authorization granted by or any affirmative defense to a violation allowed pursuant to this article does not excuse compliance with federal or state law or any other provisions of this Code or any other city ordinance relating to the activities regulated by this article.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-612. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the city to seek cumulative remedies. The suspension, revocation, cancellation, or denial of any permit issued under this article shall not prohibit imposition of any civil or criminal penalty. The imposition of a civil or criminal penalty shall not prohibit any other remedy and shall not prohibit the suspension, revocation, or denial of any permit issued under this article.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-613. Access to facilities and records.

(a) When it is necessary to make an inspection to enforce the provisions of this article or to inspect or investigate conditions related to water quality, an authorized city official may enter a building or premises at reasonable times to inspect or to perform the duties imposed by this article or to inspect or review records, reports, data, plans, or other documents relating to compliance with this article or with any TPDES or NPDES storm water permit. If the building or premises is occupied, credentials must be presented to the occupant and entry requested. If the building or premises is unoccupied, the authorized city official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If refused, the authorized city official shall have recourse to the remedies provided by law to secure entry.

(b) When, due to emergency, immediate entry is necessary to protect life or property, or when the authorized city official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the authorized city official for the purpose of inspection and investigation pursuant to this article or other laws relating to water quality.

(c) The city engineer, utility official, neighborhood protection official, building official, health officer or any city peace officer is hereby authorized to undertake the activities authorized by this section.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-614—47-630. Reserved.

DIVISION 2. POST-CONSTRUCTION CONTROLS ON NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT*

Subdivision A. In General

Sec. 47-631. Applicability.

(a) This division shall apply to new development and significant redevelopment within the city (i) of any kind by a private individual or entity, except for the construction of major thoroughfares and major collector streets designated on the City's Major Thoroughfare and Freeway Plan and any public utilities in the rights-of-way for such thoroughfares and streets, or (ii) of a structure, parking or storage area, or park or recreational facility by a governmental entity.

(b) If the use of a parcel that was previously excluded from the definition of new development because it was development on an existing undeveloped and undivided parcel of five acres or more of one dwelling unit and one or more accessory structures changes to a commercial activity that is not a home occupation, or the property is further subdivided, the owner of the parcel shall at that time comply with all requirements of this article.

***Editor's note**—Section 7 of Ord. No. 01-800 states: (a) That except as provided in subsection (b) of this section, Division 2 of Article XII of Chapter 47 of the City of Houston Code of Ordinances, as set forth in §§ 47-601—47-742, shall not apply to:(1) Any new development or significant redevelopment for which a completed and unexpired application for a preliminary or final subdivision plat has been filed prior to the effective date of this Ordinance; (2) The construction of streets, public utilities and other associated facilities included on unexpired construction plans that are submitted with a completed and unexpired application for a final subdivision plat that has been filed prior to the effective date of this ordinance; and (3) Any new development or significant redevelopment for which a completed and unexpired application for a development plat or a building permit has been filed prior to the effective date of this Ordinance.

(b) That the new development or significant redevelopment of any reserve created pursuant to a plat approved on the basis of an application described in item (1) of subsection (a) of this section shall comply with Division 2 of Article XII of Chapter 47 of the Code of Ordinances, §§ 47-601—47-742.

(c) That the terms used in this Section shall have the meanings ascribed to them in Article XII of Chapter 47 of the Code of Ordinances, as set forth in §§ 47-601—47-742.

(c) This division shall not apply to demolition authorized by action of the neighborhood protection official pursuant to chapter 10 of this Code. (Ord. No. 01-800, § 3, 8-29-01; Ord. No. 02-528, § 14n., 6-19-02)

Sec. 47-632. General requirements.

(a) Subject to the limitation in subsection (c) of this section, all new development and significant redevelopment subject to this article shall either obtain and continuously maintain a storm water quality permit or file an industrial activity certification. If a parcel subject to the requirements of this section is located partially in the city and partially in the unincorporated area of Harris County and storm water from any portion of the parcel drains into the MS4, a SWQ permit or IAC shall be required for the parcel. If a parcel subject to the requirements of this subsection is located partially in the city and partially in the unincorporated area of a county other than Harris County, a SWQ permit or IAC shall be required for the parcel.

(b) The SWQ permit is in addition to any other construction permit required for the new development or significant redevelopment.

(c) Subject to the limitations in this subsection, the obligation to have and comply with a SWQ permit shall continue in perpetuity and shall run with all the land covered by the original SWQ permit. The owner of the land shall have the obligation to have and comply with a SWQ permit unless that obligation is transferred to another person pursuant to section 47-673 of this Code. If pursuant to sections 47-673(a)(1) or 47-673(b) of this Code the obligation to comply is transferred to a homeowners' association or a person other than the city, the homeowners' association or the other person shall have the obligation to maintain and comply with a SWQ permit. If pursuant to section 47-673(a)(2) of this Code, the obligation to comply is transferred to the city, the obligation to obtain and continuously maintain a SWQ permit for the land covered by the SWQ permit shall cease.

(d) For new development or significant redevelopment that includes, in whole or in part, the platting of a single-family residential subdivision, a SWQ permit for the single-family residential portion of the subdivision shall be obtained before the release of the plat for recordation. For all other new development or any significant redevelopment, a SWQ permit shall be obtained before the issuance of any construction permit for the new development or significant redevelopment. (Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-633. Industrial activity certification.

If the new development or significant redevelopment occurs at a facility that either has or will have permit coverage for storm water discharges from industrial activity issued by the state before the industrial activity will commence, the operator shall either submit an industrial activity certification in a form approved by the city engineer or obtain a SWQ permit. The industrial activity certification shall include any of the following:

(1) A copy of the application for an individual permit from the state for storm water discharges from industrial activity at the facility;

(2) A copy of the permit issued by the state for storm water discharges from industrial activity at the facility;

(3) A copy of the NOI for coverage under a general permit for storm water discharges associated with industrial activity issued by the state;

(4) A statement of commitment to file an application for an individual permit from the state for storm water discharges from industrial activity at the facility; or

(5) A statement of commitment to file a NOI for coverage under a general permit for storm water discharges associated with industrial activity issued by the state.

(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-634. Denial of plat recordation.

The planning and development department shall not release for recordation a subdivision plat for new development or significant redevelop-

ment consisting in whole or in part of single-family residential lots that does not have a SWQ permit for the residential lots.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-635. Denial of construction permit.

(a) Neither the city engineer nor the building official shall issue any construction permit required for new development or significant redevelopment that has not filed an IAC or that has not obtained or is not in compliance with a SWQ permit.

(b) If the SWQMP on which the SWQ permit is based includes one or more structural controls, neither the building official nor the city engineer shall issue any construction permit for streets, public utilities, demolition or storm water controls for all or part of the new development or significant redevelopment unless the requirements of section 47-652 of this Code have been met.

(c) If the SWQMP on which the SWQ permit is based includes one or more structural controls, neither the building official nor the city engineer shall issue any construction permit, except permits for streets, public utilities, demolition or storm water controls, for all or part of the new development or significant redevelopment unless either:

(i) The city engineer has confirmed the proper installation of all structural controls included in the SWQMP for all or that portion of the new development or significant redevelopment and the SWQ permittee has satisfied the requirements of section 47-672(a); or

(ii) The city has assumed maintenance of all structural controls included in the SWQMP for all or that portion of the new development or significant redevelopment pursuant to section 47-674.

(c) If the SWQMP on which the SWQ permit is based does not include one or more structural controls, neither the building official nor the city engineer shall issue any construction permit for all or a part of the new development or significant redevelopment unless the SWQ permittee has satisfied the requirements of section 47-672(b).
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-636. Denial of utility connections.

The utility official shall not permit any new development or significant redevelopment to receive any service from the city water distribution or wastewater collection systems unless, at the time of the application for service, the new development or significant redevelopment has and is in compliance with a SWQ permit or an industrial activity certification.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-637. Denial of certificate of occupancy.

(a) Except as provided in subsection (b) of this section, the building official shall not issue a certificate of occupancy for any new development or significant redevelopment unless the new development or significant redevelopment has and is in compliance with a SWQ permit or an industrial activity certification

(b) Subsection (a) shall not apply if the city has assumed maintenance of all controls specified in the SWQMP on which the SWQ permit is based pursuant to section 47-674 of this Code.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-638. Fees.

The city engineer and the planning official shall, from time to time, prepare and submit for approval by motion of the city council a schedule of fees that shall be paid pursuant to this division. Payment of any applicable fees when due is a condition of the processing of any application, renewal, amendment or structural control maintenance agreement under this article.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-639—47-650. Reserved.

Subdivision B. Storm Water Quality Permit Process

Sec. 47-651. Storm water quality permit application generally.

An applicant for a SWQ permit shall submit a storm water quality permit application on the form specified by the city engineer. The application shall include a storm water quality management plan that:

(1) Complies with the design manual;

(2) Includes a proposed inspection checklist, maintenance plan, and associated construction drawings; and

(3) Is sealed by a professional engineer licensed as such in Texas.

Each application for a SWQ permit shall be accompanied by the applicable application fee. (Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-652. Bond.

(a) Except as provided in subsection (d), if the SWQMP includes structural controls, the applicant shall provide a performance bond that satisfies the following requirements:

(1) The bond shall name the owner or operator of the parcel subject to the SWQ permit as principal and a corporate bonding company licensed to conduct business in the state as surety to secure the city that the proposed structural controls to be covered by the bond will be constructed and installed in accordance with the SWQ permit, the SWQMP, and any plans and specifications contained therein, and securing the city against loss, damage, claim, or liability in connection therewith.

(2) The bond shall be in a sum that includes at a minimum the total estimated costs of the controls to be constructed.

(3) The bond shall be in favor of and for the use and benefit of the city.

(4) The bond shall describe, by reference to the number of the application together with such other brief descriptive matter as is necessary, the work proposed to be done or to be covered by the SWQ permit in connection with which the bond is given.

(5) The bond required by this section shall be conditioned that the work therein referred to will be performed in strict and full accordance with the terms and provisions of the SWQ permit, the SWQMP, and the plans and specifications therein; and that if any of the work is not performed in accordance therewith, or if any materials not in accordance therewith are used in the process of such work, such failure and default shall be promptly remedied and any defective material or work removed and replaced with material and by workmanship in accordance with the terms of the SWQ permit, the SWQMP, and plans and specifications therein without cost or expense to the city up to the sum of the bond. The bond must guarantee materials and workmanship for a period of one year after the city's initial inspection that confirms proper installation of the controls.

(6) The bond shall provide that the surety company will notify the city in writing 30 days prior to a cancellation, nonrenewal, or material change in the policy. In the case of nonrenewal or cancellation, the SWQ permittee shall then have 21 days after the surety company's notice to the city to replace the coverage or the SWQ permittee's SWQ permit shall be revoked after notice and the opportunity for a hearing without further action on the part of the city.

(7) The bond shall be in a form approved by the city attorney and must be accompanied by a power of attorney or other convincing evidence of the issuing agent's authority to act for the surety company and must meet the requirements of Article 7.19-1(b) of the Insurance Code.

(8) The bond shall be furnished to the city prior to the issuance of a construction permit for any construction on the parcel.

(b) The applicant must present to the city its estimate of the costs to construct the structural controls included in the SWQMP, and the city will assess the reasonableness of the estimate. If the city determines that the estimate is insufficient and the applicant does not provide a substitute bond in an amount deemed sufficient by the city, the city shall deny the SWQ permit that is supported by the bond.

(c) The bond shall be released one year after the date of the city's initial inspection that confirms that the structural controls covered by the bond have been properly installed.

(d) A bond shall not be required if all structural controls will be completed and the certifications required by section 47-672(a) will be filed before any additional construction, including the construction of streets and utilities, commences.

(e) If the project is on public property, the owner or operator shall also provide a payment bond to the city to secure the payment of mechanics, materialmen and suppliers liens.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-653. Issuance of SWQ permit.

(a) The city engineer shall review the SWQ permit application and the SWQMP and either approve or deny the application based on compliance with the applicable provisions of this article and the design manual. The city engineer shall also deny the application if any statement made in the application or any documents submitted therewith were known to be false or should have been known to be false by the applicant.

(b) The SWQ permit shall be issued to the owner of the land covered by the SWQ permit and shall run with the land and be binding on all subsequent owners unless responsibility for compliance has been transferred pursuant to section 47-673 of this Code.

(c) The applicant may seek a hearing for reconsideration of the denial of a SWQ permit pursuant to section 47-608 of this article by filing a written request with the city engineer not later than the tenth day after the applicant has been notified that the application has been denied.

(d) The granting of a SWQ permit does not imply that federal or state storm water management requirements or criteria have been met.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-654. Amendment of SWQ permit.

(a) An amendment to the SWQ permit is required in the following events:

(1) The person responsible for compliance with the SWQ permit changes either as a result of:

(A) The transfer of ownership of the parcel to a different person; or

(B) The transfer of the obligation to comply with this Code to a third-party permittee pursuant to section 47-673 of this Code.

(2) Any substantial deviation is made to a structural control or any change is made to a non-structural control in the SWQMP on which the SWQ permit is based; or

(3) The subsequent new development or significant redevelopment of any parcel covered by that SWQ permit (unless the subsequent new development or significant redevelopment has already been anticipated and provided for in the SWQMP on which the SWQ permit is based).

(b) Applications to amend a SWQ permit to satisfy subsection (a)(1) of this section shall be submitted within ten days after any such transfer to a subsequent owner or to a third-party permittee. Amendments to a SWQ permit to satisfy subsections (a)(2) and (a)(3) of this section must be obtained before commencement of the activity that triggers the need for the amendment.

(c) An application to amend a SWQ permit to transfer the SWQ permit to a subsequent owner or a third-party permittee shall include an attestation by the subsequent owner or third-party permittee that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.

(d) To amend a SWQ permit, the SWQ permittee must submit a revised SWQMP, including any revisions to the inspection checklist, maintenance

plan and associated construction drawings, together with the appropriate form and amendment fee. The city engineer shall review the amendment application and either approve or deny the amendment application based on compliance with the applicable provisions of this article and the design manual.

(e) If the amendment includes the transfer of responsibility for compliance with this division to a third-party permittee pursuant to section 47-673(b) of this Code, the legal agreement documenting that transfer shall be referred to the city attorney for a determination of whether the legal agreement is adequate to assure compliance. If the city attorney determines that the legal agreement is not adequate and the applicant does not provide a substitute legal agreement deemed adequate by the city attorney, the amendment application shall be denied.

(f) The applicant may seek a hearing to reconsider the denial of an amendment to a SWQ permit pursuant to section 47-608 of this Code.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-655. Revocation of SWQ permit.

(a) The city engineer shall revoke a SWQ permit after notice and opportunity for a hearing pursuant to section 47-608 of this article if he finds that:

(1) The applicant knew or should have known that a statement made in the application for the SWQ permit was false;

(2) The SWQ permittee has violated any provision of its SWQ permit or of this division including, but not limited to, failure to amend a SWQ permit as required by section 47-654 of this Code;

(3) The SWQ permittee or anyone acting on his behalf commits or threatens to commit an act of violence against a city official either on or off the job for the purpose of intimidating the official so that he will not perform his duties under this division; or

(4) The SWQ permit has been issued in error.

(b) The city engineer shall send a written notification by certified mail, return receipt requested, to the SWQ permittee informing him of the grounds for revoking his SWQ permit. The SWQ permittee may request a hearing pursuant to section 47-608 by filing a written request with the city engineer not later than the tenth day after notification by the city of the grounds for denial.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-656. Duration.

An initial SWQ permit shall be valid for one year from date of issuance, but may be renewed. All subsequent renewals of a SWQ permit shall be valid for one year.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-657. Renewal.

To renew a SWQ permit, the SWQ permittee shall submit a renewal application on a form prescribed by the city engineer and the applicable renewal fee not more than 30 days but not less than five days prior to expiration of the SWQ permit. As part of the renewal application, the SWQ permittee shall certify that all controls have been maintained as specified in the SWQMP. If structural controls are used, a state licensed professional engineer shall also certify that all structural controls still generally conform to the plans and technical specifications in the SWQMP. The city engineer shall deny a renewal application if it is found that the SWQ permittee failed to seek an amendment to its SWQ permit if required to do so pursuant to section 47-654 of this Code.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-658—47-670. Reserved.

Subdivision C. Storm Water Quality Permit Requirements

Sec. 47-671. Incorporation by reference.

The SWQMP, including the proposed inspection checklist, maintenance plan and associated construction drawings, shall be incorporated into

the SWQ permit by reference. Failure to comply with the SWQMP shall be a violation of this article.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-672. Certifications and attestations.

(a) If the SWQMP on which the SWQ permit is based includes one or more structural controls, the SWQ permittee shall submit a certificate sealed by a professional engineer licensed as such in Texas within 14 days after the structural controls specified in the SWQMP for all or that part of the new development or significant redevelopment have been installed. The certificate shall certify that all structural controls are in general accordance with the plans and technical specifications in the SWQMP. At the same time this certificate is filed, the SWQ permittee shall also submit an attestation that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.

(b) If the SWQMP on which the SWQ permit is based does not include one or more structural controls, the SWQ permittee shall, before the issuance of a construction permit for any structure on land included in the SWQMP, submit an attestation that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-673. Transfer of permit; third-party permittees.

(a) The provisions of this subsection (a) shall apply to subdivisions that include lots for single-family residential use. Prior to the sale of the first lot in the subdivision or any section thereof, the owner of land that is being subdivided, in whole or in part, into single-family residential lots shall either:

(1) Transfer the obligation to comply with all requirements of this division to a homeowners' association established for all or that part of the subdivision. The homeowners' association must have fee simple title to all structural controls and, at a minimum, an easement in favor of the homeowners' association allowing access to maintain structural controls or to implement nonstructural controls. Further, the owner must require that any homeowners' association for the subdivision have the authority to impose fees or otherwise generate monies to fund operation and maintenance measures and bond requirements. After a homeowners' association complying with the provisions of this subsection has been established, the owner may seek to amend the SWQ permit pursuant to section 47-654 of this Code to transfer the SWQ permit to the homeowners' association. Until the city has approved the transfer to the homeowners' association, the owner shall remain responsible for compliance with the requirements of this division; or

(2) Transfer the obligation to comply with all requirements of this division to the city pursuant to a structural control maintenance agreement.

(b) The provisions of this subsection (b) shall apply to all new development or significant redevelopment that is not governed by subsection (a) above. The SWQ permit may be transferred to a person other than the owner of the land subject to the SWQ permit if the person and the owner enter into a binding legal agreement that meets the requirements of this subsection. The person must agree to comply with the requirements of this division and with the terms and conditions of the SWQ permit, including adherence to the operation and maintenance requirements specified therein. The third-party agreement shall grant fee simple title to all structural controls to the person, provide an easement if necessary to allow access by person across the owner's property to maintain structural controls or to implement nonstructural controls, and if necessary, to allow storm water from the owner's property to drain across any adjacent property to a designated structural control. The legal agreement shall also provide that in the event of its termination for any reason, including by either choice or default, the obligation to comply with the provisions of this division shall revert to the owner of the land.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-674. Assumption of maintenance requirements.

(a) The city shall only enter into a structural control maintenance agreement to assume responsibility for long-term maintenance of structural controls pursuant to section 47-673(a)(2) if the city engineer determines that:

(1) The SWQMP on which the SWQ permit is based only includes structural controls;

(2) The structural controls serve either:

(a) Only the single-family residential lots in a recorded subdivision; or

(b) The single-family residential lots and reserves in a recorded subdivision if the single-family residential lots constitute more than 80 percent of area served by the controls and the aggregate of all reserves served by the controls equals less than five acres;

(3) The structural controls are suitable for public maintenance; and

(4) The structural controls have been properly installed.

(b) The city engineer shall develop a list of structural controls suitable for public maintenance and the design criteria for the controls on the list, and shall publish them in the design manual. A structural control shall be suitable for public maintenance if maintenance of it will involve activities the same or similar to the activities performed by the department of public works and engineering's maintenance and right-of-way division.

(c) The city shall assume the long-term maintenance requirements of all structural controls specified in the SWQMP only in exchange for a payment in an amount equivalent to the estimated cost of maintaining the structure for ten years as determined by the city engineer.

(d) The structural control maintenance agreement shall grant the city all easements necessary to allow access for maintenance. The city's assumption of maintenance of the structural controls does not affect ownership of the underlying fee.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-675. Accounting for structural control maintenance agreements.

(a) All payments collected pursuant to structural control maintenance agreements shall be deposited in a dedicated fund to which interest is allocated. All such amounts, together with all interest earned thereon, shall be used solely for the purposes set forth in subsection (b).

(b) The fees collected pursuant to structural control maintenance agreements may be used to finance or to recoup the costs of the operation, maintenance, equipment, labor or capital of structural controls assumed pursuant to a structural control maintenance agreement and for meeting any other ongoing regulatory requirements imposed on such structures, such as annual certifications of compliance or to finance or recoup the costs of any other subsequent measures undertaken by the city to address storm water quality to achieve the same purposes as the structural controls. Maintenance shall include, but not be limited to, mowing, dredging and repair.

(c) Consistent with the city charter and state budget laws, disbursement of funds shall be authorized by the department of public works and engineering at such times as are reasonably necessary to carry out the purposes and intent of this article.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-676. Recordation.

(a) The obligation for a parcel to comply with the SWQ permit requirements shall be recorded the real property records of the county in which the parcel is located. The recordation shall note that all structural or non-structural controls on or for the parcel may not be changed from the plans and technical specifications in the SWQ permit for the parcel unless the provisions of section 47-654 have been met.

(b) For new development that includes the platting of a reserve tract, a notation shall be placed on the subdivision plat that a SWQ permit must be obtained before the issuance of any construction permit for a structure on all or a part of the reserve tract.

(c) Third-party permittees: For subdivisions of lots for single-family residences, the homeowners' association agreement or structural control maintenance agreement shall be recorded for all parcels in the subdivision at the time of the transfer of the SWQ permit to the homeowners' association. For other new development or significant redevelopment for which there is a third-party permittee, the third-party agreement shall be recorded for all parcels subject to the rights and obligations specified in the agreement at the time of the transfer of the SWQ permit to the third-party permittee.

(d) The SWQ permit applicant or, if the SWQ permit has already been issued, the SWQ permittee, shall pay all recording fees required by the county clerk's office.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-677—47-690. Reserved.

DIVISION 3. STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

Sec. 47-691. Applicability.

This division shall apply to all facilities located within the city that have storm water discharges associated with construction activity.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-692. Unpermitted discharges prohibited.

A person who is the operator of a facility that has storm water discharges associated with construction activity commits an offense if the person discharges, or causes to be discharged, storm water associated with construction activity without first having obtained an NPDES or TPDES permit to do so.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-693. Submission of NOI.

(a) The operator of a facility required to have an NPDES or TPDES permit to discharge storm water associated with construction activity shall submit a certification that he has submitted an NOI to the EPA or TNRCC, a copy of that NOI, and a copy of a site plan detailing the location of erosion control measures to the city engineer or the building official prior to obtaining a construction permit for that activity.

(b) A person commits an offense if the person operates a facility that is discharging storm water associated with construction activity without having submitted a copy of the NOI to do so to the city.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-694. Submission of NOT.

(a) If required to submit an NOT to EPA pursuant to an NPDES or TPDES permit to discharge storm water associated with construction activity, an operator shall submit a certification that he has submitted an NOT to the EPA or TNRCC and a copy of that NOT to the city engineer at the same time the operator submits the NOT to the EPA or the TNRCC as applicable. If final stabilization as required by EPA has not been achieved at the time the operator submits the NOT, the operator shall also submit a copy of the NOI for the operator who is assuming responsibility for the site.

(b) A person subject to the requirements of subsection (a) of this section commits an offense if the person fails to submit a copy of the NOT to the city.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-695. Compliance with permit.

(a) A facility that has storm water discharges associated with construction activity shall be operated in strict compliance with the requirements of its NPDES or TPDES permit to discharge storm water associated with construction activity.

(b) The storm water pollution prevention plan implemented to satisfy the requirements of an NPDES or TPDES permit to discharge storm water associated with construction activity shall comply with the storm water management handbook for construction activities.

(c) A person commits an offense if the person operates a facility that has storm water discharges associated with construction activity in

violation of the facility's NPDES or TPDES permit to discharge storm water associated with construction activity.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-696. Modification of storm water pollution prevention plans.

(a) The city engineer and the planning official may require the operator of a facility that has storm water discharges associated with construction activity to modify the facility's storm water pollution prevention plan if, in the best professional judgment of the city engineer or the planning official, the storm water pollution prevention plan does not comply with the requirements of the facility's NPDES or TPDES permit to discharge storm water associated with construction activity.

(b) Notification of the deficiencies in a facility's storm water pollution prevention plan shall be made in writing, and the facility operator will be given a reasonable amount of time, not to exceed 30 days, to make the necessary changes in the storm water pollution prevention plan.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-697—47-710. Reserved.

DIVISION 4. STORM WATER DISCHARGES FROM INDUSTRIAL AND HIGH RISK FACILITIES

Subdivision A. Storm Water Discharges Associated With Industrial Activity

Sec. 47-711. Unpermitted discharges prohibited.

A person who is the owner or the operator of a facility that has storm water discharges associated with industrial activity commits an offense if the person discharges, or causes to be discharged, storm water associated with industrial activity without having first obtained an NPDES or TPDES permit to do so.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-712. Submission of NOI.

(a) A person who is the owner or the operator of a facility that has storm water discharges associated with industrial activity shall submit to the city engineer a copy of:

(1) The notice of intent to obtain coverage under TPDES permit number TXR050000 for the facility;

(2) The notice of intent to obtain coverage under any other TPDES general storm water permit for the facility;

(3) The individual TPDES storm water permit for the facility; or

(4) The no exposure certification form submitted to TNRCC for the facility pursuant to the provisions of TPDES permit number TXR050000.

(b) A copy of the NOI or the no exposure certification form shall be submitted to the city no later than 14 calendar days after filing the NOI or no exposure form with the TNRCC for such coverage. A copy of the individual TPDES permit shall be submitted to the city no later than 14 calendar days after TNRCC signs the permit.
(Ord. No. 01-800, § 3, 8-29-01)

Editor's note—Section 8 of Ord. No. 01-800 states: (a) That Section 47-712(b) of City of Houston Code of Ordinances, shall not apply to facilities that have storm water discharges associated with industrial activity that already have filed an notice of intent for coverage under TPDES permit number TXR050000 for the facility or that have a current, valid individual storm water permit for the facility as of the effective date of this article. Facilities that have storm water discharges associated with industrial activity that have already filed an NOI or no exposure certification form for coverage under TPDES permit number TXR050000 for the facility or that have a current, valid individual TPDES or NPDES storm water permit for the facility as of the effective date of this article shall submit a copy of that NOI or the individual permit within 30 calendar days after the effective date of this article.

(b) That the terms used in this Section shall have the meanings ascribed to them in Article XII of Chapter 47 of the Code of Ordinances, §§ 47-601—47-742.

Sec. 47-713. Submission of NOT.

(a) A person who is the owner or operator of a facility that has storm water discharges associated with industrial activity shall submit to the city engineer a copy of an NOT for the facility

which shall include any information required for notice of termination under TPDES permit number TXR050000 or any other TPDES general storm water permit, whenever:

(1) All storm water discharges associated with industrial activity are eliminated at the facility; or

(2) The operator of the facility changes.

If the NOT is being submitted because the operator of the facility has changed, a copy of the NOI for the new operator shall be submitted with the NOT.

(b) The copy of the NOT shall be submitted no later than 24 calendar days after either all storm water discharges associated with industrial activity are eliminated at the facility or the operator of the facility changes.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-714—47-720. Reserved.

Subdivision B. Monitoring and Reporting

Sec. 47-721. Applicability.

This subdivision shall apply to municipal landfills, hazardous waste treatment, disposal and recovery facilities, facilities that are subject to Section 11023 of Title 42 of the United States Code, as it may be amended from time to time, and other municipal waste treatment, storage or disposal facilities (including, but not limited to, POTWs, transfer stations and commercial incinerators). This subdivision shall also apply to facilities designated as a type 1 or a type 2 facility pursuant to section 47-722 of this Code.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-722. Designation as a type 1 or type 2 facility.

(a) The city engineer shall promulgate regulations for determining whether a facility is contributing a substantial pollutant loading to the MS4 and so should be designated as a type 1 facility. The city engineer shall further promulgate regulations for determining whether a facility is contributing a pollutant to the MS4 and so should be designated as a type 2 facility. Designation as a type 1 or type 2 facility shall be based on the results of analytical monitoring of at least two storm water discharges from the facility conducted by either the facility or city representatives, both of which support the designation as a type 1 or type 2 facility.

(b) The city engineer shall send written notification by certified mail, return receipt requested, to each type 1 or type 2 facility designated pursuant to subsection (a) of this section informing the operator of that designation. The notice shall specify the parameter or parameters that the facility will have to monitor for pursuant to section 47-723(b)(12) or section 47-723(c)(5), whichever is applicable. The facility operator may appeal the designation pursuant to section 47-608 of this Code. Designation as a type 1 or type 2 facility shall be effective on the third day following the date notice is deposited in the mail to the facility.

(c) The city engineer shall further promulgate regulations for determining whether a facility designated as a type 1 or type 2 facility pursuant to subsection (a) is no longer contributing a substantial pollutant loading or a pollutant to the MS4 and for terminating the facility's designation as a type 1 or type 2 facility. Upon terminating the facility's designation as a type 1 or type 2 facility, the city engineer shall send written notification by certified mail, return receipt requested to the facility informing it of that termination.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-723. Monitoring required.

(a) Every type 1 and type 2 facility that has storm water discharges associated with industrial activity shall undertake all monitoring:

(1) Required by an individual NPDES or TPDES storm water permit if the facility has an individual storm water permit;

(2) Required by a general NPDES or TPDES storm water permit, other than TPDES permit number TXR050000 if the facility has coverage under such a permit; or

(3) Required by TPDES permit number TXR050000, or any successor permit thereto, if neither (i) or (ii) above apply;

as applicable.

(b) If a type 1 facility does not have storm water discharges associated with industrial activity, the facility annually shall analytically monitor and analyze storm water discharges from its facility during a representative storm event on an outfall-by-outfall basis for each of the following parameters:

(1) Any pollutants limited in an existing NPDES or TPDES permit for the facility;

(2) Total oil and grease;

(3) Chemical oxygen demand;

(4) pH;

(5) Biochemical oxygen demand, five-day;

(6) Total suspended solids;

(7) Total phosphorus;

(8) Total Kjeldahl nitrogen;

(9) Nitrate plus nitrite nitrogen;

(10) Any other discharges required to be monitored under Section 122.21(g)(7)(iii) and (iv) of Title 40 of the CFR;

(11) Any pollutants for which effluent limitations are imposed in the city's storm water permit for its MS4; and

(12) Any other pollutant that the city has determined the facility is discharging that contributes a substantial pollutant loading to the MS4.

(c) If a type 2 facility does not have storm water discharges associated with industrial activity, the facility annually shall analytically monitor and analyze storm water discharges from its facility during a representative storm event on an outfall-by-outfall basis for each of the following parameters:

(1) Chemical oxygen demand;

(2) Total oil and grease;

(3) pH;

(4) Any pollutants for which effluent limitations are imposed in the city's storm water permit for its MS4; and

(5) Any other pollutant that the city believes the facility may be contributing to the MS4 or waters of the United States.

(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-724. No exposure certification.

In lieu of the monitoring required by section 47-723, a facility may submit once every five years a certification that raw and waste materials, final and intermediate products and by-products, material handling equipment or activities, industrial machinery or operations, or significant materials from past industrial activity are not presently exposed to storm water and are not expected to be exposed to storm water. If the facility would be eligible for coverage under TPDES permit number TRX05000, the certification shall be on the form provided by TNRCC pursuant to TPDES permit number TXR050000. If the facility would not be eligible for coverage under TPDES permit number TRX05000, the certification shall be on a form provided by the city. A facility that submits a certification pursuant to this section shall notify the city at least 14 days before changing operating or management procedures that would result in exposure of storm water to industrial activities, and upon such a change shall become subject to the monitoring requirements of section 47-723.

(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-725. Establishment of reporting thresholds.

The city engineer shall establish a reporting threshold for every parameter for which monitoring is required of type 1 or type 2 facilities that do not have storm water discharges associated with industrial activity under this subdivision, which may be amended from time to time as deemed warranted by the city engineer.

(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-726. Reporting of monitoring results.

(a) If the results of any monitoring required by this subdivision:

(i) Exceed a benchmark or effluent limitation in the NPDES or TPDES storm water

permit for a facility that has storm water discharges associated with industrial activity, or

(ii) Exceed the threshold established by the city engineer pursuant to section 47-725 for a facility that does not have storm water discharges associated with industrial activity,

the owner and operator of the facility shall submit the results in writing to the city engineer within 30 days after conducting the monitoring. Failure to report the results of such monitoring shall constitute a violation of this article.

(b) The city engineer may request in writing by certified mail, return receipt requested, the results of any other monitoring required by this division. The facility shall then submitted the requested data in writing to the city engineer within 30 days after the date the city engineer's request is deposited in the mail to the facility.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-727. Record retention.

Each type 1 and type 2 facility shall retain the results of all monitoring required by this division and supporting documentation for three years.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-728. Investigation, corrective measures, and additional monitoring.

(a) If the results of any monitoring required by this division:

(1) Exceed a benchmark or effluent limitation in an NPDES or TPDES storm water permit for a facility that has storm water discharges associated with industrial activity; or

(2) Exceed the thresholds established by the city engineer pursuant to section 47-725 for a facility that does not have storm water discharges associated with industrial activity;

the owner and operator of the facility shall investigate the cause of each exceedance and take appropriate corrective measures to eliminate each exceedance as soon as possible. The owner and operator shall notify the city engineer of the corrective measures that will be taken and a schedule for implementation.

(b) The city engineer may require additional monitoring at a frequency to be determined by the city engineer to ascertain the effectiveness of any corrective measures taken pursuant to subsection (a).

(c) Failure to undertake appropriate corrective measures to eliminate an exceedance within a reasonable amount of time as determined by the city engineer shall constitute a violation of this article.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-729—47-740. Reserved.

DIVISION 5. ILLICIT DISCHARGES AND CONNECTIONS

Sec. 47-741. Discharge to MS4 prohibited.

(a) A person commits an offense if the person introduces or causes to be introduced into the MS4 any discharge that is not composed entirely of storm water.

(b) It is an affirmative defense to any enforcement action for a violation of subsection (a) that the discharge was composed entirely of one or more of the following categories of discharges:

(1) A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);

(2) A discharge or flow resulting from fire fighting by the fire department if that discharge is not reasonably expected to be a significant source of pollutants to the MS4;

(3) A discharge or flow of fire protection water if that discharge is not reasonably expected to be a significant source of pollutants to the MS4;

(4) Water line flushing, provided that the water is not significantly chlorinated when reaching a receiving water;

(5) Landscape irrigation;

(6) Diverted stream flows;

(7) Rising ground waters;

(8) Ground water infiltration;

(9) Infiltration (as defined in Section 35.2005(20) of Title 40 of the CFR) to separate storm sewers;

(10) Pumped ground water;

(11) Discharges from foundation drains;

(12) Discharges from potable water sources, providing the water is not significantly chlorinated when reaching a receiving water;

(13) Irrigation water;

(14) Air conditioning condensation;

(15) Water from crawl space pumps;

(16) Springs;

(17) Lawn watering;

(18) Discharges from footing drains;

(19) Flows from riparian habitats and wetlands;

(20) Non-commercial car washing (until such time as TNRCC issues a general permit for such discharges);

(21) Pavement wash waters provided cleaning chemicals are not used (until such time as TNRCC issues a general permit for such discharges);

(22) Dechlorinated swimming pool discharges; or

(23) Materials resulting from a spill where the discharge is necessary to prevent loss of life, personal injury or severe property damage provided that the party responsible for the spill takes all reasonable steps to minimize or prevent any adverse effects to human health or the environment.

(c) No affirmative defense shall be available under subsection (b) if:

(1) The discharge or flow in question has been determined by the city engineer to be a source of a pollutant or pollutants to the waters of the United States or to the MS4;

(2) Written notice of such determination has been provided to the discharger; and

(3) The discharge has continued after the expiration of the time given in the notice to cease the discharge.

(d) A person commits an offense if the person discharges any storm water that contains a pollutant or any substance which causes, continues to cause, or will cause pollution.
(Ord. No. 01-800, § 3, 8-29-01)

Sec. 47-742. Compliance monitoring.

(a) The city engineer shall have the right to install at a facility that discharges storm water to the MS4, or to require the installation of, such devices as are necessary to conduct sampling or metering of the discharger's operations.

(b) The city engineer may require any facility that the city engineer determines has discharged or is discharging a pollutant or any substance which causes, continues to cause, or will cause pollution to conduct specified sampling, testing, analysis and other monitoring of its storm water discharges. The city engineer may specify the frequency and parameters of any required monitoring.

(c) The city engineer may require any facility that the city engineer determines has discharged or is discharging a pollutant or any substance which causes, continues to cause, or will cause pollution to install monitoring equipment as necessary at the discharger's expense. The discharger, at its own expense, shall at all times maintain the facility's sampling and monitoring equipment in a safe and proper operating condition. Each device used to measure storm water flow and quality must be calibrated to ensure accuracy.

(d) Any temporary or permanent obstruction to safe and easy access to a facility that is to be inspected or sampled must be promptly removed by the discharger at the written or verbal request

of the city engineer and may not be replaced. The cost of clearing access to the facility must be borne by the discharger.

(e) The facility shall submit in writing the results of any monitoring undertaken pursuant to the requirements of this division to the city engineer upon written request.

(f) The facility shall maintain the results of any monitoring undertaken pursuant to the requirements of this division and supporting documentation for three years.
(Ord. No. 01-800, § 3, 8-29-01)

Secs. 47-743—47-760. Reserved.

ARTICLES XIII—XX. RESERVED

Secs. 47-761—47-1000. Reserved.