

ORDINANCE NO. 3575

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CODE OF THE CITY OF MESQUITE THEREBY ADDING A NEW CHAPTER 11.5 ENTITLED POLLUTION, CONTAINING ARTICLE I, WATER POLLUTION, THEREBY ESTABLISHING REQUIREMENTS AND PROHIBITIONS RELATING TO SURFACE AND GROUND WATER; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That the Code of the City of Mesquite, Texas, is hereby amended by adding a new Chapter 11.5 thereby establishing requirements and prohibitions relating to surface and ground water, in all other respects said Code to remain in full force.

CHAPTER 11.5

POLLUTION

ARTICLE I. WATER POLLUTION

Sec. 11.5-1. General.

- (a) *Purposes.* The purpose and objectives of this Article are:
- (1) To maintain and improve the quality of surface and ground water;
 - (2) To prevent water pollution; and
 - (3) To comply with Federal and State laws.
- (b) *Administration.* The City Manager or his designated representatives shall administer the provisions of this Article.
- (c) *Abbreviations.* The following abbreviations when used in this Article shall have the designated meanings:

<u>Abbreviation</u>	<u>Meaning</u>
BMP	Best Management Practices
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
mg/l	Milligrams per liter

MS4	Municipal Separate Storm Sewer System
NOC	Notice of Change
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
ppm	Parts per million
PST	Petroleum storage tank
SWPPP	Storm Water Pollution Prevention Plan (SWP3)
SSO	Sanitary Sewer Overflow
TAC	Texas Administrative Code
TPDES	Texas Pollutant Discharge Elimination System
TPH	Total Petroleum Hydrocarbons
TCEQ	Texas Commission on Environmental Quality

Sec. 11.5-2. Definitions.

The following words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Best Management Practices (BMP) means management practices intended to prevent or reduce the pollution of the MS4. BMPs provide a schedule of activities, a prohibition of practices, maintenance procedures, treatment requirements, operating procedures and practices to control runoff from construction activities, plant or industrial site, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

City means the City of Mesquite, Dallas County, Texas.

Discharge means to deposit, conduct, drain, emit, throw, run, allow to seep or otherwise release, either purposefully or by acts of omission.

Discharger means any person who causes, allows, permits or is otherwise responsible for a discharge including any operator of a construction site or industrial facility.

Domestic Sewage means human excrement, grey water or other wastewater from household drains, and waterborne waste normally discharged from the sanitary lines of dwellings.

Facility means all structures and improvements from which there is or may be a pollutant discharged.

Fertilizer means a man-made substance or compound containing an essential plant nutrient used to stimulate growth of the plant or improve the quality of a crop.

Fire Protection Water means any water and any soluble substances or materials used by the Fire Department to control or extinguish a fire.

Garbage means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products.

Grey Water means water from home clothes washing, bathing, showers, dishwashing and food preparation.

Harmful Quantity means the quantity of any substance, predetermined by EPA/TCEQ that can cause pollution of water in the State, dependant upon the water body location. This quantity may change only according to defined levels as published by the EPA or TCEQ.

Hazardous Substance/Harmful Substance means any quantity listed in Table 302.4 of 40 CFR Part 302.

Hazardous Waste means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

Household Waste means any solid waste derived from single and multiple residences, hotels, motels and day-use recreation areas, and does not include yard waste or brush that is free of any household wastes.

Industrial Waste means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.

Motor Vehicle Fuel/Fluid means any motor crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend and any other fluid used in a motor vehicle.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances, including inlets, roads with drainage systems, municipal streets, catch basins, curbs, gutters, detention basins, ditches, man-made channels, natural creeks and channels, lakes, rivers or storm drains designed or used for collecting or conveying storm water.

Notice of Change (NOC) means the notice of change that is required by the TPDES General Permit, the Multi-Sector General Permit or other General Permit for the discharge of storm water.

Non-Point Source means any source from which pollutants flow in an unconfined and unchanneled manner, including, but not limited to, surface runoff and seepage.

Notice of Intent (NOI) means the Notice of Intent application form that is required by either the Industrial Permit or the Construction General Permit to obtain TPDES permit coverage.

Notice of Termination (NOT) means the Notice of Termination that is required by either the Industrial Permit or the Construction General Permit to terminate TPDES permit coverage.

Oil means 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.

Operator means the person or persons responsible for operating a facility or part of a facility.

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

Person means any individual, corporation, government or governmental subdivision or agency, business trusts partnerships, association, or any other legal entity.

Pest means any living organism that causes damage or economic loss, or transmits or produces disease. Pests can be animals like insects or mice, unwanted plants or microorganisms such as plant diseases and viruses.

Pesticide means 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. Pesticide refers to not only insecticides but also many other chemicals. A pesticide is any substance intended to control, destroy, repel or attract a pest.

Petroleum Storage Tank (PST) means aboveground or underground storage tank including underground pipes that contain petroleum products.

Point Source means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well or discrete fissure from which pollutants are or may be discharged.

Pollutant means contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical waste or biological materials discharged into water.

Pollution means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into MS4 or the waters of the State of Texas.

Reportable Quantity (RQ) means for any "hazardous substance," the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any "extremely hazardous

substance," the quantity established in 40 CFR Part 355 and listed in Appendix A thereto or Section 311 of the Clean Water Act (40 CFR 117.3).

Rubbish means nonputrescible solid waste, excluding ashes, including combustible or noncombustible materials.

Sanitary sewage means the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and is designed to flow to the sanitary sewage treatment plant.

Sanitary sewer overflow means an unintentional release of sewage from a collection system before it reaches the treatment plant.

Septic Tank Waste means any domestic sanitary sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

Solid Waste means 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.

State means the State of Texas.

Storm Water means storm water runoff, snowmelt runoff, surface runoff and drainage.

Storm Water Pollution Prevention Plan (SWPPP) means a planning document required by the Construction General Permit or the Industrial General Permit that describes, details and ensures the implementation of practices used to minimize pollutants in storm water discharges commonly associated with industrial and construction activity.

Texas Pollution Discharge Elimination System Permit (TPDES Permit) means a permit issued by TCEQ that authorizes the discharge of pollutants to waters of the State of Texas whether the permit is applicable to an individual, group or area-wide.

Uncontaminated means not containing a harmful quantity of any substance.

Used Oil means 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.

Wash Water means water that has been used to remove particles of dirt, oils or other matter from a contaminated item including, but not limited to, motor vehicles, carpets, private parking lots and dumpster pads that contains these particles in suspension or solubility.

Water of the State means percolating or otherwise, lakes, ponds, reservoirs, springs, rivers, streams, creeks, marshes, inlets, and all other bodies of surface water, natural or artificial, inland, fresh and navigable or non-navigable, including the beds and banks of all water courses and bodies of surface water, that are wholly inside the State.

Water Quality Standard means 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 TAC.

Wetlands means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions.

Yard Waste means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots or shrubs with intact root balls.

Sec. 11.5-3. Required Submissions.

Industrial facilities that contribute storm water discharges to the City of Mesquite MS4 and are required to obtain a discharge permit from the EPA or TCEQ must provide a copy of their completed NOI, NOCs and NOTs to the City Engineer.

Sec. 11.5-4. Prohibited Discharges.

It shall be unlawful and an offense for any person to:

- (a) Introduce or cause to be introduced into the MS4 any discharge that results in the City being out of compliance with a water quality standard, the City's NPDES permit or any state-issued permit for discharges from its MS4.
- (b) Discharge into the MS4 harmful materials listed by the TCEQ, EPA or City's laws and ordinances.
- (c) Discharge rubbish or household waste into any MS4, natural or man-made pond, lake, stream, creek, fountain, storm sewer inlet or body of water within the City.
- (d) Not use BMPs to prevent sediment, silt, earth, soil or other material associated with clearing, grading, placement, excavating, disposal or other construction activities from entering the MS4. BMPs must be implemented and maintained at construction sites disturbing one acre or more.

- (e) Connect a line conveying sanitary sewage, domestic sewage or industrial waste to the MS4, or allow or permit such a connection to continue.
- (f) Sell, distribute, apply, label, manufacture, transport, store or dispose of a pesticide or fertilizer in any manner that does not comply with all State and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and all federal regulations promulgated pursuant to FIFRA Chapters 63, 75 and 76 of the Texas Agriculture Code and all State regulations promulgated pursuant thereto and any other State or federal requirement.
- (g) Fail to show the appropriate license, permit, registration, certification or evidence of financial responsibility required by State or federal law for sale, distribution, application, manufacture, transportation, storage or disposal of a pesticide or fertilizer to City Code officers or law enforcement officers for examination upon request.
- (h) Cause any pesticide or herbicide to be used contrary to the directions for application on the labeling required by State or federal statute or regulation.
- (i) Use, dispose of, discard, store or transport a pesticide or fertilizer, or a pesticide or fertilizer container in a manner that causes a harmful quantity of the pesticide or fertilizer to enter the MS4 or waters of the State.
- (j) Dump, discharge, dispose, emit, empty, spill, leak, leach, pump, pour or otherwise introduce, cause or allow to be introduced any of the following substances into the MS4 or any water body that may affect the MS4:
 - (1) Used oil, antifreeze or any other motor vehicle fluid;
 - (2) Industrial waste;
 - (3) Hazardous waste including hazardous household waste, garbage, rubbish, brush or other floatable material;
 - (4) Sanitary sewage, grease trap waste or grit trap waste;
 - (5) Runoff or wash-down water from any commercial animal pen, kennel, fowl or livestock containment area;
 - (6) Wash water from a commercial car wash facility or from any commercial vehicle washing, cleaning or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop or maintenance facility.

- (7) Wash water from the commercial washing, cleaning or other maintenance of aircraft;
- (8) Wastewater from floor, rug or carpet cleaning;
- (9) Wastewater from the wash-down or cleaning of pavement or other surfaces that contains quantities of soap, detergent, degreaser, emulsifier or other harmful cleaning substance from commercial property;
- (10) Effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter or the "blow down" from a boiler;
- (11) Ready-mixed concrete, lime, 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;
- (12) Filter backwash from a swimming pool, fountain or spa;
- (13) Swimming pool or spa water containing elevated levels of free chlorine greater than 4ppm or contain any muriatic acid or other chemicals used in the treatment or disinfecting of swimming pool water or in pool cleaning;
- (14) Water from a water curtain in a spray room used for painting vehicles or equipment;
- (15) Contaminated runoff from a vehicle wrecking yard;
- (16) Contaminated runoff from a vehicle storage area;
- (17) Substance or material that will potentially damage, block or clog the MS4;
- (18) Release from a PST or runoff from soil contaminated by a leaking PST that fails to satisfy the following criteria:
 - a) Complies with all State and federal standards and requirements;
 - b) Does not contain a harmful quantity of any pollutant; and
 - c) Does not contain more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene and xylene (BTEX); or 15mg/l of total petroleum hydrocarbons (TPH).

Sec. 11.5-5. Affirmative Defenses.

- (a) It shall be an affirmative defense when the prohibited discharge is composed entirely of one or more of the following categories of discharges:
- (1) A discharge authorized by, and in full compliance with a TPDES.
 - (2) Permit other than the TPDES permit for discharges from the MS4.
 - (3) A discharge or flow of water resulting from active fire protection water.
 - (4) A discharge or flow from water line flush authorized by the City.
 - (5) An unintentional leak or clogged conveyance resulting in raw sewage flowing from a City-owned sanitary sewer.
 - (6) A discharge or flow from lawn watering, landscape irrigation or other irrigation water.
 - (7) A discharge or flow from a diverted stream flow or natural spring.
 - (8) A discharge or flow from uncontaminated pumped groundwater or rising groundwater.
 - (9) Uncontaminated groundwater infiltration (as defined in 40 C.F.R. 35.2005(20)) to the MS4.
 - (10) Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain or sump pump.
 - (11) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container.
 - (12) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter or any other source of pollutant.
 - (13) A discharge or flow from individual residential car washing.
 - (14) A discharge or flow from a natural watercourse or wetland.

- (15) A discharge or flow from water used in street washing provided that the water is not contaminated with soap, detergent, solvent, emulsifier, dispersant or any other harmful cleaning substance.
 - (16) Storm water runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or other source of pollutant.
- (b) No affirmative defense shall be available under subsection (a) of this section if the discharge or flow in question has been determined by the City Engineering Division to be a source of a pollutant or pollutants to the waters of the State or to the MS4, and prior written notice of such determination has been provided to the discharger.

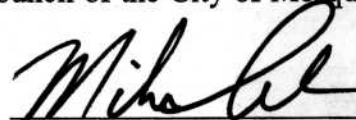
SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That the present ordinances of the City of Mesquite did not establish requirements and prohibitions relating to surface and ground water, creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of May, 2003.



Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney