

**ORDINANCE NO. 2019-005**

**AN ORDINANCE OF THE TOWN OF ANTHONY, TEXAS ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) IN ORDER TO COMPLY WITH THE REQUIREMENTS OF THE TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMIT PROCESS.**

**WHEREAS**, the GOVERNING BODY did hold a duly noticed Public Hearing; and

**WHEREAS**, the GOVERNING BODY did consider testimony from staff and the public before reaching its decision; and

**WHEREAS**, pursuant to the statutory authority granted to the GOVERNING BODY as a municipality under Texas Local Government Code Section 51.001, the GOVERNING BODY may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that: (1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, pursuant to the statutory authority granted to the municipality as a Type A General-Law Municipality under Texas Local Government Code Section 51.012, the municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic; and

**WHEREAS**, the GOVERNING BODY does make the following finding:

1. That it is in the best interest and welfare of the public at large and to otherwise provide for the establishment of methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the Town of Anthony, Texas in order to comply with the requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF ANTHONY, TEXAS:** that in consideration of the aforementioned findings and testimony, it hereby ordains that it does hereby approve the establishment of methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the Town of Anthony, Texas in order to comply with the requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process as set out more fully herein as follows:

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## **Section I. Intent and Purpose**

This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the Town of Anthony in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this ordinance are:

- To regulate pollutants from stormwater discharges into and from the MS4;
- To prohibit illicit connections and discharges to the MS4;
- To control the discharge of spills and prohibit dumping or disposal of materials other than stormwater into the small MS4;
- To enforce compliance with the permittee's ordinances, permits, contracts, or orders;
- To require installation, implementation, and maintenance of control measures;
- To receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;
- To establish legal authority to implement inspection and enforcement procedures to ensure compliance with this Ordinance;
- To respond to non-compliance with Best Management Practices (BMPs) required by the small MS4 consistent with its ordinances or other regulatory mechanism(s);
- To assess penalties, including monetary, civil, or criminal penalties; and
- To enter into interagency or interlocal agreements or other maintenance agreements, as necessary.

## **Section II. Definitions**

**Applicant** - Property owner or agent of a property owner who filed an application for a stormwater authorization under a TPDES general permit or an individual TPDES permit.

**Authorized Enforcement Agency** - Employees or designees of the Town of Anthony or the Texas Commission on Environmental Quality (TCEQ) have authority to enforce this Ordinance and/or the TPDES regulations.

**Best Management Practices (BMPs)** - Schedule of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment practices, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw materials storage areas.

**Building** - Any structure, either temporary or permanent, with walls and a roof, designed to shelter a person, animal, or property, and occupying more than 100 square feet of area.

**Construction Activity** – Includes soil disturbance, including clearing, grading, excavating, and other construction related activities (e.g., stockpiling of fill material and demolition); and does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

**Small Construction Activity** is construction activity that results in land disturbances equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land.

**Large Construction Activity** is construction activity that results in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five acres of land.

**Conveyance** - Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

**Hazardous Materials** - Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

**Illicit Connection** - Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

**Illicit Discharge** - Any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges pursuant to a TPDES stormwater general permit or a separate authorization and discharges resulting from emergency firefighting activities.

**Land Disturbance Activity** - Any activity which changes the volume or discharge rate of stormwater runoff from the land surface. This includes grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

**Maintenance Agreement** - A formal contract between a local government and a property owner to guarantee long-term maintenance of stormwater management practices.

**Non-Stormwater Discharge** - Any discharge to the storm drain system that is not composed entirely of stormwater.

**Person** - Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

**Pollutant** – In accordance with the Texas Water Code, §26.001(13) a pollutant includes the following: 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 any water in the state.

**Premises** - Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Stormwater and Stormwater Runoff** - Rainfall runoff, snow-melt runoff, and surface runoff and drainage.

**Stormwater Management** - The use of structural or non-structural control practices/BMPs designed to reduce stormwater pollutant runoff, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality.

**Stormwater Pollution Prevention Plan (SWP3)** - A document that describes the Best Management Practices and activities to be implemented by the permit holder to identify sources of pollution or contamination at a site and actions to eliminate or reduce pollutant discharges.

**Stormwater Control Practices** - Structural or nonstructural measures to minimize stormwater runoff to surface water in the state.

**Surface Water in the State** - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

**Texas Pollutant Discharge Elimination System Stormwater (TPDES) Discharge Permit** - A permit issued by the TCEQ, under the authority of Texas Water Code Sections 26.027 or 26.040 that authorizes the discharge of pollutants into or adjacent water in the state. The TPDES program is administered under the authority delegated pursuant to 33 U.S.C. Section 1342(b).

**Unauthorized Discharge** - Any direct or indirect non-stormwater discharge to the storm drain system except as exempted in Section V Prohibition of Illicit Connections of this Ordinance.

### **Section III. Applicability**

Unless exempted, this Ordinance applies to discharges entering the storm drain system within the jurisdictional limits of the authorized enforcement agency.

### **Section IV. Responsibility for Administration**

The Town of Anthony shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Town Clerk of the Town of Anthony may be delegated in writing by the Mayor of the Town of Anthony to persons or entities acting in the beneficial interest of the Town of Anthony.

Authorized individual(s) under this Section shall have the authority to enforce this Ordinance in its entirety and shall be designated as a TPDES Stormwater Manager and/or Inspector. Any person subject to an industrial or construction TPDES stormwater discharge permit or authorization shall comply with all provisions of the permit and may be required by the Town to have authorization to discharge stormwater into the MS4.

## **Section V. Prohibition of Illicit Connections and Discharges**

The Town of Anthony has the authority to prohibit illicit discharges and illicit connections in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)a. This Ordinance prohibits unauthorized discharges into the storm drain system. No person shall release discharges into the municipal storm drain containing any pollutants that cause or contribute to a violation of water quality standards, other than stormwater or authorized non-stormwater discharges.

## **Section VI. Response to Releases**

The Town of Anthony has the authority to respond to and contain other releases. The local jurisdiction must control the discharge of a spill and prohibit dumping or disposal of material other than stormwater and authorized non-stormwater discharges into the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)b. Any person in violation of this Ordinance may risk having their discharge authorization to the MS4 terminated. The authorized enforcement agency will notify the violator of the proposed termination of its authorization. The violator may petition the Town to reconsider and schedule a hearing.

When the person responsible has knowledge of any known or suspected release of materials resulting in or potentially resulting in unauthorized discharges into a storm sewer system or surface water in the state, the person must contain and clean up the release. If hazardous materials are released, the person must immediately notify emergency response agencies. If non-hazardous materials are released, the person must notify the authorized enforcement agency no later than the next business day. Notifications in person or by telephone must be confirmed by written notice addressed and mailed to the Town.

## **Section VII. Permit Procedures and Requirements**

The Town of Anthony can enforce compliance with the permittee's ordinances, permits, contracts, or orders in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)c. Land owners or operators seeking a permit for land disturbance shall follow the permitting process stipulated in the Town of Anthony Municipal Code of Ordinances and is subject to the Town of Anthony Stormwater Management Plan.

## **Section VIII. Maintenance and Repair of Stormwater Facilities**

The Town of Anthony has the authority to require installation, implementation, and maintenance of control measures in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)d and the Town of Anthony Municipal Code of Ordinances.

## **Section IX. Requirements for Stormwater Management Plan Approval**

The Town of Anthony has the authority to receive and collect information (i.e. stormwater pollution prevention plans, inspection reports, etc.) from any person (i.e. operators of regulated construction sites, new or redeveloped land, and industrial and commercial facilities) in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2).e to assess compliance with this permit. Unless special approval has been granted by the Town Clerk in writing, all construction activity within the municipal boundary of the Town shall be required to submit a stormwater management plan to the Town and obtain written approval before any construction activity may begin. The storm water management plan shall indicate the type of stormwater management measures which will be utilized to control stormwater runoff from the current project and future developments. An erosion and sediment control plan shall be included for all construction activities involving on-site stormwater management practices indicating the specific measures for the erosion and sediment control on a development site during and after construction.

## **Section X. Authority to Enter and Inspect**

The Town of Anthony has the authority to enter and inspect private property including facilities, equipment, practices, or operations related to stormwater discharges to the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)f.

A Designated Town official may enter and inspect facilities, equipment, practices and operations subject to regulation under this Ordinance as often as necessary to determine compliance with this Ordinance. If a discharger's security measures require proper identification and clearance before entry into the premises, the discharger shall make necessary arrangements to allow access to representatives of the authorized enforcement agency. Facility operators shall allow the designated official to access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records. The designated official shall have the right to monitor and/or sample the facility's stormwater discharge.

Unreasonable delays in allowing the Town access to a permitted facility is a violation of a TPDES stormwater discharge permit and of this Ordinance. A person commits an offense if the authorized enforcement agency is denied reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

## **Section XI. Best Management Practices (BMPs) to Reduce Stormwater Pollutants**

The Town of Anthony has the authority to respond to non-compliance with BMPs required by the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)g. The Town shall adopt measures to identify BMPs for any activity, operation, or facility which may facilitate pollution of stormwater, the storm drain system, or surface water in the state. The owner or operator of a commercial or industrial establishment shall implement, at their own expense, appropriate pollution control measures through the use of structural and non-structural BMPs to prevent and reduce discharge of pollutants into the municipal storm drain system or watercourses. The BMPs must be identified in the Stormwater Pollution Prevention Plan (SWP3) to satisfy requirements of the TPDES permit.

## **Section XII. Enforcement**

The Town of Anthony has the authority to assess penalties, including monetary, civil, or criminal penalties in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)h.

If the Town finds a person in violation with this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require:

- Monitoring, analysis, and reporting
- Elimination of illicit connections or discharges
- Termination of existing discharges or practices and/or operations in violation of this Ordinance
- Abatement and/or remediation of stormwater pollution or contamination hazards
- Payment of fines to cover administrative and remediation costs
- Implementation of pollution control measures or treatment BMPs

If the property must be remediated, the notice must establish a deadline to restore the site. The notice must further advise that, if the violator fails to remediate the site by the deadline, a designated governmental agency or contractor will restore the site at the expense of the violator.

### **Section XIII. Maintenance Agreements**

The Town of Anthony has the authority to enter into interagency or interlocal agreements or other maintenance agreements, as necessary in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)i. This agreement will include maintenance easements to access and inspect stormwater control practices, and perform routine maintenance to ensure proper stormwater control. A legally binding covenant will identify the responsible parties to maintain stormwater control practices.

### **Section XIV. Ultimate Responsibility**

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure prevention of contamination, pollution, and unauthorized discharge of pollutants.

### **Section XV. Severability**

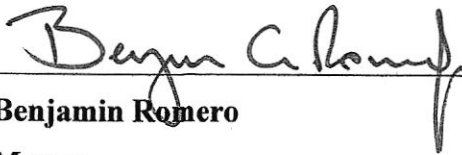
The provisions and sections of this Ordinance shall be deemed to be independent, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

### **Section XVI. Adoption of Ordinance**


This Ordinance shall be in full force and effect after its final passage and adoption. All prior Ordinances in conflict with this Ordinance are hereby repealed.

**PASSED, ADOPTED AND APPROVED THIS 22 DAY OF        JULY       , 2019.**

**APPROVED:**

  
\_\_\_\_\_  
**Benjamin Romero**  
**Mayor**

**ATTEST:**

  
\_\_\_\_\_  
**Norma Gonzalez**  
**Town Clerk**



**ROLL CALL VOTE:**

<b>Mayor Pro-Tem Shawn Weeks</b>	<b>_ YES _</b>
<b>Councilor Jose Garcia</b>	<b>_ YES _</b>
<b>Councilor Eddie Chavez</b>	<b>_ YES _</b>
<b>Councilor Louie Alfaro</b>	<b>_ YES _</b>