

Chapter 304. Prohibited Discharges, Enforcement¹

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304.001 Authority, Application, Purpose, and Construction

- (a) **Authority.** The Commissioners Court of Travis County adopts this chapter pursuant to authority granted to it in Chapter 573 of the Local Government Code Section 573.002 to take any necessary or proper action to comply with the requirements of the storm water permitting program under the national pollutant discharge elimination system [Section 402, Federal Water Pollution Control Act (33 U.S.C. Section 1342)], including:
- (1) developing and implementing controls to reduce the discharge of pollutants from any conveyance or system of conveyance owned or operated by the County that is designed for collecting or conveying storm water; and
 - (2) developing, implementing, and enforcing storm water management guidelines, design criteria, or rules to reduce the discharge of pollutants into any conveyance or system of conveyance owned or operated by the County that is designed for collecting or conveying storm water.
- (b) **Application.** This chapter applies to all unincorporated areas of Travis County, Texas.
- (c) **Purpose.** The purpose of this chapter is to:
- (1) take necessary and proper action to comply with the requirements of the storm water permitting program established under Section 402, Federal Water Pollution Control Act (33 U.S.C. Section 1342) and to protect the health, safety, and general welfare of the public;
 - (2) set forth regulations necessary to comply with Travis County's TPDES storm water discharge permit, to protect human life and health, and to eliminate or reduce pollutant levels associated with storm water;

¹ Chapter 104 was adopted by Travis County Commissioners Court on 8/14/2012, Item 14. Chapter 104 was renumbered as Chapter 304 on June 1, 2018, approved May 15, 2018 Item 7).

- (3) eliminate the illicit discharge of a pollutant into a conveyance, water in the state, or into the Travis County Municipal Separate Storm Sewer.
- (d) Construction. The provisions of this chapter are to be liberally construed to give effect to its purpose and intent.
- (e) Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, the provisions of this chapter shall take precedence over any less restrictive conflicting law, order, ordinance, code, or official determination. All other regulations inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only. For purposes of this chapter, the County Executive shall determine which of these conflicting laws, orders, ordinances, codes, or official determinations are most restrictive, and their decision in this regard shall be final.
- (f) Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid portion, and to this end the provisions of this chapter are declared to be severable.
- (g) Remedies Not Exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law, and it is within the discretion of Travis County to seek cumulative remedies. A person who violates this chapter is subject to any applicable administrative, civil, or criminal penalties.

304.002 Definitions

In this chapter:

- (1) “Accidental discharge” means an act or omission through which waste or other substances are inadvertently discharged into water in the State or a MS4.
- (2) “Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the State or the Travis County MS4. BMPs include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In the Lake Travis watershed, BMPs include those practices described in LCRA’s Technical Manual that effectively manage storm water runoff quality and volume.
- (3) “Conveyance” means curbs, gutters, man-made or natural channels and ditches, drains, pipes, and other features designed or used for flood control or to otherwise transport storm water runoff.

- (4) "County Executive" means the county executive of the Travis County Transportation and Natural Resources Department or a successor department, or a person designated by the County Executive.
- (5) "Discharge" or "To discharge" means to either deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.
- (6) "Discharger" means a person that causes or threatens to cause a discharge.
- (7) "Facility" means any structure or building, including contiguous land, or equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area.
- (8) "Hazardous substance" means any substance that is designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), is regulated pursuant to Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), or designated as such by the Texas Commission on Environmental Quality.
- (9) "Illicit connection" means a man-made conveyance regardless of whether it is on the surface or subsurface, that allows any illicit discharge to enter a municipal separate storm sewer or, any conveyance connected from a commercial or industrial site to a municipal separate storm sewer which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (10) "Illicit discharge" means any discharge to a conveyance or a municipal separate storm sewer that is not composed entirely of storm water except discharges that are allowed under Section 304.003, authorized pursuant to a TPDES permit (other than the TPDES permit for discharges from the municipal separate storm sewer), and discharges resulting from fire-fighting activities.
- (11) "Industrial activity" means manufacturing, processing, material storage, and waste material disposal areas (and similar areas where storm water can contact industrial pollutants related to the industrial activity) at an industrial facility described by the TPDES Multi Sector General Permit, TXR050000, or by another TCEQ or TPDES permit.
- (12) "Maximum Extent Practicable" means the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA sec. 402(p).
- (13) "Municipal Separate Storm Sewer System" or "MS4" means a conveyance or system of conveyances (including roads with drainage

systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that:

- (A) Is owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to water of the United States;
 - (B) Is designed or used for collecting or conveying storm water; and
 - (C) Is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2.
- (14) "Non-storm water discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water.
- (15) "Operator" means the person responsible for the overall operation of a site or facility.
- (16) "Other substances" means substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state.
- (17) "Owner" means the owner of real property subject to a proposed or existing subdivision, site, parcel of land, or development.
- (18) "Person" means an individual, association, partnership, corporation, organization, business trust, political subdivision, state or federal agency, or an agent or employee thereof.
- (19) "Person responsible" or "responsible person" means:
- (A) the owner, operator, or demise charterer of a vessel from which a spill emanates;
 - (B) the owner or operator of a facility from which a spill emanates;
or
 - (C) any other person who causes, suffers, allows, or permits a spill or discharge.
- (20) "Pollutant" means 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. The term:
- (A) includes tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding

- operation that is located in a major sole source impairment zone as defined by Texas Water Code Section 26.502; and
- (B) includes rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Texas Water Code Section 26.502; but
 - (C) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.
- (21) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
 - (22) "Premises" means any building, lot, parcel of land, or portion of land, regardless of whether it is improved or unimproved, including adjacent sidewalks and parking strips.
 - (23) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
 - (24) "Storm water" and "storm water runoff" means rainfall runoff, snow melt runoff, and surface runoff and drainage.
 - (25) "Storm Water Pollution Prevention Plan" or "SWPPP" or "SWP3" means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to water in the State, a conveyance or a municipal separate storm sewer to the maximum extent practicable. The SWP3 must include all practices and activities required by any applicable TCEQ permit as well as any applicable requirements of the Travis County Code.
 - (26) "TCEQ" means Texas Commission on Environmental Quality or any successor agency.
 - (27) "Texas Pollutant Discharge Elimination System" or "TPDES" means the state program for issuing, amending, terminating, monitoring, and enforcing permits authorizing the discharge of pollutants to water in the State of Texas, and imposing and enforcing pretreatment requirements, under Clean Water Act §§ 307, 402, 318 and 405, the Texas Water Code and Texas Administrative Code regulations.

- (28) "Travis County Municipal Separate Storm Sewer System" or "Travis County MS4" means the Small MS4 owned or operated by Travis County.
- (29) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as the terms are defined in Texas Water Code, Section 26.001.
- (30) "Water in the State" means groundwater, percolating or otherwise, 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, 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 watercourses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

304.003 Prohibited Discharges

- (a) No person may cause, suffer, allow, or permit the discharge of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter.
- (b) No person may discharge or cause to be discharged into a municipal separate storm sewer or into a water in the State any pollutant that causes or contributes to a violation of applicable water quality standards, other than storm water authorized by permit or similar authorization issued by the TCEQ. The commencement, conduct or continuance of any illicit discharge is prohibited except as described in subsections (c) and (d).
- (c) The following discharges are allowed only if they do not substantially contribute pollutants in storm water runoff:
 - (1) water line flushing, only if:
 - (A) Any hyper-chlorinated water is de-chlorinated before it is discharged; and
 - (B) The discharge is not reasonably expected to adversely affect aquatic life;
 - (2) water line breaks, only if sediment and chlorine in the discharge is controlled so that there is no impact to aquatic life;
 - (3) water line hydrant testing, only if: rust deposits and chlorine levels do not result in an impact to aquatic life;
 - (4) runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
 - (5) discharges from a potable water source;
 - (6) diverted stream flows;

- (7) rising groundwater or springs;
- (8) discharges from uncontaminated groundwater infiltration;
- (9) discharges from uncontaminated, pumped groundwater;
- (10) discharges from uncontaminated foundation and footing drains;
- (11) discharges from air conditioning condensation;
- (12) discharges from water pumped from an elevator sump or utility vault, only if it is free of oil and visible sheen;
- (13) discharges from individual residential exterior car washing only if mild detergents are used and the discharges contain no degreasers or other chemicals;
- (14) flows from a wetland or riparian habitat;
- (15) uncontaminated discharges associated with a de-chlorinated, residential swimming pool, spa, or ornamental fountain, excluding filter backwash wastewater and excluding saline water;
- (16) discharges from the routine washing of pavement only if:
 - (A) the washing is done without the use of detergents or other chemicals;
 - (B) spills or leaks of oil, toxins, or other hazardous materials have not occurred (unless all spilled material has been removed); and
 - (C) the discharge does not include street sweeper wash water;
- (17) discharges from fire-fighting activities where foam or chemical agents are not used (and not including washing of trucks, runoff from training activities, and similar activities);
- (18) discharges of uncontaminated fire test maintenance and fire sprinkler/suppression system water;
- (19) discharges specified in writing by the County Executive as being necessary to protect public health and safety;
- (20) discharges of uncontaminated water used for dust suppression;
- (21) dye testing, if written notification is made to the County Executive prior to the time of the test;
- (22) discharges associated with dewatering of collected storm water in an above-ground storage tank secondary containment area if the water is free of, oil, visible sheen, and other contaminants;
- (23) discharges from dewatering of collected storm water in a construction pit, only if the discharge is free of silt, oil, and visible sheen;
- (24) discharges of storm water from an authorized permanent water quality control;

- (25) discharges of ballast water from a petroleum storage tank pit during installation; and
 - (26) discharges of water from a dumpster or similar receptacle if the water is free of oil, visible sheen, and other contaminants.
- (d) The prohibitions set forth in this section do not apply to any non-storm water discharge authorized by a TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency and TCEQ if:
- (1) the authorized person is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations,
 - (2) written approval has been granted by the County Executive for any discharge to the Travis County Municipal Separate Storm Sewer; and
 - (3) The discharge does not contain a pollutant or any substance which causes, continues to cause, or will cause pollution.
- (e) A person violates this chapter if the person discharges any storm water that contains a pollutant or any substance which causes, continues to cause, or will cause pollution.
- (f) The construction, use, maintenance, or continued existence of an illicit connection to the Travis County Municipal Separate Storm Sewer is prohibited. This prohibition expressly includes, without limitation, an illicit connection made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

304.004 Suspension of MS4 Access

- (a) Travis County may, without prior notice, require a person to immediately stop an illicit discharge into either a municipal separate storm sewer or water in the State.
- (b) The County may, without prior notice, issue a suspension order to suspend a person's access to discharge into a municipal separate storm sewer or water in the State if the suspension would abate or reduce pollution caused by an illicit discharge.
- (c) The County will not reinstate a person's access to a municipal separate storm sewer or water in the State until:
 - (1) the person presents proof, satisfactory to the County Executive, that the illegal discharge has been eliminated and its cause determined and corrected;
 - (2) the person pays the County for all costs the County incurred in responding to abating and remediating the illegal discharge; and

- (3) the person pays the County for all costs the County will incur in reinstating access.
- (d) A person whose access to a municipal separate storm sewer has been suspended may petition the Travis County Commissioners Court for reconsideration and a hearing.
- (e) A person whose access to a municipal separate storm sewer has been suspended violates this Chapter if the person accesses the municipal separate storm sewer without the prior approval of the Travis County Commissioners Court.

304.005 Industrial or Construction Activities Discharges

- (a) Any person authorized to discharge pollutants generated from an industrial or construction activity that is subject to a TPDES storm water discharge permit or similar authorization shall comply with all provisions of such permit and any additional requirements of a Travis County development permit. Proof of compliance may be required in a form acceptable to Travis County prior to allowing discharge into a Municipal Separate Storm Sewer.
- (b) It is a violation of this chapter to engage in activities requiring a TPDES storm water permit without authorization under a TPDES permit for storm water discharges or any applicable permit required by the Travis County Code.
- (c) Any violation of any general or individual TPDES permit is a violation of this chapter.
- (d) A person violates this chapter if the person causes, suffers, allows, or permits a discharge into a MS4 without having first obtained authorization under a TPDES permit, or any other required authorization from TCEQ.

304.006 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices

- (a) Travis County requires that best management practices be identified and incorporated into any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, a municipal separate storm sewer, or water in the State. These BMPs shall be part of a storm water pollution prevention plan if required for compliance with the TPDES permit and any applicable Travis County development permit.
- (b) The owner or operator of a commercial or industrial establishment shall provide, at its own expense, protection from accidental discharge of prohibited materials into a municipal separate storm sewer or water in the State through the use of structural and non-structural BMPs.
- (c) The County Executive may require any person responsible for a property or premises, that is, or may be, the source of an illicit discharge, to implement, at the person's expense, additional structural and non-structural BMPs to

prevent the further discharge of pollutants to a municipal separate storm sewer or water in the State.

- (d) Compliance with all terms and conditions of a valid TPDES permit authorizing the discharge of storm water associated with industrial activity, along with any additional, more stringent requirements required by a Travis County development permit, shall be deemed to be compliance with the provisions of this section.

304.007 Watercourse Protection

Any responsible person who owns or leases property through which water in the State passes shall keep and maintain that part of the watercourse within the property free of any waste that could cause a condition of pollution to exist. In addition, a responsible person shall maintain any privately owned structures within or adjacent to a watercourse (including a dam or weir), so that the structures will not become a hazard to the use, function, or physical integrity of the watercourse and will not cause pollution.

304.008 Accidental Discharge or Spill of a Pollutant, Including a Hazardous Substance

As soon as any person responsible for a facility or activity or any person who is responsible for emergency response for a facility or activity has any information of a known or suspected accidental discharge or spill that causes or may cause a pollutant to enter into storm water, a MS4, or water in the State, that person must:

take all necessary steps to ensure the discovery, containment, and cleanup of the discharge;

as soon as possible and no later than 24 hours after the discharge, notify the Texas Commission on Environmental Quality and any other state or federal agency that it is required by law to be notified; and immediately notify Travis County if the discharge may adversely affect a public or private source of drinking water or a Travis County road, including a right-of-way, and provide information as to the location, identification, concentration, and volume of the discharge as well as the measures the responsible person is taking to contain and clean up the discharge.

304.009 Right of Entry

- (a) Pursuant to Texas Water Code Section 26.171, Travis County officials, employees, agents, and representatives are entitled to enter and inspect the premises of any person to determine whether or not:
 - (1) the quality of the water meets the state water quality standards adopted by the TCEQ;
 - (2) persons discharging effluent into the public water located in the areas in which Travis County has jurisdiction have obtained permits for discharge of the effluent; and

- (3) persons who have permits are making discharges in compliance with the requirements of the permits.
- (b) Pursuant to Texas Water Code Section 26.173, Travis County officials, employees, agents, and representatives are entitled to enter any public or private property within the County's territorial jurisdiction to make inspections and investigations of conditions relating to water quality. In exercising this power, Travis County officials, employees, agents, and representatives are subject to the same provisions and restrictions set forth in Texas Water Code Section 26.014 with respect to the TCEQ.
- (c) Travis County officials, employees, agents, representatives and contractors are entitled to enter public or private property at any reasonable time to investigate or monitor, or if the person responsible is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state.
- (d) Travis County officials, employees, agents, representatives and contractors who enter private property must:
 - (1) observe the property's rules and regulations concerning safety, internal security, and fire protection; and
 - (2) if the property has management in residence, notify management in person or the person then in charge in that person's presence and exhibit proper credentials.
- (e) Travis County officials, employees, agents, representatives, and contractors are entitled to enter and inspect premises as often as may be necessary to determine compliance with this chapter. If a responsible person has security measures in force which require proper identification and clearance before entry into its premises, the responsible person shall make the necessary arrangements to allow access to Travis County officials, employees, agents, representatives, and contractors.
- (f) Responsible persons must allow Travis County officials, employees, agents, representatives, and contractors ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- (g) If the premises are occupied, the Travis County representative shall present credentials and request entry. If the premises are unoccupied, the Inspector shall attempt to contact a responsible person and request entry before entering.
- (h) At the written or oral request of the responsible person of a facility or vessel to be inspected or sampled, any temporary or permanent obstruction to safe and easy access to the facility or vessel to be inspected or sampled must be promptly removed by the responsible person at the written or oral request of a

Travis County official, employee, agent, representative, or contractor and must not be replaced.

- (i) A delay of 30 minutes or more in allowing a Travis County official, employee, agent, representative, or contractor access to a permitted facility is a violation of a storm water discharge permit and of this chapter. A person who is the owner or operator of a facility with a TPDES permit to discharge storm water associated with industrial activity violates this chapter if the person denies Travis County officials, employees, agents, representatives and contractors reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.
- (j) If a Travis County official, employee, agent, representative, or contractor has been refused access to any part of the premises from which storm water is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Travis County official, employee, agent, representative, or contractor may seek issuance of a search warrant from any court of competent jurisdiction, in accordance with the enforcement policy adopted by the Commissioners Court on June 26, 2001.

304.010 Enforcement

- (a) Civil Remedies.
 - (1) In accordance with Texas Local Government Code, section 573.003, whenever Travis County finds that a person has violated a prohibition or failed to meet a requirement of this chapter, that person is liable to the county for a civil penalty of not more than \$1,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.
 - (2) Travis County may bring suit in a district court to:
 - (A) enjoin a violation or threatened violation of a rule or requirement adopted by the county in this Code; or
 - (B) recover a civil penalty authorized by Texas Local Government Code, section 573.003(a).
- (b) Nuisances. An actual or threatened discharge to a Municipal Separate Storm Sewer that violates or would violate this chapter is hereby declared to be a nuisance.
- (c) Abatement of Violation and Remediation. Any person violating any of the provisions of this chapter is liable for any costs of violation abatement or remediation of any property, land, water, or wildlife habitat negatively

affected, damaged, or threatened as a result of any such violation. The cost of abatement or remediation is the responsibility of that person and not a cost borne by Travis County and any other affected entities.

- (d) Injunctive Relief. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate this chapter, Travis County may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Travis County may recover all attorney fees, court costs, and other expenses associated with enforcement of the Code, including sampling and monitoring expenses.