

**BRUSHY CREEK MUNICIPAL UTILITY DISTRICT  
ORDER NO. 10-0909-01**

**ORDER ADOPTING ILLICIT DISCHARGE, DETECTION, AND ENFORCEMENT PROGRAM  
RULES**

THE STATE OF TEXAS                   §

COUNTY OF WILLIAMSON               §

**WHEREAS**, Brushy Creek Municipal Utility District (the “District”) is a duly created and existing municipal utility district created and operating under Chapters 49 and 54 of the Texas Water Code, as amended;

**WHEREAS**, the District owns and operates a small municipal separate storm sewer system (“MS4”) and is located within the Austin, Texas urbanized area, as defined by the U.S. Census Bureau. Accordingly, the District is required by Section 402 of the Clean Water Act and EPA’s Phase II stormwater permitting regulations to obtain permit authorization for stormwater and certain non-stormwater discharges to surface water in the state;

**WHEREAS**, in accordance with state and federal laws, the District previously adopted a Stormwater Management Program (“SWMP”) and filed its Notice of Intent to obtain coverage for storm water discharges under TPDES General Permit No. TXR040000;

**WHEREAS**, the General Permit and SWMP require the District to establish a program to detect and eliminate illicit discharges to the MS4. To the extent allowable under state and local law, the District must utilize a regulatory mechanism to prohibit, detect, and eliminate illicit discharges, including enforcement procedures for removing the source of an illicit discharge;

**WHEREAS**, Section 54.205 of the Texas Water Code authorizes a municipal utility district to adopt and enforce reasonable rules and regulations for certain purposes, including to preserve the sanitary condition of all water controlled by a district; and

**WHEREAS**, in accordance with the SWMP and the General Permit, the Board of Directors now desires to adopt illicit discharge, detection and enforcement program rules to prohibit, detect, and eliminate illicit discharges to the MS4.

**NOW THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF BRUSHY CREEK MUNICIPAL UTILITY DISTRICT THAT:**

Section 1.       The matters and facts recited in the preamble to this Order are found to be true and correct and the same are incorporated herein as a part of this Order.

Section 2.       The Board of Directors hereby adopts the Illicit Discharge, Detection, and Enforcement Program Rules in the form attached hereto.

Section 3.       In accordance with Section 54.207 of the Texas Water Code, a substantive statement of the rules and the penalty for their violation shall be published once a week for two consecutive weeks in a newspaper with general circulation in the District;

Section 4. The Illicit Discharge, Detection and Enforcement Program Rules shall be effective upon adoption of this Order.

Section 5. Upon approval and execution, a copy of this Order shall be retained in the permanent records of the District.

**PASSED AND APPROVED** this the 9 day of September, 2010.

  
\_\_\_\_\_  
President, Board of Directors

ATTEST:

  
\_\_\_\_\_  
Secretary, Board of Directors

**BRUSHY CREEK MUNICIPAL UTILITY DISTRICT  
ILLICIT DISCHARGE, DETECTION AND ENFORCEMENT PROGRAM RULES**

Adopted 9/9, 2010

**Section 1. Purpose.**

The District's Illicit Discharge, Detection and Enforcement Program is intended to protect the sanitary condition of water controlled by the District and to thereby provide for the health, safety, and general welfare of the citizens of Brushy Creek Municipal Utility District (the "District") through the regulation of non-storm water discharges to the municipal separate storm sewer system to the maximum extent practicable as required by federal and state laws. These Rules establish methods for controlling the introduction of pollutants into the District's municipal separate storm sewer system pursuant to the District's Stormwater Management Program adopted under TPDES General Permit No. TXR040000. The objectives of these Rules are:

- (1) to regulate the contribution of pollutants into the District's municipal separate storm sewer system;
- (2) to prohibit Illicit Connections and Discharges to the District's municipal separate storm sewer system; and
- (3) to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with these Rules.

**Section 2. Definitions.**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in these Rules, shall have the meanings hereinafter designated.

CFR means the Code of Federal Regulations.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Construction activity including clearing, grading and excavation activities required by the Federal Clean Water Act to have a permit to discharge storm water. Construction Activity does not include operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale.

Contaminated means containing a harmful quantity of any substance.

Contamination means the presence of or entry into the MS4 of any substance which may be deleterious to the public health and/or the quality of the water.

District means Brushy Creek Municipal Utility District.

Discharge means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the District's municipal separate storm sewer system (MS4).

Discharger means any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.

Environmental Protection Agency or EPA means the United States Environmental Protection Agency, or any duly authorized official of said agency.

Facility, as used in these Rules, means any facility, including construction sites, required by the Federal Clean Water Act to have a permit to discharge storm water associated with industrial activity.

Illicit Connections. An illicit connection is defined as either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by any governmental entity, including the District; or,
- (b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the District.

Illicit Discharge. Any discharge or release to the MS4 that is not composed entirely of storm water, except as exempted by Section 6(b) of these Rules.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR Section 122.26(b)(14).

Municipal separate storm sewer system (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the District and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

NOI means Notice of Intent.

Notice of intent means the Notice of Intent that is required by the TPDES Storm Water Multi-Sector General Permit, the TPDES Storm Water Construction General Permit, or

any similar general permit to discharge storm water associated with industrial activity that is issued by TCEQ.

Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns.

Pollutant Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind..

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

State means the State of Texas.

Storm water means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

TAC means the Texas Administrative Code.

TCEQ means the Texas Commission on Environmental Quality.

Texas Pollutant Discharge Elimination System means the program delegated to the State of Texas by the EPA pursuant to 33 USC '1342(b).

TPDES means the Texas Pollutant Discharge Elimination System.

TPDES permit means a permit issued by TCEQ that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Uncontaminated means not containing a harmful quantity of any substance.

USC means United States Code.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Any word or phrase not otherwise defined herein shall have the meanings set forth in TPDES General Permit No. TXR040000, and when not defined in such general permit, shall have the meaning set forth in 40 CFR Section 122.26.

**Section 3. Applicability**

These Rules shall apply to all water entering the MS4 generated on any developed or undeveloped lands within the District unless explicitly exempted by the District.

**Section 4. Administration.**

The General Manager of the District, and his or her authorized representatives, are authorized to administer, implement, and enforce the provisions of these Rules.

**Section 5. Edwards Aquifer Protection**

Discharges of stormwater prohibited by 30 TAC Chapter 213 (the “Edwards Aquifer Protection Rules”) are prohibited. Discharges located within the Edwards Aquifer Recharge Zone or Edwards Aquifer Contributing Zone (as defined in the Edwards Aquifer Protection Rules) must comply with all requirements of the Edwards Aquifer Protection Rules in addition to the requirements of these Rules. Any requirements of a Water Pollution Abatement Plan approved by TCEQ shall remain in full force and effect for all purposes.

**Section 6. Prohibition of Illicit Discharges.**

(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. Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. Discharges from potable water sources;
4. Diverted stream flows;
5. Rising ground waters and springs;
6. Uncontaminated ground water infiltration;
7. Uncontaminated pumped ground water;
8. Foundation and footing drains;

9. Air conditioning condensation;
  10. Water from crawl space pumps;
  11. Individual residential vehicle washing;
  12. Flows from wetlands and riparian habitats;
  13. Dechlorinated swimming pool discharges;
  14. Street wash water;
  15. Discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
  16. Other allowable non-stormwater discharges listed in 40 CFR §122.26(d)(2)(iv)(B)(1);
  17. Non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) or the TPDES Construction General permit (CGP); and
  18. Other similar occasional incidental non-stormwater discharges, unless the TCEQ develops permits or regulations addressing these discharges.
- (c) No affirmative defense shall be available under subsection (b) if:
- (1) the discharge or flow in question has been determined by the General Manager to be a source of a pollutant or pollutants 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.

**Section 7. Prohibition of Illicit Connections**

- (a) A person commits an offense if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (b) The construction, use, maintenance or continued existence of an illicit connection to the MS4 is prohibited.
- (c) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(d) Illicit connections in violation of these Rules must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the General Manager.

(e) Any drain or conveyance to the MS4 that has not been documented in plans approved by the District shall be located by the owner or occupant of such property upon receipt of written notice from the General Manager. Such notice shall specify a reasonable time period within which the location of the drain or conveyance must be completed, and results furnished to the General Manager.

## **Section 8. Storm Water Discharges Associated with Industrial Activity**

### **(a) Submission of NOI to District.**

(i) The operator of any facility located within the District required to have a TPDES permit to discharge storm water associated with industrial activity, including construction activity, shall submit a copy of the Notice of Intent (NOI) to the General Manager at the same time the operator submits the original Notice of Intent to the TCEQ.

(ii) The copy of the Notice of Intent may be delivered to the General Manager either in person or by mailing it to:

Notice of Intent to Discharge Storm Water  
Brushy Creek Municipal Utility District  
c/o General Manager  
16318 Great Oaks Drive  
Round Rock, Texas 78681

(iii) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the General Manager.

### **(b) Compliance with Permit.**

(i) A facility shall be operated in strict compliance with the requirements of its TPDES permit to discharge storm water associated with industrial activity.

(ii) A person commits an offense if the person operates a facility in violation of a requirement of the facility's TPDES permit to discharge storm water associated with industrial activity.

## **Section 9. Entry and Inspection of Property.**

(a) Pursuant to and in accordance with Section 49.221(b) of the Texas Water Code, the General Manager and his or her authorized representatives are authorized to enter and inspect



any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting and investigating conditions relating to compliance with these Rules.

(b) Unreasonable delays in allowing the General Manager access to a permitted facility is a violation of these Rules.

**Section 10. Notice of Violation.**

(a) Whenever the General Manager finds that a person has violated a prohibition or failed to meet a requirement of these Rules, the General Manager may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (i) The performance of monitoring, analyses, and reporting;
- (ii) The elimination of illicit connections or discharges; and
- (iii) That discharges, practices, or operations in violation of these Rules shall cease and desist.

(b) Any person receiving a notice of violation may appeal the determination of the General Manager. The notice of appeal must be received by the District within 10 days from the date of issuance of the Notice of Violation. A hearing on the appeal before the Board of Directors of the District shall take place at the first meeting of the Board of Directors at which such matter may be considered after receipt of the notice of appeal by the District. The decision of the Board of Directors shall be final.

**Section 11. Emergency Suspension of Utility Service and MS4 Access.**

(a) The District may, without prior notice, suspend water service, sanitary sewer service, and/or MS4 discharge access to a person discharging to the MS4 when such suspension is necessary to stop an actual or threatened discharge which:

- (1) presents or may present imminent and substantial danger to the health or welfare of persons; or
- (2) presents or may present imminent and substantial danger to the MS4.

(b) When the General Manager determines that District water service and/or sanitary sewer service needs to be suspended pursuant to subsection (a), the General Manager shall be authorized to direct staff to do so.

(c) As soon as is practicable after the suspension of service or MS4 discharge access, the General Manager shall issue a notice of violation to the discharger and shall order the discharger to cease the discharge immediately.

(d) If the discharger fails to comply with an order issued under subsection (c), the General Manager may take such steps as the General Manager deems necessary to prevent or minimize damage to the MS4, or to minimize danger to persons.

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

(1) The discharger presents proof, satisfactory to the General Manager, that the noncomplying discharge has been eliminated and its cause determined and corrected;

(2) The discharger pays the District for all costs the District incurred in responding to abating, and remediating the discharge or threatened discharge; and

(3) The discharger pays the District for all costs the District will incur in reinstating service or access.

(f) A discharger whose service or access has been suspended or disconnected may appeal to the Board of Directors of the District the notice of violation and suspension of access to the MS4. Any such appeal must be in writing and in accordance with the procedures set forth in Section 10 above.

**Section 12. Enforcement Measures after Appeal.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within the time period set forth in the decision of the Board of Directors upholding the decision of the General Manager, then the District may levy and collect civil penalties, pursue injunctive relief, file legal proceedings to recover damages, terminate MS4 access, terminate retail water or sewer service when necessary to protect the MS4 or human health, and/or pursue any other remedies authorized under these Rules or by applicable law. Notwithstanding any provision in these Rules to the contrary, the initiation of formal legal proceedings to enforce a civil penalty, pursue injunctive relief, or recover damages shall require prior approval of the Board of Directors of the District.

**Section 13. Injunctive Relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of these Rules. If a person has violated or continues to violate the provisions of these Rules, the District may, upon approval of the Board of Directors, 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.

**Section 14. Civil Penalties.** Pursuant to the authority set forth in Section 49.004 of the Texas Water Code, any person that has violated these Rules or that fails to comply with the Notice of Violation shall be subject to a civil penalty of \$1000.00 dollars per violation per day the violation continues. The District may seek recovery of all attorney's fees and court costs and other expenses associated with enforcement of these Rules in addition to recovery of any civil penalty.

**Section 15. Remedies Not Exclusive.** The remedies listed in these Rules are not exclusive of any and it is within the discretion of the Board of Directors to seek any and all remedies available under state or federal law in the event of a violation.

**Section 16. Severability**

The provisions of these Rules are hereby declared to be severable. If any provision, clause, sentence, or paragraph of these Rules or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of these Rules.

**Section 17. Compatibility with Other Laws and Regulations**

These Rules are not intended to modify or repeal any order, rule, regulation or provision of local, state, or federal law, regulation, or approval. Where any provision of these Rules imposes restrictions different from those imposed by any applicable ordinance, rule, regulation, permit or approval, the provision that is more restrictive or provides the higher protective standard for human health or the environment shall control.