

TO: Renee Esses, Special Project Manager, City of Farmers Branch
FROM: Ryan Deal, GIT, and Wylie Gorup, EIT, CFM, Freese and Nichols
SUBJECT: Phase II Small MS4 – Illicit Discharge Detection and Elimination Ordinance Requirements
DATE: 5/28/2020
PROJECT: MS4 Program Implementation Assistance – FBR20229

Purpose of Memorandum

Freese and Nichols, Inc. (FNI) has prepared this memorandum to summarize the evaluation of the City of Farmers Branch (City) illicit discharge detection and elimination (IDDE) ordinance requirements. The City code does not currently have a standalone IDDE ordinance. However, relevant provisions are outlined in the City's code of ordinances under *Chapter 34, Article VI, Sections 290 – 293* and *Chapter 86, Article III, Section 121*.

FNI reviewed these sections with respect to their compliance with the provisions of the Phase II MS4 General Permit and the related elements of the City's Stormwater Management Program (SWMP). This memorandum includes the results of our evaluation as well as recommendations to enhance compliance with State regulations while advancing City water quality and stormwater management goals.

Small MS4 Stormwater Management Program Requirements

The TCEQ administers the Small MS4 General Permit authorizing stormwater discharges to surface waters in the State. Separate storm sewer systems include ditches, curbs, gutters, storm sewers, and similar means of collecting or conveying runoff that do not connect with a wastewater collection system or treatment facility before discharging into water bodies. As an owner and operator of such a system, the City has been subject to the regulatory requirements of the permit since it was first issued in 2007.

The permit requires all regulated Small MS4s to develop a SWMP defining the City's program of Best Management Practices (BMPs) and goals developed to meet the six main MS4 program requirements, referred to as Minimum Control Measures (MCMs). The MCMs defined by *Part III, Section B* of the permit include:

1. Public Education, Outreach, and Involvement
2. ***Illicit Discharge Detection and Elimination***
3. Construction Site Stormwater Runoff Control
4. Post Construction Stormwater Management in New Development and Redevelopment
5. Pollution Prevention and Good Housekeeping for Municipal Operations
6. Industrial Stormwater Sources (not applicable to City of Farmers Branch)

Illicit Discharge Detection and Elimination Stormwater Management Requirements

The permit provisions for IDDE stormwater management include a requirement for the City to adopt an ordinance or other regulatory mechanism to enforce the prohibition of unauthorized discharges to the separate storm sewer system. The regulatory mechanism must include the legal authority to implement and enforce these requirements, as outlined under *Part III, Section A.3* of the permit, with relevant provisions summarized below:

- Authority to prohibit illicit discharges and illicit connections;
- Authority to respond to and contain other releases – Control the discharge of spills, and prohibit dumping or disposal of materials other than stormwater into the Small MS4;
- Authority to require compliance with conditions in the permittee’s ordinances, permits, contracts, or orders;
- Authority to require installation, implementation, and maintenance of control measures;
- Authority to receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit;
- Authority, as needed, to enter and inspect private property;
- Authority to respond to non-compliance with BMPs by the Small MS4 consistent with their ordinances or other regulatory mechanisms; and
- Authority to assess penalties.

Specifically, the IDDE ordinance must address the requirements of *Part III, Section B.2* of the permit, as summarized below:

- The ordinance must prohibit illicit discharges, illicit connections, and illegal dumping.
- The ordinance must authorize the City to conduct source investigations to eliminate illicit discharges, illicit connections, and illegal dumping to the MS4.
- The ordinance must authorize the City to assess penalties for illicit discharges, illicit connections, and illegal dumping to the MS4.

Summary of Findings and Recommendations

As part of its SWMP, the City is required to perform an evaluation of its MS4 ordinances during the permit term (January 2019 – January 2024) and to update its ordinances as necessary to meet the permit requirements. FNI performed this evaluation on the City’s behalf.

The following section outlines the summary of our evaluation of *Chapter 34, Article VI, Sections 290 – 293* and *Chapter 86, Article III, Section 121*. as well as recommendations for changes to the ordinance to enhance compliance with IDDE permit requirements. The findings and recommendations for IDDE ordinance requirements are outlined below:

1. The ordinance is currently included under *Chapter 86 – Utilities, Article III. Sanitary Sewer System, Subdivision II. – General Sewer Use Requirements, Section 121 – Prohibited discharges to the storm sewer*. **FNI recommends that the City relocate this provision to *Chapter 34 – Environment* and create a new Article with the title of “Illicit Discharge Detection and Elimination.” The City of Fort Worth’s Environment Code Article III – Stormwater Protection, Division 1. General Provisions** has been used as a model ordinance by communities around the country and is recognized nationally by the Environmental Protection Agency as a model ordinance. FNI recommends using the City of Fort Worth’s Article III, Division 1 as a model ordinance.
2. The ordinance under *Section 121* does not reference the MS4 General Permit requirements. **FNI recommends that the City specifically reference the MS4 General Permit and adopt its regulations, as well as subsequent revisions, as part of the Illicit Discharge Detection and Elimination ordinance.**
3. While the ordinance includes *Section 34-290 – Acts adversely affecting water quality* and *Section 86-121 – Prohibited discharges to the storm sewer*, these sections do not specifically address illicit discharges, illicit connections, or illegal dumping; nor do the exemptions identified in this section coincide with the allowable non-stormwater discharges identified in the MS4 General Permit requirements. **FNI recommends the following ordinance revisions:**
 - a. **Specifically address illicit discharges, illicit connections, and illegal dumping in accordance with the MS4 General Permit.**
 - b. **Prohibit and deem any discharges to the MS4 that is not composed entirely of stormwater a nuisance.**
 - c. **Include list of Allowable Non-Stormwater Discharges, or exemptions, identified in Part II, Section C of the MS4 General Permit.**
 - d. **Make the distinction that exemptions include all entity activities not just City activities.**
4. The ordinance under *Chapter 34, Article VI, Sections 291-293* grants the City authorization to provide a notice of violation and to abate a nuisance. **The provisions in these sections satisfy the requirement for the ordinance to enforce the installation and maintenance of control measures, allow access to inspect private property, as needed, and authorize the City to assess penalties for non-compliance with SWMP BMPs.**

However, the ordinance does not provide the appropriate provisions to collect information, such as, stormwater plans, inspection report, and other information deemed necessary to assess compliance with the MS4 General Permit. FNI recommends updating *Sections 291* to allow for receipt and collection of pertinent facility or property documentation and information.