

ORDINANCE NO. 2005-1  
AN ORDINANCE CONCERNING ILLICIT STORMWATER DISCHARGE

WHEREAS, the County is required by state and federal law, and as a condition of its State of Colorado stormwater discharge permit, to establish by ordinance methods for controlling the introduction of pollutants into the storm drain system, in order to protect and enhance the water quality of the state's watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the State and Federal Clean Water Act; and

WHEREAS, §18-4-511, C.R.S., makes it a crime to place any foreign substance whether solid or liquid into any body of water or watercourse; and

WHEREAS, §30-15-401(1)(a)(V), C.R.S., provides that, in addition to the authority given counties under §18-4-511, C.R.S., above, the Board of County Commissioners of Boulder County is authorized to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease, including the authority to restrain, fine, and punish persons for dumping rubbish, including trash, junk and garbage on public or private property; and

WHEREAS, "public or private property" is defined at §18-4-511, C.R.S., to include "waters and watercourses"; and

WHEREAS, §16-13-305(1)(e) makes any unlawful pollution or contamination of any surface or subsurface waters in this state a Class 3 Public Nuisance; and

WHEREAS, this ordinance is necessary to protect the health, safety, and general welfare of the citizens of Boulder County through the regulation of non-stormwater discharges to the storm drainage system.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Boulder County:

SECTION 1. PURPOSE/INTENT.

The objectives of this ordinance are:

To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user

To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system

To establish procedures to carry out the inspection, surveillance and monitoring necessary to ensure compliance with this ordinance

To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

## SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency means Boulder County Public Health.

Best Management Practices (BMPs) means the schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Construction Activity means activities including but not limited to clearing and grubbing, grading, excavating, and demolition.

Health Officer for Boulder County means the Executive Director of Boulder County Public Health.

Illegal Discharge means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 6.C of this ordinance.

Illicit Connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyance which allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, and any connection to the storm drain system from indoor drains, sump pumps and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Hazardous Material means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Mobile Washing Operation is a commercial activity involving power washing, steam cleaning, and any other method of mobile cosmetic cleaning of, by way of example, the following: vehicles, fabric, pets and/or exterior surfaces.

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):

Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to state waters;

Designed or used for collecting or conveying stormwater;

Which is not a combined sewer; and

Which is not part of a Publicly Owned Treatment Works (POTW).

A regulated municipality's permit will cover all areas of the municipality, unless explicitly excluded due to being outside of the urbanized area or designated area for the permit.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b) i.e. Colorado Discharge Permit System) 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.

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

Person means 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 means 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; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects; accumulations that 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; wastes and residues that result from mobile washing operations; noxious or offensive matter of any kind, and any soil, rock, and any type of landscaping material.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Storm Drainage System: refer to MS4 definition.

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

Stormwater Pollution Prevention Plan or Stormwater Management Plan means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Threatened Discharge means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce or mitigate damages to persons, property or natural resources.

Watercourse means a natural or artificial channel through which stormwater or floodwater can flow, either regularly or infrequently.

Waters of the State of Colorado (State waters) means any and all surface waters that are contained in or flow in or through the state of Colorado. The definition includes all watercourses, even if they are usually dry.

### SECTION 3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drain system generated on any developed or undeveloped lands in unincorporated Boulder County, unless explicitly exempted by an authorized enforcement agency.

### SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

Boulder County Public Health shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Health Officer of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

### SECTION 5. 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 that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

## SECTION 6. DISCHARGE PROHIBITIONS, EXEMPTIONS AND REQUIREMENTS.

### A. Prohibition of Illegal Discharges

1) No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

2) It shall be unlawful to cause pollutants to be deposited in such a manner or location as to constitute a threatened discharge into MS4 or waters of the State. Pollutants that are no longer contained in a pipe, tank or other container are considered to be threatened discharges unless they are actively being cleaned up.

### B. Prohibition of Illicit Connections

1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2) 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.

3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

### C. Exemptions

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

The following discharges are exempt from the discharge prohibitions established by this ordinance when properly managed: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

Agricultural irrigation activities, and road maintenance activities performed by state or local governments are exempt from the discharge prohibitions established by this ordinance provided that BMPs or standardized industry practices are followed.

3) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

4) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency 24 hours prior to the time of the test.

5) The discharge prohibition shall also not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

#### D. Requirements Applicable to Potential Dischargers

1) Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. Irrigation structures themselves are excepted. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

2) Minimization of Irrigation Runoff. A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation systems shall be managed to reduce the discharge of water from a site.

3) Cleaning of Paved Surfaces Required. The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Ordinance.

4) Mobile Washing Operations. Mobile washing operations shall not discharge to the storm drainage system in violation of this Ordinance.

5) Maintenance of Equipment. Any leak or spill related to equipment maintenance in an outdoor, uncovered area should be contained to prevent the potential release of pollutants.

6) Pesticides, Herbicides and Fertilizers. Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.

## SECTION 7. SUSPENSION OF MS4 ACCESS.

### Suspension due to Illicit Discharges in Emergency Situations

The Health Officer of Boulder County Public Health may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, Boulder County Public Health may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

### Termination due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. Boulder County Public Health will notify a violator of the proposed termination of its MS4 access. The violator may petition the Health Officer of Boulder County Public Health for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of Boulder County Public Health.

## SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to Boulder County Public Health prior to the allowing of discharges to the MS4.

## SECTION 9. ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES.

### Applicability.

This Section 10 applies to all facilities that have NPDES permits for stormwater discharges associated with industrial activity, including construction activity.

## Access to Facilities.

Boulder County Public Health shall be allowed to enter and inspect permitted facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of Boulder County Public Health.

Facility operators shall allow Boulder County Public Health 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 an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

Boulder County Public Health shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.

Boulder County Public Health has the right to require the discharger to install monitoring equipment as necessary to ensure the protection of Public Health and Environment. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of Boulder County Public Health and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing Boulder County Public Health access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies Boulder County Public Health reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

If Boulder County Public Health has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

## SECTION 10. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

Boulder County Public Health will adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility, which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the state. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) or stormwater management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

## SECTION 11. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a premises, or responsible for emergency response for such premises has information of any known or suspected release of materials which are resulting or may result in illegal discharges into stormwater, the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify Boulder County Public Health in person or by phone no later than 24 hours. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to Boulder County Public Health within five (5) calendar days of the initial notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

## SECTION 12. VIOLATIONS, ENFORCEMENT AND PENALTIES.

### Notice of Violation.

Whenever Boulder County Public Health finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, Boulder County Public Health may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, Boulder County may seek the enforcement of the work through injunction or other legal means, or the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

#### Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal to the Board of County Commissioners the determination of Boulder County Public Health. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the Board of County Commissioners shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Board of County Commissioners shall be final.

#### Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty authorized pursuant to Colorado Revised Statutes, Title 30, Article 15. The authorized enforcement agency may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

#### Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the

violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Remedies Not Exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

#### SECTION 13. SEVERABILITY.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

#### SECTION 14. EFFECTIVE DATE.

This article shall be effective sixty (60) days from and after the date of its adoption and final publication.

INTRODUCED, READ, AND ADOPTED ON FIRST READING on June 7 2005, and ordered published in the LONGMONT TIMES-CALL.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO