

**PUBLIC HEARING
BOULDER COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS**

DATE: **January 15, 2013**
TIME: **9:00 A.M.**
PLACE: 1325 Pearl St., 3rd Floor, BOCC Hearing Room, Boulder

Notice is hereby given that a public hearing will be held by the Board of County Commissioners at the time and place specified above. All persons interested in the following item(s) are requested to attend such hearing and aid the Commissioners in their consideration.

PRESENTER: County Transportation Department (Justin Gindlesperger)
Ordinance 2012-5

AN ORDINANCE PURSUANT TO C.R.S. SECTION 30-15-401(11) REGULATING CONSTRUCTION-RELATED STORMWATER DISCHARGE (TO BE INCORPORATED INTO AMENDMENTS TO ARTICLES 7-904 AND 18 OF THE BOULDER COUNTY LAND USE CODE PER DOCKET DC-12-0006)

The originally scheduled date for this hearing (12/20/12 at 11 a.m.), has been changed to the date and time noted above, to provide adequate time for notice to be published.

Detailed information regarding this item is available for public examination at the Boulder County Transportation Department located at 2525 13th Street, Boulder, CO 80302 (Justin Gindlesperger (303) 441-3900), or at the County's website for the Docket: <http://www.bouldercounty.org/property/build/pages/lucodeupdatedc120006.aspx>.

Free Parking in the City of Boulder CAGID lots is available for Board of County Commissioners' hearing participants. See the staff at the lobby desk for city parking vouchers.

Persons needing special services provided under the Americans with Disabilities Act, please contact Julia Yager, ADA Coordinator, or the Boulder County Human Resources Office at (303) 441-3525 at least 48 hours before the scheduled hearing.

TEXT PROPOSED FOR ADOPTION AS BOULDER COUNTY ORDINANCE 2012-5 UNDER C.R.S. SECTION 30-15-401(11), PURSUANT TO BOARD OF COUNTY COMMISSIONERS' FIRST PUBLIC READING ON 12/6/12, WITH SECOND READING AND PUBLIC HEARING TO BE HELD ON 1/15/13, 9:00 A.M., BOULDER COUNTY COURTHOUSE (ALSO PROPOSED FOR ADOPTION AS PART OF DOCKET #DC-12-0006: TEXT AMENDMENTS TO ARTICLES 7-904, 18, 13-100, AND 7-903 OF THE BOULDER COUNTY LAND USE CODE RELATED TO STORMWATER QUALITY AND MANAGEMENT AND EROSION AND SEDIMENT CONTROL)

Article 7-904 of the Boulder County Land Use Code is proposed to be repealed and reenacted as follows:

7-904 Stormwater Quality Management Permit Requirements (also adopted, with related amendments and additions to Article 18 definitions, as County Ordinance No. 2012-5 under C.R.S. Section 30-15-401(11))

A. Purpose/Intent The intent of this section is to protect and enhance the water quality of Boulder County's watercourses and waters of the state; comply with and implement the Clean Water Act, the Colorado Water Quality Control Act including the state Water Quality Control Division's ("WQCD") Colorado Discharge Permit System ("CDPS") Stormwater Management Program, and related County water quality and land use authority; and provide for the health, safety, and welfare of Boulder County citizens by controlling the discharge of construction activity-generated stormwater to the municipal/county separate storm sewer system (MS4) from within the County's unincorporated Urbanized Area (or such other permit area as may be as authorized under the County's CDPS General Permit issued by the state WQCD), and to state waters located within or flowing from the unincorporated County generally. The objectives of this section are therefore to:

1. Regulate the contribution of stormwater-conveyed pollutants to the MS4 (under the County's CDPS General permit), and more broadly to state waters located within or flowing from the unincorporated County, generated from construction activity and development;
2. Reduce pollutants in stormwater discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth or land;
3. Require the installation of temporary and permanent stormwater runoff controls and best management practices ("BMPs") to prevent the deterioration of water quality related to stormwater discharges from construction activities and sites;
4. Provide reliable mechanisms to assure the effective, ongoing maintenance of required permanent BMPs;
5. Maintain structural stormwater control facilities and nonstructural stormwater management practices so that they continue to function as designed and do not threaten public safety;
6. Establish procedures for monitoring, inspection, and enforcement as necessary to ensure compliance with County stormwater regulations; and
7. Facilitate compliance with water quality-related state and federal standards and permits.

B. Applicability

1. This section applies to all stormwater entering the County's MS4 storm drainage system, and other waters of the state located within or flowing from unincorporated Boulder County, generated from construction activity on any developed or undeveloped lands within the unincorporated County, as provided by this section, unless exempted.

C. Responsibility for Administration

1. The County Engineer shall administer, implement, and enforce the provisions of this section.

D. Requirements for Stormwater Quality Permit; Limited Permit Exemptions

1. A stormwater quality permit from the County Engineer is required for construction activity resulting in the following total disturbed area:
 - a. One acre or more; or
 - b. Less than one acre if construction activity is part of a larger common plan of development, even if multiple, separate and distinct land development activities may take place at different times on different schedules, so long as the common plan will ultimately disturb one acre or more.
2. The County Engineer may require a stormwater quality permit regardless of the size of the total disturbed area, in conjunction with approval of a final subdivision plat, special use permit, or other site specific development plan under this Code, or if the construction activity is adjacent to a watercourse or wetlands.
3. Agricultural land management activities, except point source discharges subject to National Pollutant Discharge Elimination System ("NPDES") or CDPS stormwater permitting requirements, are exempt from this section.

E. Application Requirements

1. Applications for stormwater quality permits shall be filed on a form prescribed by the County Engineer. A complete application shall include:
 - a. Signature by the landowner or the owner's authorized representative, and identification of the operator and other persons responsible for compliance with the permit. The County Engineer shall have the discretion to require that persons identified as operators, or other persons who are known at the time of application as being responsible for implementation of any approved permit, sign the application as applicants.
 - b. Documentation of an application for a Colorado Department of Public Health and Environment ("CDPHE") stormwater general permit for construction.
 - c. A Stormwater Management Plan ("SWMP") including but not limited to the following:
 - i. Best Management Practices ("BMPs") to be installed on a temporary basis as necessary to control stormwater discharges from the construction site both prior to and during construction;
 - ii. A site plan or plans depicting the affected site in sufficient detail to show significant site features (natural and manmade), areas proposed to be disturbed and developed, existing easement areas and restricted development areas, and locations of proposed temporary BMPs; and
 - iii. Identification of any affected MS4 or waters of the state anticipated to receive stormwater discharge from the site.

- d. For construction activity within the Urbanized Area, a final drainage plan including a narrative describing proposed permanent BMPs and methods for their perpetual maintenance, identification of the parties responsible for perpetual maintenance of proposed permanent BMPs, a site plan showing locations of the proposed permanent BMPs, and, as required by the County Engineer, engineered drawings or design schematics for proposed permanent BMPs.
- e. All BMPs designed to meet the requirements of this section shall generally comply with the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3 – Best Management Practices; the Colorado Department of Transportation's ("CDOT") "Erosion Control and Stormwater Quality Guide", or any other alternative methodology, which is demonstrated to be effective and approved by the County.
- f. All other information deemed necessary for the adequate processing of the application, as required in the discretion of the County Engineer.
- g. Payment of a permit fee in an amount determined by the County Engineer as reasonably necessary to defray the costs of administering the County's stormwater quality program under this section.

F. Application Approval and Permit Requirements

1. Within thirty (30) working days after receipt of a complete stormwater quality permit application, the County Engineer shall make a decision on the submitted application. The County Engineer may extend the 30 days for a reasonable period of time if, during the review process of the complete application, the County Engineer discovers problems or deficiencies requiring additional information to be provided or a response from the applicant or related agencies or interested parties. The County Engineer shall notify the applicant in writing of any such extension and the problems or deficiencies involved, and shall attempt to make a decision as soon as reasonably possible after the initial 30 days. Failure of the County Engineer to issue a decision within the specified time period shall not result in the application being automatically approved as submitted, and the County Engineer shall retain jurisdiction to make a decision on the application at the soonest possible time.
2. If the County Engineer determines that insufficient information has been provided to make a decision on the application, or that the application as submitted cannot adequately reduce the discharge of pollutants to the maximum extent practicable and protect water quality, the County Engineer shall deny the application. If a permit is denied, the County Engineer shall notify the applicant in writing of the grounds for denial, and if appropriate shall suggest corrective actions that may be taken to obtain a permit.
3. If the County Engineer determines that the application is adequate to reduce the discharge of pollutants to the maximum extent practicable and protect water quality, the County Engineer shall approve the application, and issue the stormwater quality permit, including any reasonable conditions to mitigate conditions specific to the site, provide for the adequate installation and maintenance of temporary and permanent BMPs, and allow for reasonable adjustments in required BMPs in response to changing or unanticipated conditions in the field. Any approved permit shall also contain the following standard operating requirements:

- a. The permittee must keep the accepted SWMP on site at all times and shall make the SWMP available for County Engineer inspection upon request.
- b. The permittee shall provide timely installation and maintenance of all required temporary BMPs required in the SWMP. Nonfunctioning, damaged, or destroyed BMPs shall be repaired or restored immediately. All BMP maintenance, repair, and restoration work shall be documented on the accepted SWMP required to be kept on site and available for County Engineer inspection.
- c. The responsibility to maintain and reconstruct or repair all BMPs, both temporary and permanent, shall run with the land and be binding on subsequent owners. Permanent BMPs, which shall be required for construction activity in the Urbanized Area, shall be maintained in perpetuity.
- d. The permittee shall inspect all temporary BMPs at least every 14 days and within 24 hours after any precipitation or snowmelt event that causes surface runoff. An erosion control supervisor ("ECS") must conduct all BMP inspections and keep a detailed record of same, as part of the SWMP required to be kept on site and available for County Engineer inspection.
- e. When the County Engineer deems it necessary for the reasonable implementation of this section, the County Engineer may require the provision of a financial guarantee to assure required performance under the permit.
 - i. The financial guarantee shall be in the form of an acceptable letter of credit with a banking institution in the State of Colorado, or a cash deposit.
 - ii. The amount of the financial guarantee may include warranty collateral to assure the performance of the required improvement for an appropriate period after completion or acceptance.
 - iii. The amount and term of the guarantee and provisions for its release shall be in the reasonable discretion of the County Engineer.
- f. By accepting the issued permit, the permittee consents, both for itself and its successors in interest, to allow the County Engineer and associated County agents access to the property which is the subject of the permit, for purposes of inspecting compliance with the permit including its approved SWMP, approved final drainage plan, and all required BMPs, both temporary and permanent. County access may occur at any time for this purpose and without prior notice to the permittee, including the landowner, operator or any responsible party under the approved permit, so long as the permit is active or BMPs or other requirements under the permit are required to be met or maintained.
- g. In instances where the County Engineer has reason to believe that an unannounced inspection is not necessary to assessing compliance, the County Engineer may provide prior notice of a forthcoming inspection to the permittee.
- h. The County Engineer shall record any approved permit in the real property records of Boulder County, to provide notice to subsequent owners or persons in interest of the requirements of the permit, of the ongoing obligation to maintain permanent BMPs, and of the County Engineer's right of entry for inspection and enforcement purposes under the permit without prior consent of the permittee (including the landowner, operator, or other responsible party under the approved permit). Recordation of a permit cover sheet or of the permit itself, without all approved plans or attachments, shall be considered

adequate notice of the full contents of the permit, so long as the material recorded indicates that the full permit file can be located in the official records of the County Engineer.

G. Changes to Issued Permit; Required Permit Amendments

1. Upon receipt of a stormwater quality permit, the permittee may make minor modifications to the SWMP and its approved temporary BMPs. To qualify as a minor change, the permittee must document that the change is necessary to provide equivalent water quality protection while still fulfilling the purposes of this section and not increasing adverse water quality impacts. The permittee shall promptly record all minor modifications on the SWMP required to be kept on site and available for County Engineer inspection.
2. Whenever there is a change to the accepted SWMP or any other aspect of an approved permit involving design, construction, operation, or maintenance which has the potential to cause a reduction in water quality protection or have a significant effect on hydrology or stormwater discharge from the project or site, this shall be considered a substantial modification to the approved permit, and may not proceed unless the County Engineer first approves an amendment to the permit filed and processed in accordance with the permit application procedures specified in this section, above. In the alternative, the permittee may request that the County Engineer determine whether a proposed change is minor or substantial in accordance with the considerations specified in this section. The County Engineer may impose reasonable terms and conditions on any approval of the proposed change as minor, to assure that the change is not substantial and otherwise complies with the issued permit and this section, which terms and conditions shall become part of the issued permit.

H. County Confirmation of Compliance with Issued Permits; Ongoing Requirements To Maintain Permanent BMPS

1. Upon completion of the construction or development covered by a stormwater quality permit, the permittee shall request that the County Engineer perform a final inspection to confirm compliance with the accepted SWMP and all other requirements of the permit related to controlling stormwater and other construction site discharges prior to and during construction.
2. If the approved permit requires the construction and maintenance of permanent BMPs, those BMPs must be installed at the time of final inspection, or an additional financial guarantee meeting the terms of subsection 7-904.F.3.e, above, must be provided, as required by the County Engineer, to assure such performance. The permittee must provide "as built" plans, certified by a Colorado licensed Professional Engineer, for any required permanent BMP within 30 days after BMP construction is completed or such other time period specified in the permit by the County Engineer.
 - a. As a condition of approval of the permit and its required permanent BMPs, the permittee shall agree to maintain the BMPs to their design capacity in perpetuity, unless the BMP facility is dedicated to and accepted by the County for ownership and maintenance.
 - b. The obligation to maintain permanent BMPs shall be memorialized on the subdivision plat, annexation plat, development agreement, or other binding agreement or instrument in a form acceptable to the County Engineer, that shall be binding on all subsequent owners of the permanent BMPS and recorded

in the office of the County Clerk and Recorder. Permanent BMPs included in a final drainage plan and as depicted in the submitted as-built plans must undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the ongoing BMP maintenance agreement. Continuing permittee and owner (or other responsible party) consent for the County Engineer to enter the property or site to inspect permanent BMPs for required operation and maintenance, shall be considered to be provided as part of the stormwater quality permit issuance, as provided in subsection F.3., above.

- c. Any person who transfers ownership of land on which BMPs are located or will be located, or who otherwise transfers ownership of BMPs or responsibility for the maintenance of BMPs to another person or entity, shall provide written notice to the County Engineer within 30 days after such transfer and shall also provide clear written notice of the maintenance obligations associated with the BMPs to the new or additional owner prior to that transfer. Failure to provide proper notice will not absolve any person from meeting the requirements of this section.

I. Enforcement and Penalties

1. Violation: It is unlawful for any person to violate any provision of a stormwater quality permit or fail to comply with any of the requirements of this section. Any person who violates any of the provisions of this section may be subject to one or more of the enforcement actions outlined below.
2. Enforcement: All personnel authorized by the County Engineer shall have the power to conduct inspections, give verbal direction, issue notices of violations, perform abatement actions, seek judicial permission and relief, and implement other enforcement actions under this section or as otherwise authorized by law.
3. Right of Entry To Investigate Suspected or Known Violations: Whenever the County Engineer has reason to believe that there exists or is likely to exist any condition which constitutes a violation of this section, the County Engineer shall have the right to enter the subject property at any reasonable time to inspect and determine whether a violation exists.
 - a. Consent for Entry, or Administrative Search Warrant, Required: Before entering any property, the County Engineer shall make a reasonable effort to locate the owner and obtain consent to enter. If such consent cannot be obtained, the County Engineer may seek entry by submitting a sworn affidavit to the proper court of jurisdiction, setting forth facts sufficient to support a reasonable belief that a violation exists or is likely to exist and that further investigation of the property is thus warranted. Such request for entry may include the right for the County Engineer or its designees to set up devices on the property, conduct sampling, take photographs, or perform other investigations deemed reasonably necessary to investigate the alleged violation or assess the effect of any unauthorized erosion or discharges.
 - b. Consent for Entry, or Administrative Search Warrant, Not Required: Consent to enter or an administrative search (inspection) warrant shall not be required if entry is authorized under an existing stormwater quality permit or other prior authorization of the owner or permittee; to make observations from public property, other private property, or portions of the subject property that are

open or accessible to the public or in which the owner otherwise lacks a reasonable expectation of privacy; or where the County Engineer deems an emergency situation to exist which imminently threatens the public health or safety.

4. Notice of Violation: If the County Engineer determines that a violation of this section exists and exercises discretion to pursue enforcement, the County Engineer shall provide written notice, in letter or electronic form, to the property owner of record, and to any known permittee or operator if different from the owner. The notice shall describe the alleged violation, the steps required to abate the violation, and a reasonable timetable for compliance.
5. Stop Work Order: The County Engineer may also, in writing sent to or served on the property owner and/or permittee or operator, order that the activity constituting a violation be stopped until further notice from the County Engineer. If the owner and/or operator or permittee cannot be located, the notice to stop shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any owner and/or operator or permittee to fail to comply with a stop work order.
6. Judicial Enforcement Remedies Generally: If compliance is not timely achieved, the County Engineer or County Sheriff, as applicable, may enforce this section in any court of competent jurisdiction, seeking civil or criminal remedies, as appropriate, and relying on any applicable legal enforcement authority, including but not necessarily limited to county zoning regulatory enforcement under C.R.S. Sections 30-28-124 and 30-28-124.5; county building code enforcement under C.R.S. Section 30-28-209; and county ordinance enforcement under Part 4 of Article 15 of Title 30, C.R.S. In addition, any condition caused or permitted to exist in violation of this section is a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, with any court of competent jurisdiction empowered to enjoin such violations upon proof thereof. In any such action the County may recover its costs and attorneys' fees, and collect applicable penalty assessments, as authorized by law.
7. Judicial and Penalty Assessment Enforcement Remedies under County Ordinance Powers (C.R.S. Sections 30-15-402-410, including the simplified county court procedures of Part 1 of Article 2 of Title 16, C.R.S., and the penalty assessment provisions of C.R.S. Sections 16-2-201 and 18-1.3-503): Any person who violates a county ordinance adopted pursuant to Part 4 of Article 15 of Title 30, C.R.S., commits a class 2 petty offense under state law which shall be punished by a fine of not more than one thousand dollars for each separate violation. Each day that a violation is proven to exist may be considered a separate offense. Under this authority, the Board of County Commissioners adopts the following graduated fine schedule: \$500 for the first violation, and \$1,000 for the second or repeat violations. Pursuant to C.R.S. Section 16-2-201, the arresting officer may give the violator a penalty assessment notice, or a summons and complaint may be issued pursuant to the simplified county court procedures of Part 1 of Article 2 of Title 16, C.R.S. The County Engineer and official designees are hereby designated to enforce the ordinance provisions of this section as authorized in C.R.S. Section 30-15-402.5, and the County Sheriff is empowered to enforce county ordinance provisions under C.R.S. Section 30-15-410.
8. Administrative Remedy of Abatement of County Ordinance Violation under C.R.S. Section 30-15-401(11): Any violation that the County Engineer determines is part of the County's stormwater quality management program required by the County's Municipal

Separate Storm Sewer System (MS4) CDPS General Permit issued by the state WQCD, and that the owner, operator or permittee fails to abate following notice of violation provided as required under this section, may be administratively abated by the County in accordance with C.R.S. Section 30-15-401(11), as incorporated herein. The following provisions shall govern such proceeding:

- a. The County Engineer shall seek an administrative entry and abatement (seizure) warrant from the county or district court having jurisdiction over the property from which the violation is to be abated, which the court shall issue upon the County Engineer's presentation of this section (which has been adopted as a C.R.S. Section 30-15-401(11) ordinance); a sworn or affirmed affidavit stating the factual basis for the warrant; evidence that the property owner has received notice of the alleged violation and has failed to abate the condition within the reasonable prescribed period; a general description of the location of the subject property; and a general list of corrective action needed.
 - b. Within ten (10) days after the date of issuance of the administrative entry and abatement (seizure) warrant, the County Engineer shall execute the warrant in accordance with the directions by the issuing court; provide or mail a copy of the warrant to the property owner; and submit proof to the court of execution of the warrant, including a written inventory of any property impounded by the County Engineer.
 - c. Upon completion of these requirements, the County Engineer may assess the reasonable cost of the abatement, including five percent for inspection and other incidental costs in connection with the abatement, upon the subject property, by recording a notice of such assessment with the County Clerk and Recorder. The notice shall specify the basis for and amount of the assessment, and a reasonable time within which the assessment must be paid to the County, which generally shall be within thirty (30) days unless the County Engineer determines a longer or shorter payment period is reasonable.
 - d. Once recorded, the assessment notice shall be a lien against the subject property until paid, and shall have priority based upon the date of recording. If the assessment is not paid within the time specified in the notice, the County Clerk and Recorder, upon request of the County Engineer or other responsible County official, may certify that fact to the County Treasurer, who shall collect the assessment, together with a ten (10) percent penalty for the cost of collection, in the same manner as taxes are collected. State law for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of the assessment authorized in this section.
9. 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 the exercise of any remedy specified herein shall not necessarily prejudice the pursuit of other listed remedies. It is within the discretion of the County Engineer to seek cumulative remedies.

J. Administrative Appeals

1. Any person aggrieved by the inability to obtain a stormwater quality permit under this section, or by the County Engineer's final decision on an issued permit or interpretation of the provisions of this section, may file an administrative appeal with the Board of

County Commissioners. An appeal must be filed in writing with and received by the County Engineer no later than thirty (30) days after the final action or decision being appealed. Upon receipt of an appeal authorized in this section, the County Engineer shall schedule a public hearing before the Board of County Commissioners on the appeal at the soonest time practicable, considering the Board's schedule, staff time needed to prepare a presentation on the appeal, the issues presented in the appeal, and timing concerns of the appellant.

2. Notice of a Board of County Commissioners' hearing on the appeal shall be published in a newspaper of general circulation within the County, and provided to the appellant, no later than 14 days prior to the hearing.
3. At the hearing, the Board shall consider the documents and testimony presented by the appellant and its representatives, the County Engineer, any other involved County staff, and any interested members of the public. The Board shall make a decision based on the entire record before it, either affirming in whole or in part, or overturning, the decision of the County Engineer. The Board's decision shall be considered final upon the Board's adoption of a written resolution memorializing its decision at the public hearing.

K. Related Provisions

1. In addition to requirements in this section, stormwater quality and discharge of pollutants into the municipal separate storm sewer system (MS4, or County storm drain system) are subject to regulation under Boulder County Public Health's Ordinance 2012-4, "An Ordinance Concerning Illicit Discharge and Stormwater Quality".
2. Other permits or approvals under this Code, and related regulations of the County, such as those of the Transportation Department and County Public Health, may be necessary before construction or development can commence.