

ORDINANCE NO. 2012-4

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 drainage 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, it is necessary to repeal Ordinance No. 2005-1 regulating illicit discharges, and to enact a new ordinance in order to incorporate changes recommended by the Colorado Department of Health, to delete unnecessary language and to improve on and simplify other language based on experience gained over the last seven years; and

WHEREAS, §30-15-401(11) provides that a county which holds a municipal separate storm sewer system permit pursuant to part 5 of article 8 of title 25, C.R.S., may adopt a storm water ordinance to develop, implement and enforce the stormwater management program required by the permit; and

WHEREAS, the Board of County Commissioners of Boulder County and Boulder County Public Health ("BCPH") are given additional authority to address the discharge and threatened discharge of pollutants to the waters of the State, including

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

C.R.S. §30-15-401(1)(a)(V), which provides that, in addition to the authority given counties under §18-4-511, C.R.S., above, 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 "public or private property" is defined at C.R.S., §18-4-511 to include "waters and watercourses"; and

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

WHEREAS, BCPH is authorized to administer and enforce the laws pertaining to public health and water quality and to investigate and abate nuisances when necessary in order to eliminate conditions affecting public health; 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:

1. To regulate the introduction of pollutants to the storm drainage system
2. To prohibit illicit connections and discharges to the storm drainage system
3. To establish procedures to carry out the inspection, surveillance and monitoring necessary to ensure compliance with this ordinance
4. 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:

Best Management Practices (BMPs) means the schedules of activities, prohibitions of practices, general good housekeeping 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.

Illicit Discharge means any direct or indirect non-stormwater discharge of pollutants to the storm drainage 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 illicit discharge to enter the storm drainage 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 drainage system, and any connection to the storm drainage system from indoor drains, sump pumps and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by BCPH.

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.

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 drainage 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 means the publicly owned facilities by which stormwater is collected and conveyed, including, but no limited to, any roads and drainage systems, streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, and natural and manmade or altered drainage, ditches/channels/lakes/reservoirs, and other drainage structures.

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 drainage 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.

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 Illicit Discharges

- 1) No person shall discharge or cause to be discharged into the storm drainage 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 the storm drainage system 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

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

C. Exemptions

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

- 1) 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).
- 2) Discharges from emergency firefighting activities and water incidental to street sweeping (including associated sidewalks and medians) not associated with construction.
- 3) Dye testing is an allowable discharge, but requires a verbal notification to BCPH 24 hours prior to the time of the test.
- 4) The discharge prohibition shall also not apply to any non-stormwater discharge permitted under an NPDES or CDPHE permit.
- 5) The prohibitions set forth in this section shall not apply to any non-stormwater discharge for which an authorization, or formal commitment to not pursue enforcement actions under a policy or waste discharge order is issued and administered under the authority of the CDPHE, provided that the discharger is in full compliance with all requirements of the policy or order.

D. Requirements Applicable to Potential Dischargers

- 1) **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.
- 2) **Mobile Washing Operations.** Mobile washing operations shall not discharge to the storm drainage system in violation of this Ordinance.
- 3) **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.

4) **Materials Storage:** Materials including, but not limited to, stockpiles used in construction and landscaping activities shall be stored to minimize the release of pollutants.

5) **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. 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 BCPH prior to the allowing of discharges to the storm drainage system.

SECTION 8. ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES.

1) Whenever BCPH has reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this ordinance, BCPH shall have the right to enter the premises at any reasonable time to determine if the owner or operator is complying with all requirements of this ordinance. In the event that the owner or occupant refuses entry after a request to enter has been made, BCPH is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

2) Any violation that is part of the County's stormwater quality management program required by the County's MS4 permit from the Colorado Water Quality Division, and that remains unabated following notice of violation, may be administratively abated by the County in accordance with C.R.S. section 30-15-401(11). BCPH shall seek an administrative entry and abatement (seizure) warrant, and shall execute the warrant in accordance with the directions of the court. BCPH may assess the reasonable cost of the abatement, including five percent for inspection and other incidental costs, upon the property by recording a notice of such assessment with the County Clerk and Recorder specifying a reasonable time within which the assessment must be paid to the County, which generally shall be within thirty (30) days. Once recorded, the assessment shall be a lien against the property until paid and shall have priority based upon its date of recording. If the assessment is not paid within the time specified in the notice, BCPH may request the County Clerk and Recorder certify that fact to the County Treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as taxes are collected.

3) BCPH shall have the right to set up on the property of any discharger to the storm drainage system such devices that are necessary to conduct an investigation of such discharges. The investigation may include, but is not limited to, the following: sampling of any discharge or process waters, the taking of photographs, interviewing staff on alleged violations, and access to any and all facilities or areas within the premises that may have any effect on the discharge.

4) BCPH may, without prior notice, act to prevent an actual or threatened discharge which presents or may present an imminent danger to the environment, public health or safety, or to the storm drainage system or waters of the State. If a Person fails to comply with a verbal or written order issued in such an emergency, BCPH may take such steps as are necessary to prevent or minimize the danger.

SECTION 9. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

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 storm drainage 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 storm drainage system.

SECTION 10. 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 illicit discharges into stormwater, the storm drainage system, or waters of the State, 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.

SECTION 11. VIOLATIONS, ENFORCEMENT AND PENALTIES.

Notice of Violation.

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

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

Once the illicit discharge or connection is eliminated, and 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, BCPH 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.

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. BCPH 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 BCPH to seek cumulative remedies.

SECTION 12. 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 13. EFFECTIVE DATE, REPEAL OF PRIOR ORDINANCE.

This article shall be effective sixty (60) days from and after the date of its adoption and final publication. Ordinance No. 2005-1 shall be repealed as of such effective date.

INTRODUCED, READ AND ADOPTED ON FIRST READING on October 30, 2012, and ordered published in the BOULDER DAILY CAMERA.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

Cindy Domenico, Chair

ATTEST:

Clerk to the Board

ADOPTED ON SECOND AND FINAL READING on November 29, 2012.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

Cindy Domenico, Chair

ATTEST:

Clerk to the Board