First Amended
Larimer County Stormwater Quality Ordinance # 11052012O001
Detection and Elimination of Illicit Discharges to Storm Drainage Systems

SECTION 1. TITLE

This Ordinance shall be titled Larimer County Stormwater Quality Ordinance.

SECTION 2. AUTHORIZATION

Section 30-15-401, *et seq.* C.R.S. enables counties to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Section 30-15-401(11)(a)(I) C.R.S. specifically authorizes counties that have been issued municipal separate storm sewer system permits (MS4 permits) pursuant to Part 5 of Article 8 of Title 25, C.R.S., to adopt a stormwater ordinance to develop, implement, and enforce the stormwater management program required by the permit.

SECTION 3. PURPOSE/INTENT.

The Colorado Department of Public Health and Environment (Department) has issued to Larimer County a "Municipal Separate Storm Sewer System" (MS4) permit. As a condition of the issuance of this permit, the Department requires that Larimer County implement and enforce a regulatory mechanism to prohibit non-stormwater discharges into storm drainage systems in unincorporated Larimer County.

The purpose of this Ordinance is to comply with the Department's condition of permit issuance to Larimer County and to provide for the health, safety, and general welfare of the citizens and residents of Larimer County, Colorado by detecting and eliminating to the maximum extent practicable non-stormwater discharges on and into storm drainage systems in unincorporated Larimer County.

The overall objectives of this Ordinance are:

(1) To regulate and prohibit the illicit discharge of non-stormwater discharges on and into storm drainage systems;

(2) To prohibit illicit connections to storm drainage systems; and

(3) To establish processes to carry out inspection, surveillance, monitoring and

enforcement necessary to ensure compliance with this Ordinance.

SECTION 4. APPLICABILITY.

This Ordinance shall apply in the unincorporated area of Larimer County, including the Estes Valley Area.

SECTION 5. DEFINITIONS.

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

Authorized Enforcement Agency: Larimer County Engineer or designated employees of the Larimer County Engineering Department.

Best Management Practices (BMPs): A device, practice, or method used during the construction phase of a project (temporary in-construction BMP) or used in perpetuity (permanent post-construction BMP) to reduce or prevent stormwater contaminants from reaching receiving waters. Temporary in-construction BMPs include proper materials and waste management, erosion source controls, sediment treatment controls, and site and schedule management. Permanent post-construction BMPs include water quality treatment and volume reduction controls such as grass swales, grass buffers, permeable pavement systems, and a variety of engineered ponds and wetlands. BMPs may also include prohibitions of practices, good house keeping practices, educational practices, maintenance and operating procedures, and practices to control spillage, leaks, sludge or water disposal, and drainage from raw materials storage. Descriptions of BMPs may be found in Larimer County's Stormwater Design Standards and Addendums.

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

Construction Activity: Construction projects resulting in land disturbance of 1 acre or more, or less than one acre when part of a larger common plan of development or sale. Such activities include but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility..

Hazardous Materials: 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.

Illegal Discharge: Any direct or indirect non-stormwater discharge into a storm drain system.

Illicit Connections: (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system including but not limited to any conveyances which allow any non-storm water discharge to enter the storm

drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency OR, (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by the authorized enforcement agency.

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

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the Environmental Protection Agency (EPA) or by the State of Colorado under authority delegated pursuant to 33 USC § 1342(b) 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/Non-Stormwater Discharge: Any discharge to a storm drainage system that is not composed entirely of stormwater except as specifically allowed herein. Non-stormwater discharges may include, but are not limited to: soil sediments from erosion of soils at construction sites; excessive nutrients such as nitrates and phosphates; 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 and 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; and noxious or offensive matter of any kind.

Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the United States when properly managed to ensure that no potential pollutants are present; and, therefore, will not be considered prohibited illegal discharges unless otherwise determined to cause a violation of the provisions of the Clean Water Act, or this ordinance:

a. Potable water line flushing;
b. Uncontaminated pumped groundwater and other discharges from potable water sources;
c. Irrigation return flows, landscape irrigation and lawn watering;
d. Diverted stream flows;
e. Rising groundwater;
f. Groundwater infiltration to the storm drain system;
g. Uncontaminated foundation and footing drains;
h. Uncontaminated water from crawl space pumps;
i. Air-conditioning condensation;
j. Natural springs;
k. Individual residential car washing, wash water (water only) from residential driveways and sidewalks;
l. Water from charity car washes;
m. Flows from naturally existing riparian habitats and wetlands;
n. Dechlorinated swimming pool discharges;
o. Water incidental to street sweeping (including associated side walks and

medians and that is not associated with construction); and

p. Flows from emergency fire-fighting activities
q. Any non-stormwater discharge permitted under an NPDES permit, CDPS permit, or CDPHE issued Low Risk Guidance or waste discharge order provided that the discharge is in full compliance with all requirements of the permit, waiver, guidance, policy, or order.

Person: Any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law.

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

Storm Drainage System: Facilities in unincorporated Larimer County by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. Storm Drainage System is synonymous with the term municipal separate storm sewer system (MS4).

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Non-Stormwater Discharge Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person to identify sources of non-stormwater discharges at or on premises and the actions to eliminate or reduce non-stormwater discharges to stormwater and stormwater conveyance systems to the maximum extent practicable.

Watercourse: A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainageways, in which stormwater and flood water flows either regularly or infrequently.

Waters of the State: Any and all surface and subsurface waters which are contained in or flow in or through the State of Colorado, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use and treatment until use and treatment have been completed. { Section 2(81) of the CDPS Regulations}

SECTION 6. RESPONSIBILITY FOR ADMINISTRATION.

The authorized enforcement agency shall administer, implement, and enforce the provisions of this Ordinance.

SECTION 7. DISCHARGE PROHIBITIONS.

7.1 Prohibition of Illegal Discharges.

(a) No person shall discharge or cause to be discharged non-stormwater into a storm drainage system or watercourses.

(b) No person shall dump or deposit any non-stormwater onto public or private premises when such dumping or deposit results in an illegal discharge to a storm drainage system.

7.2 Prohibition of Illicit Connections.

(a) No person shall construct, use, maintain or continue the existence of illicit connections to a storm drainage system.

(b) No person shall connect a line conveying sewage to a storm drainage system or allow such a connection to continue.

(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.

SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person issued an NPDES industrial activity permit for stormwater discharge or issued an NPDES construction activity permit for stormwater discharge shall comply with all provisions of such permit. Proof of compliance with such permits may be required in a form acceptable to the authorized enforcement agency prior to allowing non-stormwater discharges to a storm drainage system. Failure to comply with the provisions of such permits is a violation of this Ordinance.

SECTION 9. MONITORING DISCHARGES FROM INDUSTRIAL AND CONSTRUCTION ACTIVITIES.

9.1 Access to Premises.

(a) The authorized enforcement agency shall be allowed to enter and inspect premises of any person issued an NPDES industrial activity permit for stormwater discharge or issued an NPDES construction activity permit for stormwater discharge as often as may be necessary to determine compliance with this Ordinance. If such person has security measures in force that require proper identification and clearance before entry into its premises, such person shall make the necessary arrangements to allow access to the authorized enforcement agency.

(b) The authorized enforcement agency shall be allowed 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 the NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(c) Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the NPDES permittee at the written or oral request of the authorized enforcement agency and shall not be replaced without the consent of the authorized enforcement agency. The costs of clearing such access shall be borne by the NPDES permittee.

(d) Refusal to allow or unreasonable delays in allowing the authorized enforcement agency access to the NPDES permittee's premises for the purpose of conducting any activity authorized or required by this Ordinance is a violation of the NPDES industrial activity or construction activity a stormwater discharge permit and of this Ordinance.

(e) If the authorized enforcement agency has been refused access to any part of the NPDES permittee's premises from which stormwater is discharged, and the agency is able to demonstrate probable cause to believe that there may be a violation of the NPDES permit and/or 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 the NPDES permit or this Ordinance, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of an administrative search warrant from any court of competent jurisdiction.

9.2 Monitoring and Sampling

(a) The authorized enforcement agency shall have the right to locate on the NPDES permittee's premises such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the stormwater discharge.

(b) The authorized enforcement agency has the right to require the NPDES permittee to install monitoring equipment as necessary. The permittee shall, at its own expense, maintain at all times in a safe and property operating condition the sampling and monitoring equipment. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

SECTION 10. REQUIREMENT TO PREVENT, CONTROL AND REDUCE NON-STORM-WATER DISCHARGES BY THE USE OF TEMPORARY IN-CONSTRUCTION BEST MANAGEMENT PRACTICES AND PERMANENT POST CONSTRUCTION BEST MANAGEMENT PRACTICES.

10.1 Implementation and Maintenance of Best Management Practices

All construction activity as defined in this Ordinance shall comply with the following:

(a) Persons shall provide, at their own expense, reasonable protection from the release of non-stormwater discharges on or into the stormwater drainage system or into watercourses through the implementation and maintenance of structural and non-structural BMPs.

(b) The authorized enforcement agency may require any person owning, occupying or otherwise responsible for a premises, which is, or may be, the source of a non-stormwater discharge to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further release of non-stormwater discharges to the storm drainage system.

(c) Persons engaged in construction and/or redevelopment projects that disturb one or more acres, or projects less than one acre that are part of a larger common plan of development or sale, must design, construct, install, inspect and maintain indefinitely permanent BMP strategies or controls that prevent or minimize water quality impacts.

10.2 Best Management Practices by NPDES Permittee.

(a) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity and construction activity, to the extent practicable, shall be deemed compliance with the provisions of this Section 10.

(b) These erosion, sediment, and waste control BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 11. WATERCOURSE PROTECTION.

(a) Every person owning, occupying or otherwise responsible for a premises through which a watercourse passes, shall keep and maintain that part of the watercourse within the premises free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.

(b) In addition, every person owning, occupying or otherwise responsible for a 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.

SECTION 12. NOTIFICATION OF SPILLS.

(a) Notwithstanding other requirements of law, as soon as any person who owns, occupies or is otherwise responsible for a premises, or responsible for emergency response for such premises has information of any known or suspected release of a non-stormwater discharge or hazardous material into stormwater, or into or on a stormwater drainage system, or into waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(b) In the event of 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-stormwater discharges, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and

mailed to the authorized enforcement agency within three business days of the phone notice.

(c) If the discharge of hazardous materials or non-stormwater discharges 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 years.

SECTION 13. ENFORCEMENT.

13.1 Enforcement

It is unlawful for any person to violate any provision of, or fail to comply with any of the requirements of this ordinance. The commencement, conduct, or continuation of any illegal discharge to the storm drain system is prohibited. Any person who violates any provision of this ordinance may be subject to one (1) or more of the enforcement actions outlined in this section.

13.2 Notice of Violation

(a) Except where emergency suspension is necessary pursuant to Section13.3, the authorized enforcement agency shall provide written notice to persons violating this Ordinance. Such notice of violation shall describe the nature of the violation and may require without limitation:

(1) That monitoring, analyses, and reporting be performed;

(2) That illicit connections and illegal discharges be immediately eliminated;

(3) That non-storm water pollution or contamination hazards be immediately abated and/or remediated and any affected property be restored; and/or

(4) That source control or treatment BMPs be immediately implemented.

(b) If abatement of a violation and/or restoration of affected property is required, the written notice shall set forth a deadline within which such remediation or restoration must be completed.

(c) The written Notice of Violation shall be served by hand delivery or by certified mail, return receipt requested.

(d) Any person receiving a written Notice of Violation, who has competent evidence that there is no violation of provisions in this Ordinance, may appeal the determination of the authorized enforcement agency to the County Engineer. If the County Engineer is the acting authorized enforcement agency, the appeal shall be made to the County Public Works Director. The notice of appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before by the County Engineer or Public Works Director, as applicable, shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the County Engineer or Public Works Director shall be final.

(e) If correction of the violation is not commenced immediately and completed within the time set forth in the Notice of Violation, the authorized enforcement agency may pursue civil or criminal enforcement pursuant to Section 13.4 or 13.5.

13.3 Emergency Suspension of Non-stormwater Discharges

(a) The authorized enforcement agency may, without prior notice, order the suspension of the discharge of non-stormwater 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 storm drainage system, or to the waters of the state.

(b) If the person discharging non-stormwater fails to comply with such suspension order, the authorized enforcement agency may take such actions as deemed necessary to prevent or minimize damage to the storm drainage system or waters of the state, or to minimize danger. The authorized enforcement agency may collect all costs incurred in taking such action pursuant to the procedures set out in Section 13.4.

13.4 Civil Enforcement Action

(a) The authorized enforcement agency may apply to the Larimer County Court or Larimer County District Court for an administrative entry and seizure warrant authorizing the authorized enforcement agency of its contractor to enter the premises and take any and all actions necessary to abate the conditions violating this Ordinance and for restoration of any affected the premises.

(b) Such application to the Court shall include a copy of this Ordinance, a sworn or affirmed affidavit stating the factual basis for such warrant, evidence that the owner, occupant or person responsible for the premises has received the Notice of Violation or that reasonable efforts to serve the Notice have been made to no avail, a general description of the location of the premises that is the subject of the warrant, and a list of corrective action needed.

(c) Within ten days after the date of issuance of an administrative entry and seizure warrant, the authorized enforcement agency shall execute the warrant in accordance with directions by the issuing court, deliver or mail a copy of such warrant to the owner, occupant and person responsible for the premises by both certified mail return receipt requested and by regular mail, and submit proof of the execution of such warrant to the court, including a written inventory of any property impounded by the authorized enforcement agency.

(d) The authorized enforcement agency shall submit to the person violating the Ordinance an invoice for the costs of the abatement, plus an additional five percent for inspection and other incidental costs in connection therewith. Such costs shall be paid within ten (10) days of the date of the invoice. If not paid, the costs shall be a lien against the premises that were the subject of the abatement until paid and shall have priority based on upon the lien's date of recording.

(e) The County Clerk and Recorder may certify the amount of the lien to the County Treasurer who shall collect the amount of the lien, together with a ten percent penalty for

the cost of collection, in the same manner as other taxes are collection. The laws of Colorado 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 liens pursuant to this Ordinance.

(f) Nothing in this Section shall be construed to limit the authorized enforcement agency's institution of actions for injunction, mandamus, abatement or other appropriate actions to prevent, enjoin, abate or remove a violation of this Ordinance or to enforce this Ordinance.

Section 13.5 Criminal Prosecution

(a) Any person who violates this Ordinance commits a class 2 petty offense, and upon conviction thereof, shall be punished by a fine of up to one thousand dollars ($1,000). Each day during which such violation of this Ordinance continues shall be deemed a separate offense.

(b) The penalty assessment procedure set out in Section 16-2-201 C.R.S. shall be followed in enforcing this Ordinance pursuant to this Section 13.5.

(c) All fines and forfeitures collected by the court for violation of this Ordinance shall be paid to the Larimer County Treasurer within thirty (30) days of receipt and shall be deposited into the General Fund of the County.

(d) In addition to the penalties prescribed in this Section 13.5, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars ($10) that shall be paid to the clerk of the court by the defendant as provided by Section 30-15-402(2)(a) C.R.S.

Section 13.6 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, including but not limited to, withholding building permits or certificates of occupancy, storm drain stenciling or attendance at compliance workshops or other educational forums.

Section 13.7 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 14. VIOLATIONS DEEMED A PUBLIC NUISANCE.

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.

SECTION 15. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance 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 this Ordinance.

PASSED AND ADOPTED this 20th day of November, by the Larimer County Board of County Commissioners:

By: _____
Chair

ATTEST:

_____
Deputy Clerk to the Board

LARIMER COUNTY CLERK
SEAL
COLORADO

DATE: 11 13 12
APPROVED AS TO FORM:
_____
DEPUTY COUNTY ATTORNEY