

BENTON COUNTY BOARD OF COMMISSIONERS

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Approved as to Form:

County Counsel

Recording Secretary

Exhibit 1

Chapter 36 Addition to the Benton County Code

CHAPTER 36

ILLICIT (NON-STORMWATER) DISCHARGES

I. GENERAL PROVISIONS

36.005 Purpose and Intent

The purpose of this chapter is to protect the public health, safety, general welfare, environment, water quality and waterways through the regulation of non-stormwater discharges to the Benton County municipal separate storm sewer system to the maximum extent practicable consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq. (1972)).

This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and Stormwater Discharge Permit issued to Benton County by the Oregon Department of Environmental Quality. The purpose of this chapter is to meet the following objectives to the maximum extent practicable:

- (a) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping, excessive erosion or disposal of pollutants that degrade the natural environment; and
- (b) To establish legal authority to carry out inspection, investigation, monitoring and enforcement procedures necessary to ensure compliance with this chapter. [Ord. 2011-0243]

36.010 Applicability

- (1) The provisions of this Chapter 36 shall apply within the Corvallis Federal Urbanized Area boundary, as regulated by the Environmental Protection Agency and Oregon Department of Environmental Quality.
- (2) The Benton County Health Administrator shall administer, implement, interpret, and enforce the provisions of this Chapter 36 with assistance from the Public Works Director and Community Development Director.

36.100 Definitions

- (1) “**Accidental Discharge**” means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence.
- (2) “**Best Management Practices (BMPs)**” means 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.

- (3) **“Clean Water Act”** means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (4) **“Construction Activity”** means activities subject to the Oregon Phase II Municipal Stormwater Program or NPDES General Construction Permits or Benton County Erosion and Sediment Control Permit requirements.
- (5) **“Discharge Permit”** means a permit issued by the Oregon Department of Environmental Quality 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.
- (6) **“Federal Urbanized Area”** is a land area determined by the US Census Bureau, one or more places, central place(s), and the adjacent densely settled surrounding area — urban fringe — that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.
- (7) **“Groundwater Interceptor”** means any natural or artificial groundwater or surface water drainage system, including drain tile, curtain drain, foundation drain, cut banks, and ditches, that intercept and divert groundwater or surface water from the area of an onsite wastewater treatment absorption facility.
- (8) **“Hazardous Materials”** 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
- (9) **“Health Administrator”** means the Benton County Health Administrator or designee.
- (10) **“Illicit Discharge”** means any direct or indirect non-stormwater discharge to the county municipal separate storm sewer system, except as exempted.
- (11) **“Illegal Connection”** means either of the following :
 - (a) 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 conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain 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
 - (b) 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.
- (12) **“Municipal Separate Storm Sewer System (MS4)”** means a conveyance or system of conveyances including but not limited to any roads with drainage systems, county streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:
 - (a) Owned or maintained by Benton County;
 - (b) Designed or used for collection or conveying stormwater;

- (c) Not a combined sewer; and
(d) Not part of a publicly-owned treatment works as defined by 40 CFR §122.2.
- (13) **“Nonpoint Source”** means causes of water pollution that are not associated with point sources. Examples may include: fertilizer/pesticide runoff; sediment runoff from construction. Nonpoint sources may enter a discrete conveyance system and become a point source.
- (14) **“Non-Stormwater Discharge”** means any discharge to the storm drain system that is not composed entirely of stormwater.
- (15) **“Outfall”** means a point source as defined by 40 CFR, § 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States.
- (16) **“Person”** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, governmental entity, any interstate body or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.
- (17) **“Pollutant”** means a contaminant(s) that enters the natural environment that causes harm and its severity is based on its chemical nature, the concentration and the persistence. Examples of pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents; degreasers; cleaning chemicals; garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment.
- (18) **“Pollution”** means the human-made or human-induced alteration of the quality of waters by waste to a degree that unreasonably affects or has the potential to unreasonably affect the waters of the state.
- (19) **“Premises”** mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (20) **“Waters of the State”** lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.
- (21) **“Waters of the U.S.”** means current definition under 40 CFR 230.3(s)
- (22) **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (23) **“Structural Stormwater Control”** means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow. [Ord. 2011-0243]

II. PROHIBITIONS

36.200 Prohibition of Illicit Discharges

No person shall discharge any pollutants or waters containing any pollutants, into the Benton County municipal separate storm sewer system. To “discharge” includes any means of causing pollutants to enter the subject waters, including allowing others under the person’s control to discharge pollutants. [Ord. 2011-0243]

36.205 Exemptions

The following discharges are exempt from the prohibition of section 36.200 above:

- (1) Water line flushing performed by a government agency;
- (2) Dye testing necessary to protect public health and safety;
- (3) Other potable water sources;
- (4) Landscape irrigation or lawn watering;
- (5) Diverted stream flows;
- (6) Rising groundwater;
- (7) Groundwater infiltration to storm drains;
- (8) Uncontaminated pumped groundwater;
- (9) Roof drains, foundation or footing drains (including active groundwater interceptors);
- (10) Crawl space pumps;
- (11) Air conditioning condensation;
- (12) Natural springs;
- (13) Natural riparian habitat or wetland flows;
- (14) Discharges or flows from fire fighting, and other discharges necessary to protect public health and safety;
- (15) Any non-stormwater discharges permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and 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;
- (16) Residential car washing;
- (17) Discharges resulting from forest practices performed pursuant to the Oregon Forest Practices Rules and from accepted farm practices;
- (18) Any road Maintenance activities performed by public agencies pursuant to accepted Best Management Practices.
- (19) Discharges resulting from excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
- (20) Emergency measures to protect life, property, public infrastructure, or essential services, documented as soon as possible after the fact;
- (21) Mining activities performed pursuant to applicable state permit requirements;
- (22) Activities, conducted by public agencies that meet or exceed state or federal standards for erosion and sediment control;
- (23) Any other water source not containing pollutants. [Ord. 2011-0243]

36.210 Connections.

The unlawful discharge of non-stormwater to illegal connections and other connections to the municipal separate storm sewer system is prohibited. In addition:

- (1) A person violates this chapter if the person connects a line or other conveyance of pollution to the municipal separate storm sewer system, or uses an existing connection to convey non-stormwater discharges.
- (2) Improper connections in violation of this chapter shall not be allowed to discharge. If necessary to appropriately treat discharge, it shall be redirected to an approved onsite wastewater treatment system or the sanitary sewer system upon approval of the sanitary sewer agency.
- (3) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which might be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice from Benton County requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified (for example, “storm sewer” or “sanitary sewer”), and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to Benton County. [Ord. 2011-0243]

36.215 Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit or Benton County Erosion and Sediment Control Permit shall comply with all provisions of such permit. Proof of compliance with said industrial activity permit may be required in a form acceptable to Oregon Department of Environmental Quality, prior to allowing discharges to the municipal separate storm sewer system. Benton County Public Works and Community Development may require proof of compliance with applicable construction activity. [Ord. 2011-0243]

III. INVESTIGATION AND NOTICE

36.300 Illicit Discharge Investigation Procedure

- (1) When reported illicit discharge related incidents occur in the county road right of way, Benton County Public Works Department will lead investigation, coordination, and illicit discharge related responses. This includes identifying a responsible party to pay for the cleanup of the illicit discharge. Public Works will coordinate with local law enforcement and fire departments to receive critical information to identify the responsible party, and determine if spills or illicit discharges occur that are in reportable quantities under the Oregon Emergency Response System.
- (2) For areas outside of the road right of way on private properties, Benton County Environmental Health will lead investigation where illicit discharges have been reported and are within the authority and capability of Environmental Health. This includes identifying a responsible party to pay for the cleanup of the illicit discharge. These are currently limited to activities, facilities, and related illicit discharge issues associated with:

- (a) failing septic systems;
- (b) restaurants;
- (c) public swimming pools and spas;
- (d) private pool and spas;
- (e) hotel/motel;
- (f) recreational parks;
- (g) public water systems;
- (h) schools;
- (i) bed and breakfasts; and
- (j) solid waste;

(3) Benton County Environmental Health and Public Works will coordinate reporting hazardous materials related incidents to the State Department of Environmental Quality and the Oregon Emergency Response System when occurrences are known. [Ord. 2011-0243]

36.305 Access and Inspection of Properties and Facilities

The Health Administrator may enter and inspect properties and facilities identified in section 36.300(2) at reasonable times and as often as may be necessary to determine compliance with this chapter.

- (1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of Benton County.
- (2) Inspection of the property may include but is not limited to interviews, testing (including tracing dye), sampling, photography, videotaping, and examination and copying of any records pertaining to an NPDES permit.
- (3) The Health Administrator shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Health Administrator to conduct monitoring and/or sampling of flow discharges.
- (4) The Health Administrator may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Health Administrator. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Health Administrator and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- (6) Unreasonable delays in allowing the Health Administrator access to a facility are a violation of this chapter.

(7) If the Health Administrator has been refused access to any part of the premises from which illicit discharges are occurring, and the Health Administrator is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Health Administrator may seek issuance of an administrative search warrant from any court of competent jurisdiction.

(8) In the event the violation constitutes an immediate danger to public health or public safety, the Health Administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Health Administrator is authorized to seek costs of the abatement as outlined in Benton County Code Chapter 31. [Ord. 2011-0243]

36.310 Notification of Accidental Discharges and Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or other non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into the municipal separate storm sewer system, waters of the state, or waters of the U.S., said person shall notify Benton County and all other entities as required by state and federal law, including the Oregon Emergency Response System, by phone, or by facsimile or in person no later than the next business day. The nature, quantity and time of occurrence of the discharge shall be provided. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Health Administrator or Public Works Director within three business days of the phone or in person 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 years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill. In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

Failure to provide notification of an illicit discharge as provided above is a violation of this chapter. [Ord. 2011-0243]

36.315 Violations, Enforcement and Penalties

(1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person, who has violated or continues to violate the provisions of this chapter, may be subject to the enforcement actions outlined in Benton County Code Chapter 31, or any other legal remedies available to Benton County. Benton County may require \$500.00 per day with each day being considered a separate violation.

(2) In addition to Chapter 31 enforcement requirements, Benton County, upon finding

that a violation of this chapter has occurred, may order compliance by written notice of violation. The notice of violation shall contain:

- (a) The name and address of the alleged violator;
 - (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;**
 - (c) A statement specifying the nature of the violation;
 - (d) A description of the remedial measures necessary to restore compliance with this chapter,
 - (e) A time schedule for the completion of such remedial action;
 - (f) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
- (3) Such notice may require without limitation:
- (a) A professional or credentialed professional to complete remediation requirements;
 - (b) The performance of monitoring, analyses, and reporting;
 - (c) The elimination of illicit discharges and illegal connections;
 - (d) That violating discharges, practices, or operations shall cease and desist;
 - (e) The abatement or remediation of stormwater pollution or contamination hazards;
 - (f) The restoration of any affected property;
 - (g) Payment of costs to cover administrative, follow up inspections, abatement, and clean-up costs; and,
 - (h) The implementation of pollution prevention practices.
- (4) This chapter shall not establish responsibility on the part of Benton County to abate or clean up private property, or for Benton County to incur costs related thereto. [Ord. 2011-0243]

36.400 Ultimate responsibility

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the waters of the state caused by said person. This chapter shall not create liability on the part of Benton County, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made thereunder. [Ord. 2011-0243]

36.500 Severability

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Chapter 36 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 Chapter 36. [Ord. 2011-0243]