

ILLICIT DISCHARGE AND STORMWATER SEWER CONNECTION OF BANNOCK COUNTY, IDAHO ORDINANCE NO. 6

SECTION 100 TITLE, PURPOSE AND INTENT:

110 TITLE:

This ORDINANCE shall be known as the *ILLICIT DISCHARGE AND STORMWATER SEWER CONNECTION ORDINANCE OF BANNOCK COUNTY, IDAHO*.

110 STATUTORY AUTHORITY:

The legislature of the State of Idaho in I.C. 31-714 authorized the Board of County Commissioners of Bannock County to pass ordinances to provide for the safety and promote the health and prosperity of the inhabitants of the county and to protect the property within the county.

120 STATEMENT OF PURPOSE:

The purpose of this ordinance is to comply with the requirements of the county's national pollutant discharge elimination system (NPDES) permit no. IDS-028053, the federal clean water act, and to provide for the health, safety, and general welfare of the citizens of the county through the regulation of non-storm water discharges to the storm drainage system as required by federal and state law by establishing methods to control the introduction of pollutants into the municipal separate storm sewer system. The objectives of this ordinance are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- B. To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance of this ordinance.
- D. To establish penalties associated with violations of this ordinance.

SECTION 200 DEFINITIONS

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

AUTHORIZED ENFORCEMENT AGENT: The Bannock County Planning Director or the Bannock County Building Official or his designee.

BEST MANAGEMENT PRACTICES (BMPs): 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.

CLEAN WATER ACT (CWA): The federal water pollution control act (33 USC section 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY: Activities occurring in furtherance of a construction project, including, but not limited to, land disturbing activities; temporary crushing and screening operations lasting less than one hundred eighty (180) calendar days; hauling soil and rock; explosive and abrasive blasting; implosion; handling of building materials; concrete, stone and tile cutting; operation of motorized and non-motorized machinery; and the operation of motor vehicles on a construction site, a staging area, a parking area, a storage area, or any access routes to the construction site.

COUNTY: Bannock County and /or its representatives, staff, or assigns.

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 to the storm drain system, except as exempted in subsection 330A of this ordinance. This includes discharges to county rights of way.

ILLICIT CONNECTIONS (DISCHARGE): An illicit connection is defined as 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-storm water 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 the county.

INDUSTRIAL ACTIVITY: Activities subject to NPDES industrial permits as defined in 40 CFR section 122.26(b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): All parts of the county storm water conveyance system, including roads, alleyways, streets, gutters, catch basins, pipe, culverts, ditches, and other conveyances which normally convey stormwater.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

STORMWATER DISCHARGE PERMIT: A permit issued by the EPA (pursuant to 33 USC section 1342(b)) which authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area wide basis. Specifically the Pocatello urbanized area permit (IDS-028053), finalized December 15, 2006.

NONSTORMWATER DISCHARGE: Any discharge to the storm drain system that is not composed entirely of stormwater.

NOTICE OF INTENT (NOI): Electronic or written notice completed under provisions of the federal construction general permit and filed with the EPA in accordance with current requirements.

PERSON: Any individual, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.

POLLUTANT: Objects and materials which, when discharged to water or air, cause or contribute to water or air pollution, or as defined by the federal water pollution control act (also known as the clean water act).

POLLUTANTS OF CONCERN: Objects and materials identified in the clean water act 303(d) list and the Portneuf River total maximum daily load (TMDL) documentation are: sediment, oil and grease, coliform bacteria (E. coli), nitrogen and phosphorus. These pollutants of concern are of special interest in the context of the illicit discharge issue.

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

STORM DRAINAGE SYSTEM: Publicly owned facilities by which stormwater is collected and/or conveyed, including, but not limited to, any roads with drainage systems, streets, alleyways, 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 WATER POLLUTION PREVENTION PLAN (SWPPP): 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.

Stormwater pollution prevention plans must be filed in accordance with the requirements of the federal notice of intent for the construction general permit for all projects which disturb 1 acre or more. Copies of the NOI and the SWPPP must be provided to the county in the permit application process.

STORMWATER: Surface runoff and drainage associated with rainstorm events and snowmelt.

WASTEWATER: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

WATERCOURSE: Any natural or artificially managed channel through which water flows on a regular or routine basis.

WATERS OF THE UNITED STATES: Those waters described in the context of wetlands and interstate commerce and fully described at 33 CFR part 328.

In the event of a dispute or discrepancy regarding the definition of a term used in this ordinance, the definition contained in the federal water pollution control act (33 USC section 1251 et seq.), also known as the clean water act, and any subsequent amendments thereto, shall be the controlling authority.

SECTION 300 GENERAL PROVISIONS

310 APPLICABILITY:

This ordinance shall apply to all water directly or indirectly entering the stormwater system (municipal separate storm sewer system [MS4]) which is generated on any developed or undeveloped lands unless explicitly exempted by an authorized enforcement agency.

320 REGULATORY CONSISTENCY:

This ordinance shall be construed to assure consistency with state and federal laws, rules and regulations, including the clean water act and all acts amendatory thereof or supplementary thereto; all NPDES permits issued to Bannock County, and in particular, NPDES permit no. IDS-02853. No permit or approval issued pursuant to this ordinance shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance. Compliance with this ordinance does not exempt any person from complying with other applicable ordinances, rules, codes, acts or permits.

330 GENERAL REQUIREMENTS AND PROHIBITIONS:

A. Prohibition Of Illegal Discharges: No person shall directly or indirectly discharge or cause to be discharged into the municipal storm drain system, including county streets, roads and alleyways or watercourses, any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

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

1. The following discharges are exempt from discharge prohibitions established by this ordinance: uncontaminated water line flushing or other potable water sources, landscape

irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water (as defined at 40 CFR section 35.2005(20)), foundation or footing drains (not including active ground water dewatering systems), crawl space pumps, air conditioning condensation, springs, individual, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than 1 ppm chlorine), fire hydrant flushing, firefighting activities, and any other water source not containing pollutants of concern or other materials as described in this ordinance.

2. Discharges specified in writing by the county planning director or building official works as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge, but requires a verbal notification to the county prior to the time of the test.
4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the federal environmental protection agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the county for any discharge to the storm drain system.

B. Prohibition Of Illicit Connections:

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made prior to the enactment of this ordinance, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage or other non-storm water discharges to the municipal separate storm sewer system, or allows such a connection to continue, without written county approval.

335 SUSPENSION OF MUNICIPAL SEPARATE STORM SEWER SYSTEM ACCESS:

A. Suspension Due To Illicit Discharges In Emergency Situations: The county planning director or building official may, without prior notice, suspend municipal separate storm sewer system discharge access to a person or entity 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 municipal separate storm sewer system or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the director may take such steps as deemed necessary to prevent or minimize damage to the municipal separate storm sewer system or waters of the United States, or to minimize danger to persons.

B. Termination Due To the Detection of Illicit Discharge: Any person discharging to the municipal separate storm sewer system in violation of this ordinance may have their municipal separate storm sewer system access terminated if such termination would abate or reduce an illicit discharge. The county will notify a violator of the proposed termination of its municipal separate storm sewer system access. Notification shall be made in writing by certified mail to the owner of the property from which the illicit discharge is being made at the last known mailing address of said property owner on record with the Bannock County assessor.

C. Written Approval Required For Reinstatement: Any person who reinstates municipal separate storm sewer system access to premises terminated pursuant to this section, without the prior written approval of the authorized enforcement agency (county planning director or building official) is guilty of a misdemeanor.

340 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 by the county prior to allowing of discharges to the municipal separate storm sewer system.

350 WATERCOURSE PROTECTION:

Every person owning property through which a watercourse passes, shall keep and maintain that part of the watercourse within said person's property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner 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.

360 NOTIFICATION OF SPILLS:

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, the municipal separate storm sewer system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies and the Idaho department of environmental quality of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, 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 county planning director within three (3) business days of the phone notice. If the discharge

of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years from the date of the discharge.

SECTION 400 ADMINISTRATIVE PROCEDURES

410 ADMINISTRATION:

The county planning director and the county building official shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon these entities may be delegated in writing by the planning director or building official of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

420 DISCLAIMER: 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.

430 MONITORING OF DISCHARGES:

A. Applicability: This section applies to all facilities that have stormwater discharges associated with commercial activity and industrial activity, including construction activity.

B. Access To Facilities:

1. The county planning director or building official or their authorized representative shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access county planning director or building official or his authorized representative.
2. Facility operators shall allow the county planning director or building official or his authorized representative ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law related to said discharges.
3. The county planning director or building official shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The county planning director or building official has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment

shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated as required by the manufacturer's operation manual to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the county planning director or building official and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the county planning director or building official access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits a misdemeanor offense if the person denies the director of public works access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
7. If the county planning director or building official has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the county planning director or building official may seek issuance of a search warrant from any court of competent jurisdiction.

450 USE OF BEST MANAGEMENT PRACTICES TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS REQUIRED:

The county shall adopt requirements identifying best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural 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 nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the applicable NPDES permit.

460 VIOLATIONS CONSTITUTE MISDEMEANORS:

The knowing violation of any provision or failure to comply with any requirement of this ordinance shall constitute a misdemeanor and may be punishable by a fine up to one thousand

dollars (\$1,000.00), imprisonment in the county jail up to six (6) months, or both. Each day on which a violation occurs may constitute a separate criminal offense.

470 ACTS RESULTING IN VIOLATION OF FEDERAL LAWS AND REGULATIONS:

Any person who violates any provision of this ordinance, or discharges any pollutant or causes pollution, may also be in violation of federal laws or regulations, and may be subject to the sanctions of those laws or regulations, including civil or criminal penalties, notwithstanding any legal action taken by the county.

SECTION 500 DISCLAIMER OF LIABILITY

The degree of protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this ordinance does not imply that compliance will ensure against all unauthorized discharge of pollutants. This ordinance shall not create liability on the part of the county, any agent or employee thereof for any damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

SECTION 600 EFFECTIVE DATE

This ordinance shall be in full force and effect upon its passage, approval, and publication.