

**ORDINANCE NO. 2020-28**

**THE BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY, COLORADO**

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 20 AND  
AMENDING THE PUEBLO COUNTY CODE, TITLE 8, CHAPTER 8.26 TITLED THE  
PUEBLO COUNTY ILLICIT DISCHARGES AND STORMWATER QUALITY  
ORDINANCE**

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

**WHEREAS**, C.R.S. § 30-15-401(11)(a)(i), more specifically authorizes counties that have been issued Municipal Separate Storm Drainage System Permits (MS4 Permits) pursuant to Part V 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; and

**WHEREAS**, this Board adopted Ordinance No. 20, Pueblo County Stormwater Quality Ordinance, Detection and Elimination of Illicit Discharges to Storm Drainage Systems on May 20, 2008, which was incorporated into the Pueblo County Code, Chapter 8.26, Stormwater Quality; and

**WHEREAS**, the Pueblo County Public Works Department in conjunction with the Pueblo Department of Health and Environment and the Pueblo County Attorney's Office have informed this Board that Chapter 8.26 Stormwater Quality needs to be updated in the interest of the public health for control of illicit discharges to the storm drainage system in the area covered by the Pueblo County MS 4 Permit; and

**WHEREAS**, the Pueblo County Public Works Department and the Pueblo County Attorney's Office have updated Chapter 8.26 Stormwater Quality in the Pueblo County Code aimed at the detection and elimination of illicit discharges to storm drainage systems in the County and have reviewed the same and recommend to the Board of County Commissioners that the same be officially adopted as a Pueblo County ordinance to repeal and replace Ordinance No. 20 and the Board, having concurred with such recommendation as being in the best interest of the public health, safety and welfare of the citizens of Pueblo County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY, COLORADO, THAT:**

**Section 1. Title**

This ordinance shall be known and referred to as the "Pueblo County Illicit Discharges and Stormwater Quality Ordinance" and may be cited and referenced as Chapter 8.26 Stormwater Quality in the Pueblo County Code.

**ORDINANCE NO. 2020-28 (CONTINUED)**

**Section 2. Repeal and Replace**

This Ordinance shall repeal and replace Ordinance No. 20 adopted on May 8, 2008.

**Section 3. Amendment**

Chapter 8.26 Stormwater Quality of the Pueblo County Code, as it currently appears, is removed and replaced in its entirety with the language appearing in the attached Exhibit A, which is incorporated by this reference into this Ordinance No. 2020-28.

**Section 4. Authenticity**

The foregoing text, including Exhibit A attached and incorporated herein, is the authentic text of Pueblo County Ordinance No. 2020-28.

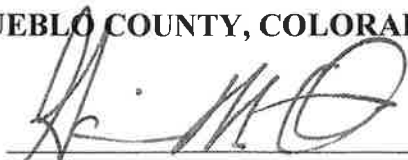
The first reading of said Ordinance took place on August 25, 2020. It was published in full in the Pueblo Chieftain on August 29, 2020.

It was adopted on September 15, 2020 and is to be republished by title in the Pueblo Chieftain on September 19, 2020, and shall take effect on October 19, 2020.

**PASSED AND ADOPTED** this 15<sup>th</sup> day of September 2020, in Pueblo County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY, COLORADO**

By:

  
Garrison M. Ortiz, Chairman

**ATTEST:**

By:

  
Gilbert Ortiz, County Clerk

## **Chapter 8.26 STORMWATER QUALITY**

### **8.26.010 Title.**

This Ordinance shall be titled Pueblo County Illicit Discharges and Stormwater Quality Ordinance.

### **8.26.020 Authorization.**

C.R.S. § 30-15-401, et seq., 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.

C.R.S. § 30-15-401(11)(a)(I), 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.

C.R.S. § 30-15-401 (11)(a)(ii)(A), authorizes counties to provide for and compel the abatement of any condition that causes or contributes to a violation of a MS4 permit or requirement from any property located within the unincorporated portion of a county at such time, upon such notice, and in such manner consistent with the terms of the MS4 permit as the Board of County Commissioners may prescribe by ordinance.

### **8.26.030 Purpose and Intent.**

Pueblo County has a Municipal Separate Storm Sewer System permit (MS4 Permit) issued by the Colorado Department of Public Health and Environment Water Quality Control Division (Division). As a condition of this permit, the Division requires that Pueblo County implement and enforce a regulatory mechanism to regulate non-stormwater discharges and pollutants into storm drainage systems in those portions of unincorporated Pueblo County covered by the MS4 Permit. A map of the area covered by the Permit shall be on file and available for review in the offices of the Pueblo County Department of Public Works (Public Works Department).

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

The overall objectives of this Chapter are:

- A. To regulate the contribution of pollutants to the Pueblo County MS4 by stormwater discharges by any user;
- B. To minimize increases in stormwater runoff from any development in order to reduce flooding, siltation, and streambank erosion, and maintain the integrity of stream channels;
- C. To minimize increases in nonpoint source pollution caused by stormwater runoff from development which would otherwise degrade local water quality;

- D. To ensure MS4 Permit requirements for applicable construction and post-construction activities are met, including enforcement for violations of applicable construction or post-construction requirements;
- E. To regulate and prohibit illicit discharges and non-stormwater discharges to Pueblo County's MS4, including sanctions against entities responsible for illicit discharges;
- F. To have a procedure to request access to property(ies), as necessary, to implement the illicit discharge procedures, including judicial action;
- G. To provide legal access for Pueblo County to cease or require to be ceased and removed, or to require and ensure the removal of, and impose penalties for, all illicit discharges for a period from when the illicit discharge is identified until removed; and
- H. To promote public awareness of the hazards involved in the improper discharge of pollutants into the Pueblo County MS4.

#### **8.26.040 Applicability.**

This Chapter shall apply in those portions of the unincorporated area of Pueblo County as defined in the MS4 Permit boundary issued by the Division.

#### **8.26.050 Definitions.**

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

**Applicable Development Site:** Sites that result in land disturbance of greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, unless excluded under Section 8.26.110.C (Post-construction).

**Applicable Construction Activities:** Construction activities that result in a land disturbance of greater than or equal to one acre or that is less than one acre, but is part of a larger common plan of development or sale that would disturb, or has disturbed since March 2, 2001, one acre or more unless the construction activity is excluded (Section 8.26.100.C) or the disturbed areas have been finally stabilized.

**Authorized Enforcement Agency:** The Public Works Department and designated employees of such Department, as well as the Pueblo City/County Health Department for purposes of Sections 8.26.070, 8.26.120, and 8.26.140.

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

**Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct construction activities may be taking place at different times, on different schedules, but remain related by a common contract or plan. Contiguous means activities located in close proximity to each other (less than ¼ mile). Examples may include but are not limited to subdivisions; master drainage plans and phased construction.

**Construction Activity:** Activities subject to NPDES Construction Stormwater Permits, in Colorado typically covered under the Colorado Discharge Permit System (CDPS). These include construction projects resulting in a land disturbance area greater than or equal to one

acre or part of a larger common plan of development or sale that would disturb one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, staging, excavating, and demolition.

**Control Measures:** A best management practice or other method used to prevent or reduce the discharge of pollutants to waters of the State. Control measures include, but are not limited to, best management practices. Control measures can include other methods such as the installation, operation and maintenance of structure controls and treatment devices. This definition includes all best management practices listed in Urban Drainage Flood Control District (a/k/a Mile High Flood District) Volume I, II, and III in which runoff and floodwater flows, either regularly or infrequently.

**Director:** The Director of the Public Works Department.

**Final Stabilization:** The condition reached when all ground surface disturbing activities at the site have been completed, and for all areas of ground surface disturbing activities a uniform vegetative cover has been established with an individual plant density of at least seventy percent (70%) of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

**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 MS4 that is not composed entirely of stormwater, except discharges exempted in Section 8.26.070.E of this Chapter or excluded from the definition of Non-Stormwater Discharge.

**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-stormwater 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 an authorized enforcement agency.

**Industrial Activity:** Any activities subject to NPDES Industrial Stormwater Permits.

**Municipal Separate Storm Sewer System (MS4):** Publicly owned facilities by which stormwater is collected and conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, and natural and human made or altered drainage ditches/channels/lakes/reservoirs, and other drainage structures.

**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. For most stormwater discharges in Colorado (except federal facilities and Tribal Lands), this permit is regulated under the CDPS General permit for Stormwater Discharges Associated with Construction Activities (CDPS-SCP).

**Non-Stormwater Discharge:** Any discharge to a storm drainage system that is not composed entirely of stormwater except as specifically allowed herein, and unless exempted pursuant to Section 8.26.070.E. 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.

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

**Pollutant:** Dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste.

**Pollution:** Man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

**Post-Construction or Permanent Stormwater Control Measures (PSCM):** Control measures required for applicable development sites unless exempted under Section 8.26.110.C.

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

**Public Health Officer:** Any employee of the Pueblo City/County Health Department responsible for public health and environment including illicit discharges.

**Pueblo County Stormwater Construction Permit (PC-SCP):** The permit Pueblo County issues to applicable construction activities.

**Storm Drainage System:** Facilities in unincorporated Pueblo 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 or 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.

**Stormwater Management Plan:** A document which describes the control measures and activities to be implemented by a user 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, or receiving waters to the maximum extent practicable.

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

**Watercourse:** A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainage ways, 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.

#### **8.26.060 Responsibility for Administration.**

The authorized enforcement agencies shall coordinate the administration and thereafter the implementation and enforcement of the provisions of this Chapter. The Public Works Department shall have on staff a stormwater coordinator who shall be primarily responsible for the implementation of this Chapter and who shall have the authority to direct other agencies within Pueblo County government concerning the implementation of this Chapter. The Public Health Officer shall report any violations of Section 8.26.070 to the stormwater coordinator or the Director.

#### **8.26.070 Discharge Prohibitions.**

##### **A. Prohibition of Illegal Discharges.**

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

(2) 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.

(3) As soon as any person who owns, occupies, operates or is otherwise responsible for a premises, or is responsible for the emergency response for such premises, has information of any known or suspected release of a non-stormwater or hazardous material discharge to the Pueblo County MS4, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release.

##### **B. Prohibition of Illicit Connections.**

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

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

(3) These prohibitions expressly include, 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. Suspension of Non-Stormwater and Illicit Discharges.

(1) The Director or the Public Health Officer may, without prior notice, suspend storm sewer system discharge access to a person 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 Pueblo County storm sewer system or the waters of the United States.

(2) If the violator fails to comply with a suspension order issued in an emergency, the Director or the Public Health Officer may take such steps as deemed necessary to prevent or minimize damage to the Pueblo County storm sewer system or the waters of the United States or to minimize danger to persons.

(3) Any person discharging to the storm sewer system in violation of this Chapter may have his or her storm sewer system access terminated. Except in the case of an emergency, the Director or the Public Health Officer shall give prior written notification to a violator of the proposed termination of the violator's storm sewer system access. The violator may appeal the action taken by the Director or the Public Health Officer pursuant to the provisions of Section 8.26.150.D.

(4) A person commits an offense if the person reinstates storm sewer system access to premises after termination pursuant to this Chapter, without the prior written approval of the Director or the Public Health Officer.

D. Waste Disposal Prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the Pueblo County storm sewer system, or waters of the United States, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purpose of collection are exempted from this prohibition.

E. Exemptions.

The following discharges, when properly managed, are exempt from the discharge prohibitions established by this Section:

- (1) Landscape irrigation
- (2) Lawn watering
- (3) Diverted stream flows
- (4) Irrigation return flow



- (5) Rising ground waters
- (6) Uncontaminated groundwater infiltration
- (7) Uncontaminated pumped groundwater. Discharges containing groundwater that comes into contact with construction activity is not considered "uncontaminated" due to the potential for sediment content.

(8) Springs

(9) Flows from riparian habitats and wetlands

(10) Water line flushing in accordance with the Division's Low Risk Policy Discharge

Guidance: Potable Water

(11) Discharges from potable water sources in accordance with the Division's Low Risk Discharge Guidance. The potable water shall not be used in any additional process. Processes include, but are not limited to, any type of washing, heat exchange, manufacturing, and hydrostatic testing of pipelines not associated with treated water distribution systems.

(12) Foundation drains

(13) Air conditioning condensation

(14) Water from crawl space pumps

(15) Footing drains

(16) Individual residential car washing

(17) Dechlorinated swimming pool discharges in accordance with the Division's Low Risk

Discharge Guidance: Swimming Pools

(18) Water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction

(19) Dye testing in accordance with the manufacturer's recommendations

(20) Stormwater runoff with incidental pollutants

(21) Discharges resulting from emergency fire-fighting activities

(22) Discharges authorized by a CDPS or NPDES permit

(23) Agricultural stormwater runoff

(24) Discharges that are in accordance with CDHPE Water Quality Control Division's Low Risk Policy guidance documents or other Division policies and guidance documents where the Division has stated that it will not pursue permit coverage or enforcement for specified point source discharges.

#### **8.26.080 Industrial or Construction Activity Discharges.**

Any person issued an NPDES Industrial Stormwater Permit or issued an NPDES Construction Stormwater Permit 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 Chapter.

#### **8.26.090 Pre-construction Requirements.**

A. Purpose. The purpose of this Section is to require the submittal and acceptance of specific documentation prior to any land-disturbing activities to ensure construction activity and post-construction requirements of the MS4 Permit are met. This Section applies to all land-disturbing activities commencing after July 1, 2019.

B. Pre-construction requirements. The following documents are required to be submitted and accepted by the Public Works Department prior to any construction activity that will disturb greater than or equal to one acre of land. Applicable construction activities include

the total disturbed area from a common plan of development or sale. The Public Works Department shall determine whether a permit for construction or a development site is required and procedures and documentation necessary for permittees to comply with MS4 Permit requirements. Documentation includes:

(1) Pueblo County Stormwater Construction Permit (PC-SCP). Within the designated Pueblo County MS4 area, it shall be unlawful for any person to conduct any activity resulting in, or contributing to, a total disturbed area of greater than or equal to one acre without first obtaining a PC-SCP from the Public Works Department. A PC-SCP permit is also required for sites less than one acre but are part of a larger common plan of development or sale.

(2) CDPS stormwater construction permit (CDPS-SCP) or R-factor waiver (if not otherwise excluded). CDPS-SCP permit coverage shall be obtained prior to the start of land disturbing activities. Alternatively, an R-factor waiver granted by the Division may be utilized in lieu of obtaining CDPS-SCP permit coverage. Proof of CDPS-SCP permit certification or waiver shall be required prior to PC-SCP issuance by Public Works as well as providing information required for any claimed exclusion.

(3) Stormwater Management Plan (SWMP). In accordance with the CDPS-SCP, a SWMP shall be developed prior to land disturbing activities and located onsite until final stabilization, available for staff review upon request by county, state or federal agencies. The SWMP must be prepared in accordance with good engineering, hydrologic and pollution control practices and include the installation and implementation of control measures from initial earth work through to final stabilization. The SWMP may also need to include other relevant plans such as grading and construction drawings. At a minimum the following must be included in the SWMP:

(a) A project description that includes the location and extents of the project, a summary of the construction to be completed and the end product.

(b) Control measures to be installed on a temporary basis as necessary to control stormwater discharges from the construction site before and during construction until final stabilization. This includes a narrative describing nonstructural control measures such as construction site phasing (e.g., phasing of the project so that existing vegetation can be protected until it has to be disturbed, seeding or restoring areas after area is completed while other areas are being worked, etc.).

(c) Existing Soils and vegetation.

(d) Potential pollutant sources. Control measures must be selected, designed, installed, implemented and maintained to provide control of all potential pollutants, such as but not limited to sediment, construction site waste, trash, discarded building materials, concrete truck washout, chemicals, sanitary waste and contaminated soils in discharges to the Pueblo County MS4. At a minimum pollutant sources associated with the following activities (if part of the applicable construction activity) must be addressed in the SWMP in addition to those activities required by the Pueblo County checklist included as part of the PC-SCP submittal:

- Land disturbance and storage of soils;
- Vehicle tracking;
- Loading and unloading operations;
- Outdoor storage of construction site materials, building materials, fertilizers and chemicals;
- Bulk storage of materials;
- Vehicle and equipment maintenance and fueling;

- Significant dust or particulate generating processes;
- Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents and oils;
- Concrete truck and equipment washing;
- Dedicated asphalt and concrete batch plants;
- Other areas where spills can occur; and
- Other non-stormwater discharges including construction dewatering not covered under the CDPS construction dewatering permit and wash water not covered above.

- (e) Materials Handling
- (f) Stream Crossings, if applicable
- (g) Allowable non-stormwater discharges
- (h) Spill Prevention and response
- (i) Final stabilization
- (j) Site Plans (See subsection (4) below for minimum requirements)

(4) MS4 site plans. In accordance with the MS4 Permit, the following documents, collectively referred to as "MS4 Site Plans", shall be reviewed and accepted by the Public Works Department prior to land-disturbing activity. Significant modifications made after acceptance shall be submitted to the Public Works Department for approval. Site plans are considered to be part of the SWMP. At a minimum the following must be included in the Site Plan in addition to the information required by the Pueblo County checklist included as part of the PC-SCP submittal:

- (a) Cover sheet with project information
- (b) Initial, Interim and Final Grading Erosion and Sediment Control (GESC) Plans. (Linear utilities may request a variance to only supply initial and final GESC Plans.)
- (c) Existing topography and flow arrows
- (d) Limits of construction
- (e) Limits of disturbance
- (f) Stockpile and staging areas
- (g) Temporary haul routes
- (h) Stream crossings
- (i) Protection of pre-existing vegetation or equivalent controls within fifty (50) feet of a receiving water if feasible.
- (j) Control measures (structural and non-structural)
- (k) Final permanent stabilization plans should show areas of hard scaping, seeding, landscaping or other soft restoration.

Site plans must locate and identify all structural and non-structural control measures for the applicable construction activities. These plans will include installation and implementation specifications or reference the document with installation and implementation specifications for all control measures.

(5) SWMP Checklist. A Pueblo County SWMP checklist must be submitted as part of the PC-SCP submittal.

(6) Drainage Report, if applicable to the type of construction being conducted. Drainage reports must identify the following minimal components: site drainage; design details for permanent control measures; narratives for non-structural control measures, if applicable; and corresponding calculations used in determining compliance with the "Base Design

Standards" of the MS4 Permit. "Base Design Standards" are specified in Section 8.26.110.B(1)(a).

(7) Permanent Stormwater Control Measure Checklist and Designs if applicable to the project including but not limited to the following:

(a) Drainage and access easements; identifying all easements or other legal means used to convey drainage to permanent control measures and easements or other legal means used to access permanent control measures for operations, maintenance and inspections.

(b) Long-term operation and maintenance plan; identifying the long-term observation, maintenance and operation of permanent control measures. The plan shall also include frequencies of routine inspections and maintenance activities.

(8) Additional documents to comply with MS4 Permit requirements; which shall be determined by the Public Works Department on a case-by-case basis.

C. Technical Standards and Specifications will follow Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3 or CDOT Road and Bridge Specifications, current editions.

D. Enforcement. Failure to comply with this Section is a violation of this Article and enforcement procedures shall be pursued as detailed in Section 8.26.150.

#### **8.26.100 Construction Activity.**

A. Purpose. The purpose of this Section is to require the implementation of temporary control measures during land-disturbing activities to ensure construction activity requirements of the MS4 Permit are met. All control measures shall be selected, installed, implemented and maintained in accordance with good engineering, hydrologic and pollution control practices, and shall meet the drainage, erosion, and stormwater quality requirements of Section 17.76.010, Section 17.76.030, and Section 17.76.060. This Section applies to all land-disturbing activities commencing after July 1, 2019.

B. Construction activity requirements. The following requirements are applicable to sites with construction activity that will disturb greater than or equal to one acre of land. Applicable land-disturbing activity includes the total disturbed area from a common plan of development or sale. The Public Works Department shall determine whether a permit for construction sites is required and procedures and documentation necessary for permittees to comply with MS4 Permit requirements.

(1) Temporary control measures. Temporary control measures shall be implemented, according to the accepted SWMP and associated Site Plans, and shall control all potential pollutants during each phase of construction until final stabilization is achieved. If modifications to the plans are necessary, the owner or operator shall submit the modification to the Public Works Department for acceptance. Structural control measures shall be maintained in operational condition. Corrective actions such as repairs and/or maintenance shall be performed immediately in most cases.

(2) Initial inspection of control measures. The Public Works Department MS4 inspector shall perform an initial inspection of the control measures prior to construction starting to ensure that they are installed pursuant to the approved design.

(3) Self-Inspection by Permittee. The project owner or representative shall inspect all control measures in accordance with the County requirements and CDPS-SCP. Inspections of control measures shall be conducted by a qualified stormwater manager.

(4) Maintenance. Control measures shall be continuously maintained in operating condition and repaired immediately when damaged and until the entire project has achieved final stabilization.

C. Exemptions. The following activities are exempt in addition to the exemptions in Section 8.26.070:

(1) Agricultural land management activities, except point source discharges subject to National Pollutant Discharge Elimination System (NPDES) or CDPS -SCP permitting requirements, are exempt from the stormwater quality management plan and PC-SCP requirements.

(2) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

(3) Emergency operations related to flood, fire, or other force majeure are not exempt but may obtain coverage after starting construction following the emergency repair timelines listed in the CDPS-SCP.

(4) Colorado Department of Transportation (CDOT) construction within their right-of-way that will be covered by the CDOT construction program.

(5) Activities covered by another NPDES program such as mining or other industrial permits. Although these activities are excluded from obtaining coverage under the County's CSP, the County may request current permits and modifications demonstrating appropriate state coverage and documents demonstrating the sites have met the requirements for these permits.

(6) Lands and activities where the County has no jurisdictional control. Any pollutant discharges to Pueblo County's MS4 from areas where the County has no jurisdictional control remain subject to the County's illicit discharge program.

D. Additional Exclusions: Sites that are not otherwise exempted may request a design exception using the following process. Design exceptions that cause non-compliance with Pueblo County's MS4 Permit will not be allowed.

(1) Sites that may request a design exception include, but are not limited to, utility projects such as those granted an R-Factor waiver by the Division in accordance with Colorado Regulation 61.3(2)(f)(ii)(B) as effective. R-Factor waivers tend to be for short-duration projects occurring in months with lower erosion potential (winter) that will be restored with hard surfaces such as linear projects that occur in the roadway.

(2) Design exception requests are reviewed on a site-specific basis and are uncommon. If an exception is granted, the required information and correspondence with the project site owner or contractor will be documented in the Public Works Department files along with the following information: the site name, owner name, location, completion date, project disturbed acreage and reason for exclusion, and if using the R-Factor waiver a copy of the exception by the Division must be submitted to the County.

(3) The Public Works Department reserves the right to require the submittal of necessary documents, such as an Erosion and Sediment Control Plan and SWMP, to prevent the discharge of pollutants to the Pueblo County MS4 on a case-by-case basis. Additionally, the R-factor waiver exemption for construction activity is not applicable to post-construction requirements.

D. Enforcement. Failure to comply with this Section is a violation of this Article and enforcement procedures shall be pursued as detailed in Section 8.26.150.

#### **Sec. 8.26.110 Post-construction.**

A. Purpose. The purpose of this Section is to require the implementation and maintenance of permanent control measures after applicable construction activity to ensure post-construction requirements of the MS4 Permit are met. All control measures shall be selected, installed, implemented and maintained in accordance with good engineering, hydrologic and pollution control practices and the owner must maintain the permanent stormwater control measures in perpetuity. This Section applies to all land-disturbing activities commencing after July 1, 2019.

B. Post-construction requirements. The following requirements are applicable to sites for which construction activity has created a disturbed area greater than or equal to one acre and sites which will have a cumulative disturbed area greater than or equal to one acre during future phasing. The requirements are applicable to individual sites as well as sites that are part of a larger common plan of development or sale. The Public Works Department shall determine whether a permit for construction or development sites is required and procedures and documentation necessary for permittees to comply with MS4 Permit requirements. Exemptions from this requirement are described in the CDPS General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (CDPS MS4 Permit) and in Sections 8.26.070.E and 8.26.110.C.

##### **(1) Permanent control measures.**

(a) Stormwater quality control measures shall be designed to meet one of the "base design standards" described in the MS4 Permit. These options include:

(i) Water Quality Capture Volume (WQCV) Standard: The control measure(s) is designed to provide treatment and/or infiltration of the WQCV. The WQCV shall be calculated following the procedures in the Urban Storm Drainage Criteria Manual, Volume 3.

(ii) Pollutant Removal Standard: The control measure(s) is designed to treat at a minimum the 80th percentile storm event. The control measure(s) shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration of total suspended solids (TSS) to a median value of 30 mg/L or less.

(iii) Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal

to sixty percent (60%) of what the calculated WQCV would be if all impervious area for the applicable development site discharged without infiltration.

(iv) Applicable Development Site Draining to a Regional WQCV Control Measure: The regional WQCV control measure must be designed to accept the drainage from the applicable development site. Stormwater from the site must not discharge to a water of the state before being discharged to the regional WQCV control measure.

(v) Applicable Development Site Draining to a Regional WQCV Facility: The regional WQCV facility is designed to accept drainage from the applicable development site. Stormwater from the site may discharge to a water of the state before being discharged to the regional WQCV facility. Before discharging to a water of the state, at least twenty percent (20%) of the upstream imperviousness of the applicable development site must be disconnected from the storm drainage system and drain through a receiving pervious area control measure comprising a footprint of at least ten percent (10%) of the upstream disconnected impervious area of the applicable development site. The control measure must be designed in accordance with a design manual identified by the permittee. In addition, the stream channel between the discharge point of the applicable development site and the regional WQCV facility must be stabilized.

(vi) Constrained Redevelopment Sites Standard, as described in the CDPS MS4 Permit.

(vii) Previous Permit Term standard, as described in the CDPS MS4 Permit.

Note: The CDPS MS4 Permit provides additional detail and conditions associated with these base standards that must be followed.

(b) Site plans that include control measures for the applicable development sites must be submitted to Public Works Department for review and approval. Control measures must be fully operational in accordance with the approved site plan at the time of project completion.

(c) As-built submittal. After installation of a permanent control measure is complete, a certified as-built drawing, signed and stamped by a licensed Professional Engineer in the State of Colorado, shall be submitted to the Public Works Department to be recorded.

(d) Final inspection and acceptance. After receiving the as-built drawing, Pueblo County shall inspect the site to verify compliance with the Drainage Report, Drainage and Access Easements, Long-Term Operation and Maintenance Plan, and other submitted documentation. If the Public Works Department determines the site has met the requirements of this Section, the owner will be notified in writing of the acceptance within ten (10) business days.

(e) Long-term operation and maintenance of stormwater quality control measures is required.

(f) Permanent control measures implemented for compliance with this Section shall be located within the jurisdiction of Pueblo County and within the County's MS4 permitted area until annexed by a municipality or included in a special district with a MS4 permit.

(2) Change of ownership. Upon sale of the property, the obligations to maintain permanent control measures shall be a covenant running with the land in perpetuity for the benefit of Pueblo County.

(3) Post-acceptance oversight, and inspections of permanent control measures. Inspections by the stormwater control measure owner should be conducted at least annually. The Public Works Department, as part of their oversight program, will perform compliance inspections at least every five (5) years, or an alternative frequency determined by the Public Works Department or by the Division in subsequent MS4 Permit revisions, to ensure adequate long-term operation and maintenance of permanent control measures. If the

Pueblo County oversight inspector is unable to visually verify adequate functioning and maintenance of the permanent control measure, additional requirements may apply.

C. Exemptions.

(1) The MS4 Permit allows for specific exemptions to post-construction requirements. However, the Public Works Department shall review each exemption prior to use. Use of an exemption without prior approval by the Public Works Department is a violation of this Section.

(2) A list of allowable post-construction exemptions under the MS4 Permit include the following:

(a) Pavement Management Sites – The acreage of the excluded impervious area for rehabilitation and reconstruction of pavement that are not maintenance sites.

(b) Excluded Roadway Redevelopment – The acreage of the excluded impervious area.

(c) Excluded Existing Roadway Areas for Roadway Redevelopment – The acreage of the excluded impervious area.

(d) Non-Residential and Non-Commercial Infiltration Conditions – The acreage of the excluded impervious area.

(e) Sites with Land Disturbance to Undeveloped Land that will Remain Undeveloped Redevelopment – The acreage of the excluded impervious area.

(f) Stream Stabilization Sites Redevelopment – The acreage of the excluded impervious area.

(g) Trails – The acreage of the excluded impervious area.

Note: Excluded sites must submit documentation demonstrating the exclusion and providing site name, owner name, location, completion date, site acreage, acreage of excluded impervious area, reason for exclusion, and any other information required by the Public Works Department Permanent Stormwater Control Measure Checklist.

D. Enforcement. Failure to comply with this Section is a violation of this Article and enforcement procedures shall be pursued as detailed in Section 8.26.150.

**8.26.120 Monitoring Discharges from Industrial and Construction Activities.**

A. Access to Premises.

(1) The authorized enforcement agency shall be allowed to enter and inspect the premises of any person issued an NPDES or CDPS Industrial Stormwater Permit, a NPDES or CDPS-SCP, an PC-SCP issued by Pueblo County, premises with permanent post-construction control measures, and to enter premises to respond to illicit discharges and investigate possible noncompliance with this Chapter, and to enter such premises as often as may be necessary to determine compliance with this Chapter. 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.

(2) 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 or CDPS permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.



(3) 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 permittee at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the permittee or operator of an illicit discharge.

(4) Refusal to allow or unreasonable delays in allowing the authorized enforcement agency access to the premises for the purpose of conducting any activity authorized or required by this Chapter is a violation of this Chapter.

(5) If the authorized enforcement agency has been refused access to any part of the permittee's or illicit discharge premises, the authorized enforcement agency may seek issuance of an administrative search warrant from any court of competent jurisdiction to gain access for the purpose of inspection or sampling as part of a routine inspection and sampling program designed to verify compliance with this section or any order issued pursuant to this Chapter.

#### **8.26.130 Watercourse Protection.**

A. Every person owning, occupying or otherwise responsible for a premise 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, the owner, occupant or responsible person 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.

#### **8.26.140 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 State, 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 immediately notify the authorized enforcement agency in person or by phone. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three (3) business days of the phone notice unless otherwise prescribed by then-applicable requirements of the MS4 Permit or County regulations.

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 (3) years.

## **8.26.150 Enforcement.**

### **A. Notice of Deficiency**

(1) PCPW or their staff may notify a project that they have deficiencies on their site. PCPW will provide a timeline for addressing such deficiencies. Deficiencies will be evaluated to determine severity, past history on the site, and recalcitrance.

(2) Actions taken in response to deficiencies may include:

- (a) Informal meetings.
- (b) Written MS4 inspection reports.
- (c) Warning Notice –these written warnings do not constitute a Notice of Violation. A Warning Notice is the same as a “Notice of Non-compliance,” as it is referred to in the MS4 Compliance Inspection Form. A Warning Notice is typically used to prevent deficiencies from becoming violations, or when voluntary compliance may be achieved.
- (d) Combination of any or all of the above.

### **B. Notice of Violation.**

(1) Except where emergency suspension is necessary pursuant to Section 8.26.150.B, the authorized enforcement agency shall provide written notice to persons violating this Chapter. Such notice shall describe the nature of the violation and may require without limitation:

- (a) That monitoring, analyses, and reporting be performed;
- (b) That illicit connections and illegal discharges be eliminated;
- (c) That non-storm water pollution or contamination hazards be abated and/or remediated and any affected property be restored; and/or
- (d) That source control or treatment control measures be implemented.

(2) 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.

(3) If the person does not come into compliance within the time provided, the authorized enforcement agency may issue a Stop Work Order requiring a stoppage of all work at the facility or on the project until such time as compliance is achieved and the violations have been remedied.

(4) The Notice of Violation or Stop Work Order shall be served by hand delivery or by certified mail, return receipt requested.

(5) Criminal Penalties and Enforcement Costs: It is unlawful for any person to violate or permit or cause violation of this Chapter or to the provisions of the MS4 Permit. Violations shall be punishable as provided in this Code. Each day or part of a day any violation occurs or continues is a separate offense.

C. Suspension of Non-stormwater and Illicit Discharges. The authorized enforcement agency may, without prior notice, order the suspension of the discharge of non-stormwater pursuant to the procedures of Section 8.26.070.C. The authorized enforcement agency may collect all costs incurred in taking such action pursuant to the procedures set out in Section 8.26.150.E.(4).

D. Administrative Fine.

(1) The authorized enforcement agency may assess a fine when a person has violated, or continues to violate, any provision of this Chapter, a NPDES or CDPS discharge permit, or order issued herein. The authorized enforcement agency may fine such person an amount not to exceed ten thousand dollars (\$10,000) per day for each day during which such violation occurs. Such fines shall be assessed on a per violation, per day basis.

(2) Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be subject to a lien against the user's property for unpaid charges, fines, and penalties.

E. Administrative Appeal.

(1) Any person receiving a Notice of Violation, Stop Work Order, or Administrative Fine may appeal the determination of the authorized enforcement agency to the Board of County Commissioners. A notice of appeal shall state the grounds therefor, shall attach a copy of the documents being appealed and shall be set forth in writing. The Notice of Appeal must be received by the Board of County Commissioners within fifteen (15) days from the date of the documents being appealed. A hearing on the appeal before the Board of County Commissioners shall take place within forty-five (45) days from the date of receipt of the notice of appeal. The decision of the Board of County Commissioners shall be final.

(2) If the violation has not been corrected pursuant to the requirements set forth in the applicable notice, or, in the event of an appeal, within thirty (30) days of the decision of the Board of County Commissioners upholding the decision of the authorized enforcement agency, then the authorized enforcement agency may pursue civil and/or criminal enforcement pursuant to Section 8.26.150.E. or Section 8.26.150.F.

F. Civil Enforcement Action.

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

(2) Such application to the Court shall include a copy of this Chapter, 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 notice of the condition or that reasonable efforts to so notify 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.

(3) 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.

(4) The authorized enforcement agency shall submit to the person violating the Chapter an invoice for the costs of the abatement, plus an additional five percent (5%) 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 upon the lien's date of recording.

(5) 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 collected. 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 Chapter.

(6) 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 Chapter or to enforce this Chapter.

#### G. Criminal Prosecution.

(1) Any person who violates this Chapter commits a class 2 petty offense, and upon conviction thereof, shall be punished by a fine of up to ten thousand dollars (\$10,000). Each day during which such violation of this Chapter continues shall be deemed a separate offense.

(2) The penalty assessment procedure set out in C.R.S. § 16-2-201, shall be followed in enforcing this Chapter pursuant to this subsection F.

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

(4) In addition to the penalties prescribed in this Section, persons convicted of a violation of this Chapter 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 C.R.S. § 30-15-402(2)(a).

#### H. Compensatory Action.

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

#### I. Remedies Not Exclusive.

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**8.26.160 Violations Deemed a Public Nuisance.**

Any condition caused or permitted to exist in violation of any of the provisions of this Chapter 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.

**8.26.170 Severability.**

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

**8.26.180 Authenticity.**

The foregoing text is the authentic text of Pueblo County Ordinance No. 2020-28.

The first reading of said Ordinance took place on August 25, 2020. It was published in full in the Pueblo Chieftain on August 29, 2020. It was adopted on September 15, 2020, and is to be republished by title in the Pueblo Chieftain on September 19, 2020, and shall take effect on October 19, 2020. (Ord. 2020-28)

# **PUBLIC NOTICE**

**ORDINANCE NO. 2020-28**

## **THE BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY, COLORADO**

### **AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 20 AND AMENDING THE PUEBLO COUNTY CODE, TITLE 8, CHAPTER 8.26 TITLED THE PUEBLO COUNTY ILLICIT DISCHARGES AND STORMWATER QUALITY ORDINANCE**

Introduced and Read: August 25, 2020  
First Publication: August 29, 2020  
Adopted: September 15, 2020  
Effective Date: October 19, 2020

**ATTEST:**

By: \_\_\_\_\_

Gilbert Ortiz, County Clerk

**PUEBLO COUNTY, COLORADO**

By: \_\_\_\_\_

Garrison Ortiz, Chair