

ORDINANCE NO. 519

AN ORDINANCE CONCERNING ILLICIT DISCHARGE AND CONNECTION INTO THE STORM WATER SYSTEM.

WHEREAS, Summit County has adopted a Storm Water Management Plan which requires more stringent Storm Water Pollution Prevention measures be adopted to protect the natural water bodies and drainage ways during the implementation period of the Plan; and,

WHEREAS, Storm water pollution prevention is only generally addressed in Summit County's Codes or Ordinances; and,

WHEREAS, The United States Environmental Protection Agency and The State of Utah Division of Water Quality have rules, regulations and laws under the National Pollutant Discharge System (NPDES) which must be enforced by the local agency; and

WHEREAS, The State of Utah Division of Water Quality is concerned about various waterways and lakes which have been determined to be impaired; and,

WHEREAS, The Summit County Engineering Division has been charged with the implementation of the Storm Water Management Plan adopted by the County;

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, STATE OF UTAH, AS FOLLOWS:

SECTION 1. PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Summit County, Utah, through the regulation of non-storm water discharges to the storm drainage system, waterway or any natural body of water to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the Summit County Storm Sewer System in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the storm sewer system by storm water discharges by any user,
2. To prohibit Illicit Connections and Discharges to the storm drain system, waterway or any natural body of water, and
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

SECTION 2. DEFINITIONS.

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

AUTHORIZED ENFORCEMENT AGENCY - Employees or designees of the director of the municipal agency designated to enforce this ordinance.

BEST MANAGEMENT PRACTICES (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CLEAN WATER ACT - The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY - Excavation, Grading, Filling, or otherwise disturbing the natural environment.

ILLEGAL DISCHARGE - Any direct or indirect non-storm water discharge to the storm drain system, waterway or any natural body of water, except as exempted in Section 7 of this ordinance.

ILLICIT CONNECTIONS - An illicit connection is defined as either of the following:

1. 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,
2. 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 Summit County.

INDUSTRIAL ACTIVITY - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT - A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NON-STORM WATER DISCHARGE - Any discharge to the storm drain system that is not composed entirely of storm water.

PERSON - Any individual, corporation, partnership, association, company or body politic, including any agency of the State of Utah and the United States Government.

POLLUTANT - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same 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.

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

STORM DRAINAGE SYSTEM - Public or privately owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural water bodies and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM WATER - Storm water runoff, snow melt runoff, and surface runoff and drainage.

STORM WATER POLLUTION PREVENTION PLAN (SWP3): The plan required by Summit County Ordinance that describes BMPs and activities to be implemented to eliminate or reduce pollutant discharges to storm water.

WASTEWATER - Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The Summit County Engineer and Health Department shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agencies may be delegated in writing by the Director of the authorized enforcement agencies to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will

ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 6. DISCHARGE PROHIBITIONS.

- 1) Prohibition of Illegal Discharges. It shall be unlawful and punishable as a Class C Misdemeanor for any person who discharges or causes to be discharged into the storm drain system 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 storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
 - (a) The following discharges are exempt from discharge prohibitions established by this ordinance: 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, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
 - (b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
 - (c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
 - (d) 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 for any discharge to the storm drain system.
- 2) Prohibition of Illicit Connections.
 - (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
 - (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (c) It is unlawful for any person to connect a line conveying sewage to the storm drainage system, or allows such a connection to continue.

SECTION 7. SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS.

- 1) Suspension due to Illicit Discharges in Emergency Situations. The authorized enforcement agency may, without prior notice, suspend 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 storm drainage system or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or Waters of the United States, or to minimize danger to persons.
- 2) Suspension due to the Detection of Illicit Discharge.
 - a) Any person discharging to the storm drainage system in violation of this ordinance may have their storm drainage system access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its storm drainage system access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
 - b) A person commits an offense if the person reinstates storm drainage system access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity SWP3 or ECP Permit and/or NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the authorized enforcement agency prior to the allowing of discharges to the storm drainage system

SECTION 9. MONITORING OF DISCHARGES.

1. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
2. Access to Facilities.
 - (a) The authorized enforcement agency 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 to representatives of the authorized enforcement agency.

- (b) Facility operators shall allow the authorized enforcement agency 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 storm water, and the performance of any additional duties as defined by state and federal law.
- (c) The authorized enforcement agency 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 storm water discharge.
- (d) The authorized enforcement agency 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 storm water flow and quality shall be calibrated to ensure their accuracy.
- (e) 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 authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a SWP3 or ECP and/or a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (g) If the authorized enforcement agency has been refused access to any part of the premises from which storm water 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 10. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

Summit County's Storm Water Pollution Prevention Ordinance outlines requirements identifying Best Management Practices for activities, operations, or facilities which may cause or contribute to pollution or contamination of storm water, 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 non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm water system. Compliance with all terms and conditions of a valid SWP3 or ECP Permit and/or NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.

SECTION 11. WATERCOURSE PROTECTION.

It is unlawful for any person owning property through which a watercourse passes, or such person's lessee, to not keep and maintain that part of the watercourse within the 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, it is unlawful for the person owning or the lessee to not maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 12. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible person 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 storm water, the storm drain system, or water 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 of the occurrence via emergency dispatch services. In the event of a release of non-hazardous 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 Summit County Engineer, or Health Department (P.O. Box 128, Coalville, Utah 84017) within three 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 years.

SECTION 13. ENFORCEMENT.

1. Notice of Violation. Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (a) The performance of monitoring, analyses, and reporting;
 - (b) The elimination of illicit connections or discharges;

- (c) That violating discharges, practices, or operations shall cease and desist;
 - (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
 - (e) The implementation of source control or treatment BMPs.
2. Timeliness for remediation or restoration. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. Failure to correct a notice of violation is punishable as a Class C misdemeanor.)

SECTION 14. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency to the Board of Adjustment. A notice of appeal must be filed with the office of the authorized enforcement agency within 10 days of the denial or imposition of conditions of the permit. The notice of appeal shall contain the following information:

- (1) An application containing the applicants name, address and daytime telephone number,
- (2) A statement describing the basis for the appeal; and
- (3) The relief sought by the applicant.

The appeal shall be scheduled on the next available Board of Adjustment meeting.

SECTION 15. FAILURE TO COMPLY.

In the event of failure on the part of any person, firm, public utility, or corporation to comply fully with the provisions of this ordinance, law enforcement authorities of Summit County are authorized to:

- (1) Initiate criminal action by citation or information under Section 15 of this ordinance, or
- (2) Give written notice to such person, firm, public utility, or corporation to abate the violation and/or restore the property. Such notice may be served either by personal service or by mailing the notice to the person, firm, public utility, or corporation by certified mail and posting a copy thereof on such installation for a period for 10 days. If the violation is not abated or restored within 10 days after the notice is complete, said authorities may abate the same at the expense of the person, firm, or corporation and recover costs and expenses, and also the sum of \$100.00 for each day the violation continues after the notice was complete, in an action for that purpose; or,

(3) If such person, firm, public utility, or corporation refuses to abate the violation and/or restore the property, said authorities may bring an action to abate the same as a nuisance, and if judgement is recovered by said authorities, there shall also be recovered, in addition to having the same abated, the cost of action and the sum of \$100.00 for every day such nuisance remained after notice was given for its implementation in the manner provided in Subsection (2) of this Section. (UCA 27-12-135).

(4) It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 16. PENALTY.

Any person who violates the provisions of this ordinance is guilty of a Class C Misdemeanor, punishable by a fine not to exceed seven hundred and fifty dollars (\$750.00), or a jail term of up to ninety (90) days, or by both such fine and jail term.

Violators of this ordinance are also subject to any penalties that may be imposed by the State of Utah, or the Federal Government, under the Clean Water Act.

SECTION 17. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 18. COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 18. REMEDIES NOT EXCLUSIVE.

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

SECTION 19. SEVERABILITY.

Should any section, paragraph, sentence, clause, or phase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of said ordinance shall not be affected thereby.

SECTION 20. EFFECTIVE DATE.

This ordinance shall become effective after publication of such in accordance with applicable State Law.

PASSED AND ADOPTED by the Board of County Commissioners of Summit County, Utah, this ____ day of _____, 2004.

SUMMIT COUNTY BOARD COMMISSIONERS

KEN WOOLSTENHULME, CHAIR

BOB RICHER

SHAUNA KERR

ATTEST:

SUE FOLLETT
Summit County Clerk

APPROVED AS TO FORM:

Deputy Summit County Attorney

COMMISSIONER VOTED:

WOOLSTENHULME _____
(AYE OR NAY)

RICHER _____
(AYE OR NAY)

KERR _____
(AYE OR NAY)