

ORDINANCE NO. 1122

AN ORDINANCE OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO FOR THE REGULATION OF NON-STORM WATER DISCHARGES TO THE STORM DRAINAGE SYSTEM

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO, THAT:

SECTION 1. PURPOSE/INTENT.

The purpose of this Ordinance is to protect, preserve and improve the health, safety, and general welfare of the citizens of the Town of Berthoud through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm-sewer) 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 municipal separate storm sewer system by storm water discharges by any user
2. To prohibit Illicit connections and discharges to the municipal separate storm sewer system
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:

Town of Berthoud: The Town as a statutory municipality and shall include employees or designees of the Town of Berthoud designated to enforce this Ordinance.

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 storm water, receiving waters, or storm water 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: The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

Colorado Discharge Permit System (CDPS). – Colorado's version of the federal National Pollutant Discharge Elimination System (NPDES). State of Colorado regulation (5 CCR 1003-61) which covers discharges from specific types of industries including construction sites, and storm sewer systems for certain municipalities as part of the Water Quality Control Division (Division) under the Colorado Department of Public Health and Environment (CDPHE).

Construction Activity: Activities subject to CDPS Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Facility: Any building including private homes, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

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.

Illicit Discharge: Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except the following: discharges specifically authorized by a CDPS permit, and discharges resulting from fire fighting activities. .

Illicit Connections: Either of the following: 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 Town of Berthoud; or,

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 Town of Berthoud.

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

Municipal Separate Storm Sewer System (MS4) a conveyance or system of conveyances (including: roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), owned or operated by a State, city, town, county, district, or other public body (created by state law), having jurisdiction over disposal of sewage, industrial waste, stormwater, or other wastes; designed or used for collecting or conveying stormwater.

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) i.e. Colorado Discharge Permit System) 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, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

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 areas.

Storm Drainage System: Also defined as Municipal Separate Storm Sewer System (MS4).

Storm Water: precipitation-induced surface runoff.

Storm Water Pollution Prevention Plan or Stormwater Management Plan. (SWMP): 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 storm water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

Watercourse: means a channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainageways, in which storm water runoff and floodwater flows, either regularly or infrequently.

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 the Town of Berthoud.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The Town of Berthoud shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Town of Berthoud may be delegated in writing by the Town of Berthoud to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. 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 7. DISCHARGE PROHIBITIONS.

Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal 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:

The following discharges are exempt from discharge prohibitions established by this Ordinance:

1. landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, springs, flows from riparian habitats and wetlands, water line flushing, discharges from potable water sources, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges, and water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction.
2. Dye testing is an allowable discharge, but requires a written notification to the Town of Berthoud and written authorization for the test by the Town prior to the time of the test. A copy of the results will be provided to the Town upon completion.
3. The prohibition shall not apply to any non-storm water discharge permitted under an CDPS permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the CDPHE, 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 and a copy of the CDPS permit is provided to the Town.

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 in the past, 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 to the storm drain or storm water system, or allows such a connection to continue.

SECTION 8. SUSPENSION OF STORM SEWER ACCESS.

Suspension due to Illicit Discharges in Emergency Situations. The Town of Berthoud may, without prior notice, suspend storm drain or storm water 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 storm drain or storm water system or waters of the State of Colorado. If the violator fails to comply with a suspension order issued in an emergency, the Town of Berthoud may take such steps as deemed necessary to prevent or minimize damage to the storm drain or storm water system or waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this Ordinance may have their storm drain or storm water system access terminated if such termination would abate or reduce an illicit discharge. The Town of Berthoud will notify a violator of the proposed termination of its storm drain or storm water system access. The violator may petition the Town of Berthoud for a reconsideration and hearing.

A person commits an offense if the person reinstates storm drain or storm water system access to premises terminated pursuant to this Section, without the prior approval of the Town of Berthoud.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity CDPS storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit will be required in a form acceptable to the Town of Berthoud prior to the allowing of discharges to the Storm drain or storm water system.

1. CDPS Permit required. It shall be unlawful for any person to conduct any activity resulting in the following total disturbed area without first obtaining a storm water quality permit:
 - a. One acre or more.
 - b. Less than one acre if such activities are part of a larger common plan of development, even though multiple, separate and distinct land development activities may take place at different times on different schedules.
 - c. The Town may also require a storm water quality permit regardless of the size of the total disturbed area in conjunction with approval of a final subdivision plat, special use permit, or site development plan, or if the construction activities are adjacent to a watercourse or wetlands.
2. Permit application: Applications for State storm water quality permits shall be Filed with the Town.
 - a. The application shall include documentation of an application for a CDPHE storm water general permit for construction activities and a completed SWMP.
3. Construction activities may not proceed until the Town approves the SWMP.
4. Construction storm water management plan.
 - a. A SWMP shall be prepared in accordance with the requirements of the most recent SWMP guidance document prepared by the CDPHE, and the engineering, hydrologic

and pollution control practices outlined in Larimer County Stormwater design standards and construction specifications.

b. The owner, occupant, or operator of any premises or facility shall have the approved SWMP on site at all times and shall be prepared to respond to maintenance of specific BMPs.

c. Based on inspections performed by the owner or by Town personnel, modifications to the SWMP will be necessary if at any time the specified BMPs do not meet the objectives of this Ordinance. In this case, the owner shall meet with Town personnel to determine the appropriate modifications. Modifications shall be completed immediately within the referenced inspection and shall be recorded on the owner's copy of the SWMP.

d. SWMP review/changes. The operator shall amend the plan whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for discharge of pollutants to the MS4. In this case, the owner shall meet with town personnel to determine the appropriate modifications. All modifications shall be completed within seven (7) days of the referenced inspection, and shall be recorded on the owner's copy of the SWMP.

e. Records of inspection are to be maintained on site with the SWMP and are to be available to the Town inspector upon request.

5. Technical standards and specifications. All BMPs designed to meet the requirements of this Ordinance shall comply with Larimer County Stormwater Design Standards or its successor, and any other alternative methodology, which is demonstrated to be effective and approved by the Town.

6. Post-construction requirement of permanent BMPs.

a. Land development subject to this chapter must address stormwater runoff quality through the use of permanent BMPs which shall be maintained in perpetuity.

b. Structural BMPs, such as pipes and inlets, located on private property shall be owned and operated by the owner of the property on which the BMP is located, unless the Town in writing agrees that a person other than the owner shall own or operate such BMP.

c. As a condition of approval of the BMP, the owner shall also agree to maintain the BMP to its design capacity unless or until the Town relieves the property owner of that responsibility in writing. The obligation to maintain the BMP shall be memorialized on the subdivision plat, annexation plat, development agreement or other instrument or in a form acceptable to the Town and shall be recorded in the office of the county clerk and recorder.

7. Certification of permanent BMPs. Upon completion of a project, and before a certificate of occupancy shall be granted, the Town shall be provided a written certification stating that the completed project is in compliance with the approved final drainage plan. All applicants are required to submit "as built" plans for any permanent BMPs after final construction is completed. The certification and as-builts shall bear the stamp and signature of a Colorado licensed professional engineer. A final inspection by the Town is required before the release of any performance securities can occur.

8. Ongoing inspection and maintenance of permanent BMPs.

- a. Maintenance agreements. The owner must, unless an on-site storm water management facility or practice is dedicated to and accepted by the Town, execute a inspection and maintenance agreement, that shall be binding on all subsequent owners of the permanent BMPs.
- b. Long-term inspection of permanent BMPs. Permanent BMPs shall be subject to ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of any maintenance agreements, drainage plans and this Ordinance.

SECTION 10. MONITORING OF DISCHARGES.

Whenever the Town has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this ordinance, the Town shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this ordinance. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

The Town shall have the right to set up on the property of any discharger to the municipal separate storm sewer system such devices that are necessary to conduct an investigation of such discharges. The investigation may include, but is not limited to the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing staff on alleged violations, and access to any and all facilities or areas within the premises that may have any effect on the discharge.

Access to Facilities. The Town of Berthoud 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 Town of Berthoud.

Facility operators shall allow the Town of Berthoud 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 CDPS permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The Town of Berthoud shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town of Berthoud to conduct monitoring and/or sampling of the facility's storm water discharge.

The Town of Berthoud 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 an accessible, 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. Records of calibration activities shall be maintained by the facility operator and be provided to the Town upon request.

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 Town of Berthoud and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing the Town of Berthoud access to a permitted facility is a violation of this Ordinance. A person who is the operator of a facility with a CDPS permit to discharge storm water associated with industrial activity commits an offense if the person denies the Town of Berthoud reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

If the Town of Berthoud has been refused access to any part of the premises from which an illicit discharge is detected, 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 Town of Berthoud may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11. WATERCOURSE PROTECTION.

Every person owning a watercourse or easement for a watercourse including irrigation and drainage ditches, or such person's lessee, shall 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, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13. 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 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 or non-hazardous materials said person shall immediately notify emergency response agencies of the occurrence by the most expedient and reliable communication available and shall continue these attempts of notification until it is successful. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Berthoud 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 14. ENFORCEMENT.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who violates any of the provisions of this ordinance shall be subject to one or more of the enforcement actions outlined in this section. Any violation or threatened violation may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Town of Berthoud is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town of Berthoud is authorized to seek costs of abatement as outlined in **Section 17.**

A. Compliance Directive

In addition to any other remedy available to the Town, inspectors may issue compliance directives at the time of inspection to require a person to implement actions that will correct any violation of this ordinance.

B. Notice of Violation.

Whenever the Town of Berthoud finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Town of Berthoud may verbally warn the person of the violation. If immediate action for compliance is not met, the Town will order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment to cover all administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.
7. A stop work order will be issued by the Town of Berthoud.

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.

SECTION 15. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the Town of Berthoud. The notice of appeal must be received within seven (7) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fourteen (14) days from the date of receipt of the notice of appeal.

SECTION 16. ENFORCEMENT MEASURES AFTER APPEAL.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven (7) days of the decision of the municipal authority upholding the decision of the Town of Berthoud, then representatives of the Town of Berthoud shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. 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 17. COST OF ABATEMENT OF THE VIOLATION.

Within fourteen (14) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days. If the amount due is not paid within fourteen (14) days or longer, as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the Town of Berthoud by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of eight percent (8%) per annum shall be assessed on the balance beginning when the Town incurs any costs.

SECTION 18. 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 Town of Berthoud 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 19. COMPENSATORY ACTION.

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

SECTION 20. VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public

health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 21. CRIMINAL PROSECUTION.

In addition at all other remedies, any person that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of Three Hundred Dollars (\$300) and up to ninety (90) days imprisonment. Each day a violation continues shall constitute a separate violation.

SECTION 22. 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 Town of Berthoud to seek cumulative remedies.

SECTION 23. EFFECTIVE DATE.

The Board of Trustees of the Town of Berthoud herewith finds, determines and designates that this Ordinance shall take effect and be in force thirty (30) days after publication.

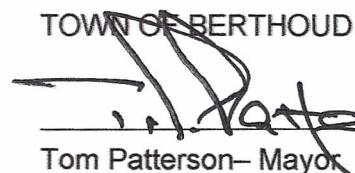
At its meeting August 31, 2010, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 28th day of September, 2010.

ATTEST:

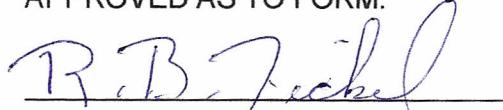


Mary K. Cowdin – Town Clerk

TOWN OF BERTHOUD


Tom Patterson – Mayor

APPROVED AS TO FORM:



R. B. Fickel, Town Attorney

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