ORDINANCE

An Ordinance Adopting Policy Part 7, Chapter 2, Section 7 Illicit Stormwater Discharge.

BE IT ORDAINED by the Board of County Commissioners of Jefferson County, Colorado that the Policy 7.2.7 regarding Illicit Stormwater Discharge is hereby adopted as follows:

Title: Regulatory Policy Illicit Stormwater Discharge	**Policy No.** Part 7, Planning and Land Use Chapter 2, Regulations Section 7
	Effective Date December 29, 2012
Policy Custodian Planning and Zoning	**Adoption/Revision Date** November 20, 2012

Adopting Resolution(s): CC12-414

References (Statutes/Resos/Policies): C.R.S. §18-4-511, §30-15-401, §16-13-305; CC12-371

Purpose: An ordinance, pursuant to the authority granted by §30-15-401(1)(a)(V) and §30-15-401(11), C.R.S., regulating illicit Stormwater discharge within unincorporated Jefferson County. The purposes of this Ordinance is to regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by Stormwater discharges by any user, to protect the health, safety, and general welfare of the citizens of Jefferson County through the regulation of non-Stormwater discharges to the municipal separate storm sewer system (MS4), to prohibit illicit connections and discharges to the municipal separate storm sewer system (MS4), to establish procedures to carry out the inspection, surveillance and monitoring necessary to ensure compliance with this Ordinance, to promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the municipal separate storm sewer system (MS4), and, to ensure Jefferson County is in compliance with CDPS Permit No. COR-090000 and the Colorado Department of Public Health and Environment, Water Quality Control Commission Regulations No . 61 (Colorado Discharge Permit System Regulations), No. 73 (Chatfield Reservoir Control Regulation) and No. 74 (Bear Creek Watershed Control Regulation).

Policy: Illicit Stormwater Discharge

A. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

1. Authorized Enforcement Agency: The Jefferson County Planning and Zoning Division and the Jefferson County Sherriff's Office and/or their designated agents.

2. Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, general good house-keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices

to prevent or reduce the discharge of pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

3. Colorado Discharge Permit System or CDPS: The State of Colorado's system of permitting discharges (e.g. Stormwater, wastewater) to Waters of the State which corresponds to the Federal NPDES permits under the Federal Clean Water Act.

4. CDPHE: The Colorado Department of Public Health and the Environment.

5. Construction Activity: Activities including but not limited to clearing and grubbing, grading, excavating, and demolition.

6. Emergency Fire Fighting Discharge: A discharge of non-Stormwater to the MS4 or Waters of the State resulting from the act of extinguishing fires.

7. Illicit Connection: (1) Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the storm drain system, including but not limited to any conveyance which allows any non-Stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, or (2) any connection to the storm drain system from indoor drains, sump pumps and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Authorized Enforcement Agency; 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 an Authorized Enforcement Agency.

8. Illicit Discharge: Any prohibited direct or indirect Non-Stormwater Discharge to MS4.

9. Hazardous Material: 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.

10. Mobile Washing Operation: A commercial activity involving power washing, steam cleaning, and any other method of mobile cosmetic cleaning of, by way of example, the following: vehicles, fabric, pets and/or exterior surfaces.

11. Municipal Separate Storm Sewer System or MS4: The system of conveyances including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, inlets, retention and detention ponds, outfalls, ditches, man-made channels, or storm drains owned and/or maintained by Jefferson County and designed for collecting or conveying Stormwater and which is not used for collecting or conveying sewage.

12. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by United State's Environmental Protection Agency (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.

13. Non-Stormwater Discharge: Any discharge to the storm drain system that is not composed entirely of Stormwater.

14. Person: Any individual, association, trust, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

15. 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; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects; 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; wastes and residues that result from mobile washing operations; noxious or offensive matter of any kind, and any soil, sediment, rock, and any type of landscaping material.

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

17. Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation.

18. Stormwater Pollution Prevention Plan or Stormwater Management Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

19. Threatened Discharge: A condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce or mitigate damages to persons, property or natural resources.

20. Watercourse: A natural or artificial channel through which Stormwater or floodwater can flow, either regularly or infrequently.

21. Waters of the State/United States (State waters): Any and all surface waters that are contained in or flow in or through the State of Colorado. The definition includes all Watercourses, even if they are usually dry. (Note: These terms are used interchangeably throughout.)

B. Applicability

This Ordinance shall apply to all water entering the MS4 generated on any developed or undeveloped lands within the area of unincorporated Jefferson County, unless explicitly exempted by this Ordinance.

C. Responsibility for Administration

The Jefferson County Planning and Zoning Division shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Authorized Enforcement Agency may be delegated in writing by the Director of Planning and Zoning to persons or entities acting in the beneficial interest of or in the employ of the agency.

D. 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.

E. Discharge Prohibitions, Exemptions and Requirements

1. Prohibition of Illicit Discharges

   a. No person shall discharge or cause to be discharged into the MS4 or Watercourses any Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than Stormwater.

   b. It shall be unlawful to cause Pollutants to be deposited in such a manner or location as to constitute a Threatened Discharge into MS4 or Waters of the State. Pollutants that are no longer contained in a pipe, tank or other container are considered to be Threatened Discharges unless they are actively being cleaned up.

2. Prohibition of Illicit Connections

   a. The construction, use, maintenance or continued existence of Illicit Connections to the MS4 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. A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

3. Exemptions

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

   a. The following discharges are exempt from the discharge prohibitions established by this Ordinance when properly managed: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space pumps, air conditioning condensation, springs, residential washing of vehicles, natural riparian habitat or wetland flows, swimming pools

(if dechlorinated - typically less than one PPM chlorine), Emergency Fire Fighting Activities, and any water incidental to street sweeping that is not associated with construction.

b. Agricultural irrigation activities and road maintenance activities performed by state or local governments are exempt from the discharge prohibitions established by this Ordinance provided that BMPs or standardized industry practices are followed.

c. Dye testing is an allowable discharge, but requires a written notification to the Jefferson County Planning and Zoning Division at least 24 hours prior to the time of the test.

d. The discharge prohibition shall not apply to any Non-Stormwater Discharge permitted under an NPDES permit, CDPS permit, or CDPHE issued policy or guidance provided that the discharge is in full compliance with all requirements of the permit, waiver, guidance or order and other applicable laws and regulations.

4. Requirements Applicable to Potential Dischargers

a. Watercourse Protection. Every person owning property through which a Watercourse passes, 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. Irrigation structures themselves are excepted. 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.

b. Minimization of Irrigation Runoff. A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation systems shall be managed to reduce the discharge of water from a site.

c. Cleaning of Paved Surfaces Required. The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of Pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this Ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Ordinance.

d. Mobile Washing Operations. Mobile washing operations shall not discharge to the storm drainage system in violation of this Ordinance.

e. Maintenance of Equipment. Any leak or spill related to equipment maintenance in an outdoor, uncovered area should be contained to prevent the potential release of Pollutants.

f. Pesticides, Herbicides and Fertilizers. Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.

F. Suspensions Due to Emergency Situations

1. The Authorized Enforcement Agency may, without prior notice, suspend MS4 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 MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

2. Termination due to the Detection of Illicit Discharge
Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an Illicit Discharge. The Jefferson County Planning and Zoning Division will notify a violator of the proposed termination of its MS4 access. The violator may petition the Board of County Commissioners for reconsideration and hearing as set forth in Section K(2) below.

   A person commits an offense if the person reinstates MS4 access to a Premises terminated pursuant to this Ordinance, without the prior written approval of the Jefferson County Planning and Zoning Division.

G. Industrial or Construction Activity Discharges
Any person subject to an industrial or construction activity CDPS Stormwater 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 Jefferson County Planning and Zoning Division prior to the allowing of discharges to the MS4.

H. Access and Inspection of Properties and Facilities

1. Access to Facilities
The Authorized Enforcement Agency shall be allowed to enter and inspect permitted 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 Authorized Enforcement Agency.

   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 Stormwater, and the performance of any additional duties as defined by state and federal law.

   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 Stormwater discharge.

The Authorized Enforcement Agency has the right to require the discharger to install monitoring equipment as necessary to ensure the protection of public health and environment. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure Stormwater flow and quality shall be calibrated to ensure their accuracy.

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 owner or lessee of the property 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 owner or lessee.

Unreasonable delays in allowing the Authorized Enforcement Agency access to a permitted facility is a violation of a Stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES Permit to Discharge Stormwater 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.

If the Authorized Enforcement Agency has been refused access to any part of the Premises from which Stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Enforcement Agency may seek issuance of a search warrant from any court of competent jurisdiction.

I. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices

The Jefferson County Planning and Zoning Division will adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility, which may cause or contribute to pollution or contamination of Stormwater, the storm drain system, or Waters of the State. 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 Premises, which is, or may be, the source of an Illicit Discharge may be required to implement, at said person’s expense, additional structural and non-structural BMPs to prevent the further discharge of Pollutants to the Municipal Separate Storm Sewer System. Compliance with all terms and conditions of a valid NPDES or CDPS Permit authorizing the discharge of Stormwater associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPP) or Stormwater Management Plan (SWMP) as necessary for compliance with requirements of the NPDES or CDPS Permit.

J. Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a Premises, or responsible for emergency response for such Premises has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges into Stormwater, the storm drain system, or State Waters, 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 Jefferson County Planning and Zoning Division in person or by phone no later than 24 hours. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Jefferson County Planning and Zoning Division within five (5) calendar days of the initial notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

K. Violations, Abatement, Enforcement and Penalties

1. Notice of Violation

When 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 Stormwater pollution or contamination hazards and the restoration of any affected property;

e. Payment to cover administrative and remediation costs; and

f. The implementation of source control or treatment BMPs.

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, Jefferson County may seek the enforcement of the work through injunction or other legal means, or the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. Each day or part of a day that the violation occurs or continues is a separate offense.

The notice of violation shall be served by hand-delivery or by first-class mail. Any such notice shall be deemed valid if it is mailed to the address of the owner of the Premises on file with the Jefferson County Assessor's Office for the receipt of tax notices or mailed as otherwise set forth herein. A copy of the

same notice shall be sent to the “occupant” of the property if the property address and the owners address differ. If a person violates this Ordinance and such violation is not associated with a specific premise, then: if the violation is committed by a person that is a legal entity, notice to such entity shall be deemed valid if sent to the registered agent’s address on file with the Secretary of State; or, if the violation is committed by a person other than a legal entity, notice shall be deemed valid if sent to such person at the person’s residence, if known, or to any address of such person reported by such person in any political subdivision or State official records, kept for any purpose whatsoever.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, the Authorized Enforcement Agency may pursue civil or criminal enforcement pursuant this Section K.

2. Appeal of Notice of Violation
   Any person receiving a notice of violation may appeal to the Board of County Commissioners the determination of the Jefferson County Planning and Zoning Division. The notice of appeal must be received within 10 days from the date of the notice of violation. Hearing on the appeal before the Board of County Commissioners shall take place within 15 business days from the date of receipt of the notice of appeal. The decision of the Board of County Commissioners shall be final. Nothing in this Section K(2) shall impact the County’s ability to seek abatement, as described in Section K(3) below, or any other remedies during the pendency of such appeal process.

3. Abatement
   The Authorized Enforcement Agency may apply to the county court or the district court having jurisdiction over the property for an administrative entry and seizure warrant permitting the Authorized Enforcement Agency and/or any additional persons deemed necessary and appropriate to abate the violation to enter the Premises and take any and all actions necessary to abate the conditions violating this Ordinance and for restoration of the affected Premises. Such application to the court shall include: (1) a copy of this Ordinance,(2) a sworn or affirmed affidavit stating the factual basis for such warrant, (3) evidence that notice of violation has been provided or that reasonable efforts to serve the notice of violation have been made to no avail and such person has failed to abate the condition within the prescribed period, and (4) a general description of the location of the Premises that is the subject of the warrant and a list of corrective actions needed.

   Within ten (10) days after the date of issuance of an administrative entry and seizure warrant, the Authorized Enforcement Agency shall (A) execute the warrant in accordance with directions by the issuing court, (B) deliver or mail a copy of such warrant to the property owner where the violation has occurred by first-class mail, and (C) 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. Collection of Costs
   Upon notice to and failure of the property owner to abate or mitigate the discharge of Pollutants, the County may perform the work needed to comply with this Ordinance. The whole cost thereof, including five percent for inspection and other incidental costs in connection therewith, shall become an assessment upon the

property from which such condition has been abated or remediated. The County shall keep a written record of all such costs which shall be part of the file. Any assessment pursuant to this Ordinance shall, once recorded, be a lien against such property until paid and shall have priority based upon its date of recording. In case such assessment is not paid within 60 days after notice is mailed to the property owner, it may be certified by the County Clerk and Recorder to the County Treasurer, who shall collect the assessment, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this State for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collections of assessments pursuant to this Ordinance.

5. Criminal Prosecution
   Any person who violates any provision of this Ordinance commits, pursuant to §30-15-402(1), C.R.S., a class 2 petty offense, and upon conviction thereof, shall be punished by a fine of $250 for the first offense, $500 for the second repeat offense, and $1,000 for the third and subsequent repeat offenses. Each day during which such violation of this Ordinance continues shall be deemed a separate offense.

   The penalty assessment procedure set out in section 16-2-201, C.R.S., shall be followed in enforcing this Ordinance pursuant to this Section.

   In addition to the penalties prescribed in this Section K, persons convicted of a violation of this Ordinance 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 §30-15-402(2)(a), C.R.S. and any other fines or surcharges deemed appropriate by the court.

   The County Attorney is authorized to prosecute violations of this Ordinance.

6. 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.

L. Severability
   If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Chair, Board of County Commissioners

Jefferson County Clerk and Recorder