

ORDINANCE NO. 1240

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 16.28 TO THE NAPA COUNTY CODE ESTABLISHING PROCEDURES WITH REGARD TO STORMWATER MANAGEMENT AND DISCHARGE CONTROL

The Board of Supervisors of the County of Napa ordains as follows:

SECTION 1. A new Chapter 16.28 entitled, “**Stormwater Management and Discharge**

Control” is added to the Napa County Code of Ordinances to read in full as follows:

Chapter 16.28

STORMWATER MANAGEMENT AND DISCHARGE CONTROL

Sections:

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16.28.010 Title.

This chapter shall be known as the County “Stormwater Management and Discharge Control,” and may be cited as such, and will be referred to herein as “this chapter.”

16.28.020 Purpose and intent.

The purpose of this chapter is to protect the health, safety and general welfare of Napa County residents; to protect water resources and to improve water quality; to cause the use of management practices by the County and its citizens that will reduce the adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of stormwater as a resource; and to ensure the County is compliant with applicable state and federal law. This chapter seeks to promote these purposes by:

- A. Prohibiting illicit discharges to the stormwater conveyance system;
- B. Establishing authority to adopt requirements for stormwater management, including source control requirements, to prevent and reduce pollution;
- C. Establishing authority to adopt requirements for development projects to reduce stormwater pollution and erosion both during construction and after the project is complete;
- D. Establishing authority to adopt requirements for the management of stormwater flows from development projects, both to prevent erosion and to protect existing water-dependent habitats;
- E. Establishing authority to adopt standards for the use of off-site facilities for stormwater management to supplement on-site practices at new development sites..

16.28.030 Definitions.

The following words, when used in this chapter, shall have the following meanings:

“Best Management Practices” (BMPs) means 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.

“Development” means any activity that moves soils or substantially alters the preexisting vegetated or man-made cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil, placement of fill materials, paving, pavement removal, exterior construction, substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing, or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.

“Director of Public Works” or “Director” means the Director of the Napa County Department of Public Works.

“Discharge” shall mean the release, addition or deposit of any fluid, liquid, solid, flowing substance, or any other material or substance to the stormwater conveyance system.

“Employee training program” means a documented employee training program which may be required to be implemented by a business pursuant to a stormwater pollution prevention plan for the purpose of educating its employees on methods of reducing discharge of pollutants to the stormwater conveyance system.

“Enforcement agency” means the Napa County Department of Public Works.

“Enforcement official” means the Director of Public Works or his or her designee or any agent

of the County authorized to enforce compliance with this chapter.

“Illicit discharge” means any discharge to a stormwater conveyance system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

“Illicit connection” means a pipe, facility, or other device, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater conveyance system regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency.

“Maximum extent practicable (MEP)” means a technology-based standard established by Congress in the Clean Water Act section 402(p) (3) (B) (iii) for stormwater discharge that municipalities must meet. MEP is generally the result of emphasizing pollution prevention and source control best management practices (BMPs) primarily (as the first line of defense) and in combination with treatment methods serving as backup (additional line of defense). The MEP approach is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does what constitutes MEP.

“National Pollutant Discharge Elimination System” (NPDES) means a permit issued by the U.S. Environmental Protection Agency, State Water Resources Control Board, or the California Regional Water Quality Control Board pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq., (CWA) that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

“Noncommercial vehicle washing” means the washing and rinsing of passenger vehicles on private property in which no commercial enterprise is being conducted in the washing of those vehicles.

“Non-stormwater discharge” means any discharge to the stormwater conveyance system that is not entirely composed of stormwater.

“Plan standard” means any and/or all applicable requirements of the Water Quality Control Plan for Basin 2, adopted by the Regional Water Quality Control Board, San Francisco Bay Region in 1995, and all subsequent amendments.

“Pollutant” means any “pollutant” defined in Section 502(6) of the CWA or incorporated into the California Water Code Section 13373. Pollutants may include, but are not limited to the following:

- A. Residential, commercial and industrial waste (such as trash, litter, fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash, and sludge);
- B. Metals such as cadmium, lead, zinc, silver, nickel, chromium, copper and non-metals such as phosphorous and arsenic;
- C. Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease);
- D. Excessive eroded soil, sediment, and particulate materials in amounts that may adversely affect the beneficial use of the receiving waters, flora or fauna of the State.
- E. Animal wastes (such as discharge from confinement facilities, kennels, pens, recreational facilities, stables, and show facilities; and
- F. Substances having characteristics such as pH less than 6 or greater than 9, or unusual coloration or turbidity, or excessive levels of fecal coliform, or fecal streptococcus, or enterococcus.

“Premises” means any building, lot, parcel, land or portion of land whether improved or unimproved.

“Receiving Waters” means all waters that are “Waters of the State” within the scope of the

California Water Code, including but not limited to natural streams, creeks, rivers, reservoirs, lakes, ponds, water in vernal pools, lagoons, estuaries, bays, the Pacific Ocean, and ground water.

“Stormwater” means surface runoff and drainage associated with storm events, which is free of pollutants to the maximum extent practicable.

“Stormwater conveyance system” means those artificial and natural facilities within the unincorporated area of the County, whether publicly or privately owned, by which stormwater may be conveyed to a watercourse or Waters of the State, including any roads with drainage systems, streets, catch basins, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, and natural and artificial channels or storm drains.

“Stormwater pollution prevention plan” means a document which describes the best management practices to be implemented by the owner or operator of a business or construction site to eliminate illicit discharges and/or reduce to the maximum extent practicable pollutant discharges to the stormwater conveyance system.

“Watercourse” means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, runs, and rivulets.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined above shall, when used in this chapter, have the same meaning as set forth in said act or regulation.

16.28.040 Conflicts with other laws.

In the event of any conflict between this chapter and any federal or state law or regulation, that requirement which establishes the higher standard for public health or safety shall govern. To the extent permitted by law, nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order, or permit.

16.28.050 Discharge prohibitions.

A. Illicit Discharges. Except as provided in Section 16.28.060, it is unlawful for any person to make or cause to be made any illicit discharge into the stormwater conveyance system. Notwithstanding the exemptions provided by Section 16.28.060 (A) and (B), if the Regional Water Quality Control Board or the enforcement official determines that any otherwise exempt discharge causes or significantly contributes to violations of any plan standard, or conveys significant quantities of pollutants to surface water(s) or watercourse(s), or is a danger to public health or safety, such discharge shall be prohibited from entering the stormwater conveyance system.

B. Illicit Connection. The construction, use, maintenance or continued existence of illicit connections is prohibited. This prohibition includes illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

C. Litter, Dumps, and Stockpiles. Throwing, depositing, leaving, abandoning, maintaining or keeping materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge is prohibited.

16.28.060 Exceptions to discharge prohibition.

Subject to the authority granted to the Regional Water Quality Control Board and the enforcement official, the following discharges to the stormwater conveyance system are exempt from the prohibition set forth in Section 16.280.050.

A. Any discharge or connection regulated under a NPDES permit issued to the discharger and administered by the state of California pursuant to Division 7, Chapter 5.5 of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations;

B. Discharges from the following activities, which do not cause or contribute to the violation of any plan standard:

1. Water line flushing and other discharges from potable water sources,
2. Irrigation and lawn watering,
3. Rising ground waters or springs,
4. Passive foundation and footing drains,
5. Water from crawl space pumps and basement pumps,
6. Air conditioning condensate,
7. Noncommercial vehicle washing,
8. Natural flows from riparian habitats and wetlands,
9. Dechlorinated swimming pool discharges,
10. Flows from fire suppression activities, including fire hydrant flows,
11. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d) and California Health and Safety Code Section 25117,
12. Diverted stream flows,
13. Uncontaminated ground water infiltration (as defined at 40 Code of Federal Regulation Section 35.2005(b)(20) to separate storm sewers;
14. Uncontaminated pumped ground water

C. Any discharge, which the enforcement official, the local health officer, or the Regional Water Quality Control Board determines in writing, is necessary for the protection of the public health and safety;

D. Any discharge caused by flooding or other natural disaster, which could not have been reasonably foreseen or mitigated for in advance by the discharger, as, determined by the enforcement official.

16.28.070 Discharge in violation of permit.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the enforcement official prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

16.28.080 Concealment and abetting.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation.

16.28.090 Acts potentially resulting in violation of Federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any stop order, prohibition, or effluent limitation, may also be in violation of the CWA and/or Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.) and may be

subject to the sanctions of those Acts including civil and criminal penalties.

16.28.100 Reduction of pollutants in stormwater.

Any person engaged in activities which may result in pollutants entering the stormwater conveyance system shall, to the maximum extent practicable, undertake the measures set forth below to reduce the risk of illicit discharge and/or pollutant discharge.

A. Business Related Activities.

Stormwater Pollution Prevention Plan. The enforcement official may require any business in the County that is engaged in activities which may result in pollutant discharges to develop and implement a stormwater pollution prevention plan, which shall, without limitation, include an employee training program. Business activities which may require a stormwater pollution prevention plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.

B. Development

The County shall adopt by resolution requirements identifying appropriate Best Management Practices to control the volume, rate, and potential pollutant load of stormwater runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The County shall incorporate such requirements as conditions in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this chapter.

C. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the enforcement official prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

D. Compliance with Best Management Practices. Every person undertaking any activity or use of a premises which may cause or contribute to stormwater pollution or contamination, illicit discharges, or non-stormwater discharges shall comply with best management practices guidelines or pollution control requirements as may be reasonably established by the enforcement official.

16.28.110 Containment and notification of spills.

Any person owning or occupying a premises who has knowledge of any release of pollutants or illicit discharge from or across those premises which might enter the stormwater conveyance system, other than a release or discharge that is permitted by this chapter, shall immediately take all reasonable action to contain and abate the release of pollutants or illicit discharge, and shall notify the enforcement agency within twenty-four (24) hours of the release of pollutants or illicit discharge.

16.28.120 Inspection authority.

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of this chapter, the enforcement official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter. Any request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made upon issuance of a warrant issued by a court of competent jurisdiction. In the

event the owner or occupant refuses entry after such request has been made, the enforcement official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. Inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharge, nonstormwater discharge to the stormwater conveyance system, or similar factors.

A. Sampling Authority. During any inspection, the enforcement official may take samples as necessary in order to implement and enforce the provisions of this chapter. This authority may include the installation of sampling and metering devices on private property, or requiring the person owning or occupying the premises to supply samples.

B. Monitoring, Analysis and Reporting Authority. The enforcement official may require monitoring, analysis and reporting of discharges from any premises to the stormwater conveyance system. Upon service of written notice by the enforcement official, the burden, including cost, of these activities, analyses and reports, incurred in complying with the requirement shall, to the extent permitted by law, be borne by the property owner or occupant of the facility or activity for which testing and monitoring has been requested.

C. Fee Authority. The enforcement agency has the authority to conduct inspections and collect fees for the purpose of ensuring compliance with this chapter from any person or business issued one or more of the following County-issued permits:

1. Hazardous Material Business Plan;
2. Food establishments except restricted food service transient occupancy establishments;
3. Building permits;
4. Grading permits.

A fee schedule for the purpose of enforcing this chapter shall be drafted by the enforcement official and submitted to the Board of Supervisors for adoption. Fees shall be established by the Board of Supervisors.

16.28.130 Enforcement authority.

Enforcement of this chapter shall be by the enforcement official.

A. Violations. It shall be a violation for any person to violate or cause any other person to violate any of the provisions of this chapter which are declared to be unlawful or a public nuisance or to cause any other person to do so. In addition to any other remedy provided by law, such violation shall be punishable as a misdemeanor and be enforced pursuant to the provisions of either Chapter 1.20, 1.24 or 1.28.

B. Civil Actions--Injunctive Relief. The County may elect to proceed with a civil action, including seeking injunctive relief, rather than proceed with criminal enforcement actions. Any person, firm or corporation, whether acting as principal, agent, employer or otherwise, who willfully violates any provision of this chapter, or the terms and/or conditions of any permit issued pursuant to this chapter, shall be liable for a civil penalty not to exceed one thousand dollars for each day or portion thereof, that the violation continues to exist. Any person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.

16.28.140 Stop orders.

The enforcement official is hereby authorized to issue stop orders to prohibit further construction of buildings or structures involving violations of this title, and such stop orders shall remain in effect until such violations have been resolved.

16.28.150 Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

16.28.160 Disclaimer of liability.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the Waters of the State. This chapter shall not create liability on the part of the County, any officer or employee thereof for any damages that result from reliance on the code or any administrative decision lawfully made thereunder.

16.28.170 County authority.

The enforcement official is authorized to make any decision on behalf of the County required or called for by this chapter.

SECTION 2. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 3. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 4. A summary of this ordinance shall be published at least once five days before the adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was introduced and public hearing held thereon before the Board of

Supervisors of the County of Napa, State of California on the 8th day of June, 2004, and was passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 22nd day of June, 2004, by the following vote:

AYES:	SUPERVISORS	WAGEKNECHT, DILLON, DODD, RIPPEY and LUCE
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	NONE

MARK LUCE, Chairperson
Napa County Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors

By_____

<p align="center">Approved by the Napa County Board of Supervisors</p> <p>Date: June 22, 2004</p> <p>Processed by:</p> <p align="center">_____</p> <p align="center">Deputy Clerk of the Board</p>

<p align="center">APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>E-Signature by Krishan Chopra</u> Deputy County Counsel</p> <p>By: <u>E-Signature by Sue Ingalls</u> County Code Services</p> <p>Date: <u>June 22, 2004</u></p>
