ORDINANCE NO. 11 CONCERNING ILLICIT DISCHARGES TO THE WATERS OF THE STATE WITHIN UNINCORPORATED ADAMS COUNTY

WHEREAS, the County is required by State and Federal law, and as a condition of its State of Colorado Municipal Separate Stormwater System discharge permit, to establish by Ordinance methods for controlling the introduction of pollutants into the storm drain system, in order to protect and enhance the water quality of the state's watercourses, water bodies and wetlands in a manner pursuant to and consistent with the provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended, the Colorado Water Quality Control Act, § 25-8-101 et seq., C.R.S., as amended, the County Powers and Functions, §30-15-401et seq., C.R.S., as amended; and

WHEREAS, the County has approved a resolution authorizing acceptance and submission of application to the State of Colorado for coverage under the State General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4s); and

WHEREAS, §18-4-511, C.R.S., makes it a crime to place any pollutant whether solid or liquid into any body of water or watercourse; and

WHEREAS, Colorado law empowers the Board of County Commissioners ("Board") to do all acts and make all regulations which may be necessary or expedient for the promotion of health and the suppression of disease, including the authority to restrain, fine, and punish persons for polluting the environment, including trash, junk and garbage, construction site waste and sediment on public or private property including waters and watercourses; and

WHEREAS, §16-13-305(1)(e), C.R.S., makes any unlawful pollution or contamination of any surface or subsurface waters in this state a Class 3 Public Nuisance; and

WHEREAS, the Board of County Commissioners wishes to comply with the above Federal and State laws in order to protect the health, safety, and general welfare of the citizens of Adams County through the regulation of non-stormwater discharges to the storm drainage system.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of the County of Adams, State of Colorado, that it is necessary for the protection of the environment and public health and safety that Ordinance Number Eleven (Amended) become immediately effective upon adoption because introducing pollutants to stormwater constitutes a threat to the environment and citizens of Adams County.

BE IT FURTHER ORDAINED by the Board of County Commissioners of the County of Adams, State of Colorado, that Ordinance Number Eleven, Concerning Illicit Discharges to the Waters of the State within Unincorporated Adams County, enacted by the Board on November 15, 2006, is hereby amended and re-enacted effective _____.

SECTION 1. PURPOSE AND INTENT

The objectives of this Ordinance are:

To regulate the release of pollutants to the Municipal Separate Storm Sewer System (MS4) from stormwater discharges by any user;

To prohibit illicit connections and illicit discharges to the MS4;

To establish procedures through inspections and enforcement in order to detect, trace and eliminate illicit discharges necessary to ensure compliance with this Ordinance;

To promote public awareness of the hazards involved from the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, antifreeze, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

SECTION 2. DEFINITIONS

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

Authorized Enforcement Agency means Adams County Public Works.

Best Management Practices (BMPs) means schedules of activities, structures, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of Waters of the State. BMPs can be structural or non-structural and temporary or permanent. Examples include, but are not limited to, silt fence, erosion blankets, hay bales, extended detention basin treatment requirements, operating procedures and practices to control site runoff, spillage of leaks, sludge or waste disposal, and drainage from raw material storage.

Colorado Discharge Permit System (CDPS) means 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.

Construction Activity means activities including, but not limited to, clearing and grubbing, grading, excavating, and demolition.

Erosion and Sediment Control Plan (ESC Plan) means a written plan required by Adams County Stormwater Quality Regulations in order to obtain a stormwater quality permit. Among other things, the ESC Plan specifies measures that will be implemented to control erosion, prevent sediment from traveling outside the permitted area and minimize the discharge of pollutants in stormwater.

Illicit Discharge means any direct or indirect non-stormwater discharge to the storm drain system.

Illicit Connection means either of the following: 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 such as sewage, process wastewater, and wash water to enter the storm drain system, and 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.

Hazardous Material means any material, substance, waste, or combination thereof, which because of its quantity, concentration, 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.

Inspector means any person designated by the County within the Public Works Department to fulfill the responsibilities that have been empowered with such position.

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

Municipal Separate Storm Sewer System (MS4) means 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, county, city, town, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to Waters of the State; designed or used for collecting or conveying stormwater; which is not a combined sewer; and which is not part of a Publicly Owned Treatment Works.

Adams County has a regulated Phase II MS4 permit that covers areas of the unincorporated county serving a population between ten thousand (10,000) and one hundred thousand (100,000) with urban areas of one thousand (1,000) or more people per square mile based on the 2000 U.S. Census.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by EPA (or by the 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-Stormwater Discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means 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 means 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 including grass clippings and leaves; 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; pet wastes; wastes and residues that result from constructing a building or structure, concrete washout waste; wastes and residues that result from mobile washing operations; noxious or offensive matter of any kind, and any soil, mulch, rock, or other type of landscaping material**.**

Pollution means the presence of any foreign substance (organic, inorganic) in water or wastewater which in sufficient concentration tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which may not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.

Potable Water means any water which, according to recognized standards, is safe for human consumption.

Premises mean any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Stormwater means any surface flow, runoff, and drainage occurring during or following any form of natural precipitation event and resulting therefrom and consisting entirely of water from natural precipitation events.

Stormwater Quality Permit means a local stormwater discharge permit to regulate discharges from municipal separate storm sewer system (MS4s) for compliance with the Clean Water Act regulations.

Stormwater Quality Regulations means the regulations found in the Adams County Zoning and Subdivision Regulations used by the County to require construction site operators to implement appropriate erosion and sediment control BMPs; and to control construction site waste.

Threatened Discharge means 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.

Watercourse means a natural or artificial channel through which stormwater or floodwater can flow, either regularly or infrequently.

Waters of the State of Colorado (Waters of the State) means all streams, lakes, rivers, ponds, wells, impounding reservoirs, watercourses, springs, drainage systems, and irrigation systems, all sources of water such as snow, ice, and glaciers; and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, located wholly or partially within or bordering upon this state and within the jurisdiction of this state.

SECTION 3. APPLICABILITY

This Ordinance shall apply to anything entering the storm drain system generated on any developed or undeveloped lands in unincorporated Adams County, unless explicitly exempted by this Ordinance, or by the Director of Public Works or his designated representative by means of a written letter.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION

A. The Director of the Adams County Public Works Department or his designated agents including, but not limited to environmental compliance agents shall perform inspections for the enforcement of this Ordinance and will inspect unincorporated Adams County for causes of Stormwater Quality Regulation violation(s) and/or illicit discharge(s).

B. Any person that causes an illicit discharge, or their failure to remediate the cause of an illicit discharge, shall constitute a violation of this Ordinance. The violation may be remediated or abated pursuant to the procedures outlined in Section 12 of this Ordinance.

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, EXEMPTIONS AND REQUIREMENTS.

A. Prohibition of Illegal Discharges

1) No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

2) It shall be unlawful to cause pollutants to be deposited in such a manner or location as to constitute a threatened discharge into the MS4 or Waters of the State. Pollutants that are no longer contained in a tank or other container are considered to be threatening discharges unless they are actively being cleaned up.

B. 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 pollutants to the MS4, or allows such a connection to continue.

C. Exemptions

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

1) The following discharges are exempt from the discharge prohibitions established by this Ordinance when properly managed: discharges from potable water sources, uncontaminated pumped ground water, water line flushing, controlled burning, landscape irrigation and lawn watering, irrigation return flow, springs, rising groundwater, air conditioning condensation, water from crawl space pumps, residential car washing, foundation drains, roof drains, footing drains, de-chlorinated swimming pool discharges, surface cosmetic power washing operations to land, diverted stream flows, dye testing, flow from riparian habitats and wetlands, uncontaminated groundwater infiltration, water incidental to street sweeping not associated with construction, emergency fire fighting activities, emergency utility repairs and emergency situations that pose imminent threat to life or property.

2) Agricultural irrigation activities and practices including animal husbandry.

3) Permitted discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

D. Requirements Applicable to Potential Dischargers

1) Watercourse Protection. Every person owning, leasing or otherwise occupying property through which a watercourse passes, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, animal waste excluding agricultural practices specifically exempted in Section 6.C.2)_and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. Irrigation structures themselves are excluded. In addition, the owner, lessee or tenant 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.

2) Maintenance of Equipment. Any leak or spill related to equipment maintenance in an uncovered outdoor area should be contained to prevent the potential release of pollutants. Leaks and spills shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Ordinance.

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

SECTION 7. SUSPENSION OF MS4 ACCESS

Suspension due to Illicit Discharges in Emergency Situations

Adams County Public Works may inspect, and 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 State Water. If the violator fails to comply with a suspension order issued in an emergency, Adams County Public Works may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to the public.

SECTION 8. PERMIT COMPLIANCE

Any person subject to a mining, landfill, industrial or construction activity that holds a Federal NPDES, State CDPS or County Stormwater Quality Permit for stormwater discharges shall comply with all provisions of such permit. Proof of compliance with said permit is required in a form acceptable to Adams County Public Works prior to receiving an Adams County Stormwater Quality Permit, allowing permitted discharges to the MS4.

SECTION 9. ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES

Applicability

Inspection access for purposes of enforcing this Ordinance shall apply to all properties located within unincorporated Adams County.

Access to Facilities

Adams County Public Works shall be allowed to enter and inspect properties and facilities subject to this Ordinance as often as may be necessary to determine compliance. 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 Adams County Public Works.

Property and/or facility operators shall allow Adams County Public Works ready access to all parts of the premises for the purposes of inspection, sampling, performing an examination and any additional duties

as defined by State and Federal law and copying records that must be kept under the conditions of an CDPS and/or County permit.

Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the operator, owner, lessee, or tenant at the written or oral request of Adams County Public Works and shall not be replaced. The costs of clearing such access shall be borne solely and completely by the facility operator, owner, lessee, or tenant.

Unreasonable delays in allowing Adams County Public Works access to a facility is a violation of this Ordinance. A person who is the operator, owner, lessee or tenant of a facility with a County Stormwater Quality Permit to discharge stormwater associated with industrial activity or construction activities violates this Ordinance if the person denies Adams County Public Works reasonable access to the property for the purpose of conducting any activity authorized or required by the County Stormwater Quality Regulations or this Ordinance.

If Adams County Public Works personnel have been denied access to any part of the premises from which stormwater is discharged, and 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. PREVENTION, CONTROL, AND REDUCTION OF STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

Adams County Public Works shall provide for and compel the abatement of any condition that causes or contributes to a violation of this Ordinance, County Stormwater Quality Regulations or any Stormwater Quality Permit; and require Best Management Practices (BMPs) for any activity, which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or Waters of the State. The owner, operator, lessee, or tenant, at their own expense, shall provide reasonable protection from accidental or intentional discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and non-structural, temporary and permanent BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge may be required, at their own expense, to properly clean up the pollutant, and implement additional temporary and/or permanent, structural and non-structural BMPs to prevent further discharge of pollutants to the municipal separate storm sewer system. These BMPs shall be part of an erosion and sediment control plan and/or stormwater management plan as necessary for compliance with the requirements of the County's Stormwater Quality Regulations and/or the State's CDPS stormwater construction permit, including post-construction BMP maintenance.

SECTION 11. NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a property or 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 an illegal discharge into stormwater, the MS4, or Waters of the State, shall take all necessary steps to ensure the discovery, containment, and cleanup of a known or suspected release. In the event of a release of hazardous materials, emergency response agencies shall be immediately notified of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, Adams County Public Works shall be notified in person or by phone, immediately of the illicit discharge.

SECTION 12. ABATEMENT OF ILLICIT DISCHARGE(S)

In addition to any other remedies available, where the Director of Public Works or his/her designated agent(s) believe that a violation of this Ordinance or the County's stormwater management program exists at a property, the violation(s) may be remedied or abated pursuant to the following procedures:

A. Where the cause(s) of the violation of this Ordinance or the County's Stormwater Management Program are pollutants and failure to employ best management practices, and/or control erosion and capture sediment, notice shall be sent via first-class mail or by personal delivery to the owner of record as shown in the records of the County Clerk and Recorder. A copy of the same notice shall be sent to the "occupant" of the property if the property address and the owners address differ. Said notice(s) shall advise the recipient of the following:
    1) the nature of the violation, and
    2) a demand that the violation be remedied, and
    3) that if the cause(s) of violation of this Ordinance or the County's stormwater management program are not remediated, the Director of Public Works or his/her agents may apply without further notice, for a warrant for the removal and disposal of the cause(s) of the violation of this Ordinance or the County's stormwater management program from the Adams County Court and that the costs of the remediation shall become a lien against the property from which the cause(s) of violation have been remediated.

B. In the event that the recipient(s) of the notice referred to in paragraph A above fails to immediately remediate the cause(s) that are in violation of this Ordinance or the County's stormwater management program, then the Director of Public Works may apply for an administrative entry and seizure warrant by affidavit from the Adams County Court. To apply for an administrative entry and seizure warrant the Director of Public Works or his/her designated agents shall present to the County Court:
    1) a copy of Ordinance Number Eleven, and
    2) a sworn or affirmed affidavit stating the factual basis for such warrant, and
    3) evidence that the property owner has received notice of the violation and has failed to remediate the violation(s) of this Ordinance or the County's stormwater management program, or request a hearing within the 14 day period, and
    4) a general description of the location of the property which is the subject of the warrant, and
    5) a general list of corrective actions needed.

C. Within ten days following the date of the issuance of the administrative warrant , the Director of Public Works or his/her designated agents shall:
    1) Execute such warrant in accordance with the directions of the issuing court,
    2) Provide or mail a copy of such warrant to the property owner, and
    3) Submit proof of the execution of such warrant, including a written inventory of any property impounded, to the Court.

SECTION 13. COLLECTION OF COSTS

A. 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 the Stormwater Quality Regulations. 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 for the County's stormwater quality program kept by the County.

B. 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.

C. 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 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.

D. Pursuant to 30-15-402, C.R.S., there shall be a graduated fine schedule for repeat offenses by the same individual, as follows:

Second offense: In the event that the County performs the work needed to abate or mitigate the discharge of pollutants upon notice to and failure of the person responsible for the property or premise to remove or eliminate such pollutants, the whole cost thereof, including five percent for inspection and other incidental costs in connection therewith multiplied by two shall become an assessment upon the property from which such causes of illicit discharges have been removed.

Third and subsequent offenses: In the event that the County performs the work needed to abate or mitigate the discharge of pollutants upon notice to and failure of the person responsible for the property or premise to remove or eliminate such pollutants, the whole cost thereof, including five percent for inspection and other incidental costs in connection therewith multiplied by three shall become an assessment upon the property from which such causes of illicit discharges have been removed.

Any person responsible for property or premise who commits a third offense is deemed a chronic and recalcitrant violator.

SECTION 14. VIOLATIONS, ENFORCEMENT AND PENALTIES

Criminal Prosecution

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 authorized pursuant to Colorado Revised Statutes, Title 30, Article 15. The authorized enforcement agency may recover all attorneys' fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

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 or environmental 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.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Fischer_____ Aye
Nichol_____ Aye
Hansen_____ Aye
Commissioners

STATE OF COLORADO)
County of Adams)

I, __Karen Long__, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Adams County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Brighton, Colorado this 14th day of March, A.D. 2012.

County Clerk and ex-officio Clerk of the Board of County Commissioners
Karen Long:

By:

Deputy