

## CHAPTER 36

### ILLCIT (NON-STORMWATERWATER) DISCHARGES

#### I. GENERAL PROVISIONS

##### 36.005 Purpose and Intent

(1) The purpose of this chapter is to protect and enhance the public health, safety, general welfare, financial investment in public and private infrastructure, private property value, the environment, water quality, waterways, and the quality of life of the inhabitants of Benton County through the regulation of non-stormwater discharges to the Benton County stormwater conveyance systems to the maximum extent practicable consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq. (1972)).

(2) This chapter establishes methods for controlling the introduction of pollutants into the stormwater conveyance systems in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and Stormwater Discharge Permit issued to Benton County by the Oregon Department of Environmental Quality. Goals of this chapter:

(a) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping, excessive erosion or disposal of pollutants that degrade the natural environment; maintain or improve water quality within Benton County as required under State and Federal National Pollution Discharge Elimination System law and as benefits the environment and the community, and

(b) Establish legal authority to carry out inspection, investigation, monitoring and enforcement procedures necessary to ensure compliance with this chapter. [Ord. 2011-0243]

##### 36.010 Applicability

The provisions of Chapter 36 shall apply to all unincorporated areas of Benton County.

##### 36.015 Administration.

Administration of this Chapter, under the supervision of the Board shall be by the Benton County Community Development Department. The Community Development Director or designate shall administer, implement, interpret, and enforce the provisions of this chapter. The following persons and agencies shall assist the Department in carrying out its duties under BCC Chapter 36: Health Department (Environmental Health); Finance Department (Fiscal Management and Rates); Public Works Department (Public Facilities); County Counsel, District Attorney, and Sheriff (Enforcement).

##### 36.100 Definitions

(1) **“Accidental Discharge”** means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence. It does not include any discharge

situation which County staff or other appropriate authorities have already notified responsible parties or discussed the situation with them.

(2) **“Best Management Practices (BMPs)”** means 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 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) **“Clean Water Act”** means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

(4) **“Construction Activity”** means activities subject to the Oregon Phase II Municipal Stormwater Program or NPDES General Construction Permits or Benton County Erosion and Sediment Control Permit requirements.

(5) **“County”** means those administrative authorities described in 36.015.

(6) **“Discharge Permit”** means a permit issued by the Oregon Department of Environmental Quality under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(7) **“Groundwater Interceptor”** means any natural or artificial groundwater or surface water drainage system, including drain tile, curtain drain, foundation drain, cut banks, and ditches, that intercept and divert groundwater or surface water from the area of an onsite wastewater treatment absorption facility.

(8) **“Hazardous Materials”** means 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.

(9) **“Illicit Discharge”** means any direct or indirect non-stormwater discharge to the County stormwater conveyance systems, except as exempted.

(10) **“Illegal Connection”** means either of the following :

(a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter a stormwater conveyance system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the stormwater conveyance system and any connections to the stormwater conveyance system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency, or

(b) Any drain or conveyance connected from a commercial or industrial land use to the stormwater conveyance system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(11) **“Municipal Separate Storm Sewer System (MS4)”** means a conveyance or system of conveyances including but not limited to any roads with drainage systems, county streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural storm water controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (a) Owned or maintained by Benton County;
- (b) Designed or used for collection or conveyance of stormwater;
- (c) Not a combined sewer; and
- (d) Not part of a publicly-owned treatment works as defined by 40 CFR §122.2.
- (e) Within the boundaries of the Federally Recognized Urbanized Area.

(12) **“Nonpoint Source”** means causes of water pollution that are not associated with point sources. Examples may include: fertilizer/pesticide runoff; sediment runoff from construction. Nonpoint sources may enter a discrete stormwater conveyance system and become a point source.

(13) **“Non-Stormwater Discharge”** means any discharge to the stormwater conveyance system that is not composed entirely of stormwater.

(14) **“Outfall”** means a point source as defined by 40 CFR, § 122.2 at the point where a stormwater conveyance system discharges to waters of the state.

(15) **“Person”** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, governmental entity, any interstate body or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

(16) **“Pollutant”** means a contaminant(s) that enters the natural environment that causes harm and its severity is based on its chemical nature, the concentration and the persistence. Examples of pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents; degreasers; cleaning chemicals; garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; and sediment.

(17) **“Pollution”** means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color,

turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wildlife, fish, other aquatic life or the habitat thereof. (OAR Ch. 340 Section 41: (45))

(18) **“Premises”** mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(19) **“Stormwater Conveyance System”** means drainage facilities, both natural and manmade, which collect, contain, and provide for the flow of surface and storm water from the highest points on the land down to a receiving water and includes the MS4. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes, and wetlands. The human-made elements of the conveyance system include gutters, ditches, pipes, channels, and most retention/detention facilities.

(20) **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(21) **“Structural Stormwater Control”** means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow. [Ord. 2011-0243]

(22) **“Uncontaminated”** means, for the purposes of this chapter, that outflow does not result in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or result in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or contribute to a violation or exceedance of an applicable Oregon water quality standard.

(23) **“Waters of the State”** may include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh water or salt water, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

## **II. PROHIBITIONS**

### **36.200 Prohibition of Illicit Discharges**

No person shall discharge any pollutants or waters containing any pollutants, into the Benton County stormwater conveyance systems. To “discharge” includes any means of causing pollutants to enter the subject waters, including allowing others under the person’s control to discharge

pollutants. The range of discharges covered by this Code Chapter include, but are not limited to those listed in the current NPDES MS4 Phase II General Permit, Schedule A.3.c.iii.

### **36.205 Exemptions**

Discharge of non-stormwater is allowable if it satisfies one of the following conditions:

- (1) The non-stormwater discharge is regulated under a separate NPDES permit;
- (2) The non-stormwater discharge originates from emergency firefighting activities, fire hydrant flushing, or other discharges necessary to protect public health and safety;
- (3) The non-stormwater discharge is categorized as an authorized allowable non-stormwater discharge as listed below:
  - (a) Uncontaminated water line flushing performed by a government agency;
  - (b) Water associated with dye testing necessary to protect public health and safety;
  - (c) Landscape irrigation or lawn watering. For areas owned or operated by Benton County, landscape irrigation will be considered allowable only if any pesticides and fertilizers that are present are applied within the manufacturer's instructions and do not flow past the landscaped area nor into a stormwater conveyance system;
  - (d) Discharges resulting from forest practices performed pursuant to the Oregon Forest Practices Rules and from accepted farm practices as defined in the guidance, rules, and BMPs, of the Oregon Department of Forestry and Oregon Department of Agriculture, respectively;
  - (e) Stream flows that are diverted under the authorization of the appropriate state or federal agency;
  - (f) Natural flows from riparian habitat or wetlands;
  - (g) Natural springs;
  - (h) Rising groundwater;
  - (i) Uncontaminated groundwater infiltration to stormwaterstormwaterwater drains and conveyances (as defined in CFR §35.2005(20));
  - (j) Uncontaminated pumped groundwater, provided it does not cause visible erosion;
  - (k) Potable water sources (including potable groundwater monitoring wells and draining and flushing of municipal potable water sources and start-up flushing of groundwater wells), provided no visible erosion is caused;
  - (l) Foundation, footing, and crawl space drains and pumps (where flows are not contaminated, this exemption does not include process water);

- (m) Uncontaminated air conditioning or compressor condensate;
- (n) Individual or charity car washing (provided that chemicals, soaps, detergents, steam or heated water are not used. Washing is restricted to the outside of vehicles);
- (o) Street and pavement wash waters (provided that chemicals, soaps, detergents, steam or heated water are not used);
- (p) Routine external building wash-down and wash waters (provided that chemicals, soaps, detergents, steam or heated water are not used);
- (q) Dechlorinated swimming pool and dechlorinated hot tub discharge and drainage waters (heated water must be cooled for at least 12 hours and reach ambient temperature prior to discharge);
- (r) Road maintenance activities performed under a public agencies' Best Management Practices and/or the conditions of a public agencies' DEQ 1200-CA permit;
- (s) Activities, conducted by public agencies, that meet or are better than state or federal standards for erosion and sediment control;
- (t) Discharges resulting from excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
- (u) Discharges of treated water from investigation, removal, and remedial actions selected or approved by DEQ pursuant to Oregon Revised Statute (ORS) Chapter 465.

### **36.210 Connections**

The unlawful discharge of non-stormwater to illegal connections and other connections to the stormwater conveyance system is prohibited. In addition:

- (1) A person violates this chapter if the person connects a line or other conveyance of pollution to the stormwater conveyance system, or uses an existing connection to convey non-stormwater water discharges.
- (2) Improper connections, and discharge via those connections, in violation of this chapter shall not be allowed. If necessary to appropriately treat discharge, it shall be redirected to an approved onsite wastewater treatment system or the sanitary sewer system upon approval of the appropriate governing agency.
- (3) Any drain or conveyance that has not been previously documented in plans, maps or equivalent images submitted to Benton County Public Works, Community Development, or Environmental Health for review and approval, and which the County determines might be connected to the stormwater conveyance system, shall be located by the owner or occupant of that property upon receipt of written notice from Benton County requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified (for example,

“stormwater sewer” or “sanitary sewer”), and that the outfall location or point of connection to the stormwater conveyance system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to Benton County. [Ord. 2011-0243]

### **36.215 Industrial or Construction Activity Discharges**

Any person subject to any NPDES stormwater discharge permit or Benton County Erosion and Sediment Control Permit shall comply with all provisions of such permit. Proof of compliance with said activities permit may be required in a form acceptable to Oregon Department of Environmental Quality, prior to allowing discharges to the stormwater conveyance system. Benton County Public Works and Community Development may require proof of compliance with applicable construction activity. [Ord. 2011-0243]

## **III. INVESTIGATION AND NOTICE**

### **36.300 Illicit Discharge Investigation Procedure**

(1) When reported illicit discharge related incidents occur in the Benton County road right of way, Benton County Public Works Department will lead investigation, coordination, and illicit discharge related responses. This includes identifying a responsible party to pay for the investigation and cleanup of the illicit discharge. Public Works will coordinate with local law enforcement and fire departments to receive critical information to identify the responsible party, and to determine if spills or illicit discharges occur that meet or exceed reportable quantities and require reporting to the Oregon Emergency Response System.

(2) For areas outside of the road right of way on private properties, Benton County Environmental Health and/or Community Development will lead investigations where illicit discharges have been reported and are within their authority and capability. This includes identifying a responsible party to pay for the investigation and cleanup of the illicit discharge.

(3) Benton County Environmental Health, Community Development and Public Works shall coordinate reporting hazardous materials related incidents to the Oregon Department of Environmental Quality and the Oregon Emergency Response System when occurrences are known. [Ord. 2011-0243]

### **36.305 Access and Inspection of Properties and Facilities**

The County may enter and inspect properties and facilities causing the discharges in section 36.300 at reasonable times and as often as may be necessary to determine compliance with this chapter.

(1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of Benton County.

(2) Inspection of the property may include but is not limited to interviews, testing (including tracing dye), sampling, photography, videotaping, and examination and copying of any records pertaining to an NPDES permit.

(3) The County shall have the right to set up on any property or facility such devices as are necessary in the opinion of the County to conduct monitoring and/or sampling of flow discharges.

(4) The County may require the owner or operator to purchase and install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the County. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the County and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(6) Unreasonable delays in allowing the County access to a facility are a violation of this chapter.

(7) If the County has been refused access to any part of the premises from which illicit discharges are occurring, and the County is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the County may seek issuance of an administrative search warrant from any court of competent jurisdiction and the property owner shall reimburse the County for the administrative costs of such action.

(8) In the event the violation constitutes an immediate danger to public health or public safety, the County 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 County is authorized to seek costs of the abatement as outlined in Benton County Code Chapter 31. [Ord. 2011-0243]

### **36.310 Notification of Accidental Discharges and Spills**

(1) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or other non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into the stormwater conveyance systems, state waters, or waters of the state, said person shall notify Benton County and all other entities as required by state and federal law, which may include Oregon Department of Environmental Quality and Oregon Emergency Response System by live discussion via phone or in person as soon as reasonably possible and no more than four hours after obtaining such information. The nature of the pollutant, quantity, time of



occurrence, and other pertinent details of the discharge shall be provided. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the County within three business days of the phone call or in-person 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 aforementioned details of the discharge, the actions taken after the discharge, and the actions taken to prevent its recurrence. The actions taken to prevent recurrence shall be reviewed and approved by the County. Such records shall be retained for at least three years and shall be available for inspection by the County. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

(2) Failure to provide notification of an illicit discharge as provided above is a violation of this Chapter. [Ord. 2011-0243]

### **36.315 Violations, Enforcement and Penalties**

(1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person, who has violated or continues to violate the provisions of this chapter may be subject to the enforcement actions outlined in Benton County Code Chapter 31, or any other legal remedies available to Benton County. Benton County may require the property owner, company responsible, or any other responsible party to pay Benton County a fee of \$1,000.00 per day with every 24-hour period being considered a separate violation.

(2) Ongoing Illicit Discharges - If the elimination of an illicit discharge will take more than 15 working days due to technical, logistical, or other reasonable issues, the County shall within 20 working days of identifying the source of an illicit discharge initiate procedures to eliminate the illicit discharge. Upon confirmation of an illicit connection, the County shall use the escalating enforcement procedures of Benton County Code 31.020 and document the effort to eliminate the illicit connection within six months to the extent allowable under state law. All known illicit connections to the stormwater conveyance system must be eliminated. Additionally, the property owner, business owner, and/or other responsible party shall be fined a minimum of \$1,000 per day with every 24-hour period considered a separate violation.

(3) In addition to Chapter 31 enforcement requirements, Benton County, upon finding that a violation of this chapter has occurred, may order compliance by written notice of violation. The notice of violation shall contain:

- (a) The name and address of the alleged violator;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this chapter,
- (e) A time schedule for the completion of such remedial action;
- (f) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,

(4) Such notice may require without limitation:

- (a) A professional or credentialed professional to complete remediation requirements;

- (b) The performance of monitoring, analyses, and reporting;
- (c) The elimination of illicit discharges and illegal connections;
- (d) That violating discharges, practices, or operations shall cease and desist;
- (e) The abatement or remediation of stormwater pollution or contamination hazards;
- (f) The restoration of any affected property;
- (g) Payment of costs to cover administrative, follow up inspections, abatement, and clean-up costs; and
- (h) The implementation of pollution prevention practices.

(5) This chapter shall not establish responsibility on the part of Benton County to abate or clean up private property, or for Benton County to incur costs related thereto. [Ord. 2011-0243]

### **36.320 Detection and Elimination of Illicit Discharges**

(1) Illicit Discharge Complaints or Reports - Benton County shall publicize a phone number, webpage, and/or other communication channel that the public can use to report illicit discharges. The complaint/reporting communication channel shall be answered or responded to by trained staff during normal business hours, shall include a system to record or capture incoming complaints or reports during non-business hours, and shall include 24-hour emergency contact communication channel.

(2) Response to Complaints or Reports - Benton County shall respond to all complaints or reports of illicit discharges, as soon as reasonably possible, and within two business days, unless there is a threat to human health, welfare, or the environment. For discharges, including spills, which constitute a threat to human health, welfare, or the environment, the County shall respond within one business day. Spills, or other illicit discharges, that may endanger human health or the environment must be reported in accordance with all applicable federal and state laws, including notification to the Oregon Emergency Response System and the Oregon Department of Environmental Quality. The County's complaint response and the associated investigation shall, at minimum, use the following timelines:

(a) Initial Investigation or Evaluation - Conduct an initial investigation or evaluation within an average of one business day or refer the complaint to the appropriate agency (see subsection (4) of this section).

(b) Complaints Tracking - The County shall maintain a procedure or system to document all complaints or reports of illicit discharges into and from the stormwater conveyance system. The tracking system must document, at minimum the following by the County and County staff:

- (A) Date the complaint was received by staff and, if available, the complainant's name and contact information.
- (B) Staff responding to the complaint.
- (C) Date the investigation was initiated.
- (D) The outcome of the investigation.

- (E) Corrective action(s) taken to eliminate the illicit discharge.
- (F) The responsible party for the corrective action(s).
- (G) The status of enforcement procedure(s), when necessary.
- (H) The date the corrective action(s) was completed and staff that evaluated final compliance.
- (I) Complaint tracking information must be summarized in each Annual Report.

(3) Ongoing Illicit Discharges Involving Capital Improvements - If the elimination of the illicit discharge involves the repair or replacement of Benton County's stormwater sewer conveyance systems, the County must remove the source of the illicit discharge within three years of the date of its identification unless DEQ approves an extension.

(4) Notification of Other Authorities. If the illicit discharge originates outside the County's jurisdictional authority, the County must notify the jurisdictional authority within one business day of becoming aware of the illicit discharge.

### **36.400 Ultimate responsibility**

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the waters of the state caused by said person. This chapter shall not create liability on the part of Benton County, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made thereunder. [Ord. 2011-0243]

### **36.500 Severability**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Chapter 36 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 Chapter 36. [Ord. 2011-0243]