

ORDINANCE NO. 4720

ORDINANCE AMENDING CHAPTER 16.30 TO TITLE 16 OF THE MENDOCINO COUNTY CODE – "MENDOCINO COUNTY CODE ESTABLISHING THE STORMWATER RUNOFF POLLUTION PREVENTION PROCEDURE"

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

Chapter 16.30 to Title 16 of the Mendocino County Code is amended to read as follows:

Chapter 16.30.

STORMWATER RUNOFF POLLUTION PREVENTION PROCEDURE (hereinafter SRPPP).

This Chapter shall be known and cited as the "STORMWATER RUNOFF POLLUTION PREVENTION PROCEDURE".

16.30.010. PURPOSE.

The purpose and intent of this Chapter is to protect and promote the health, safety, and general welfare of citizens, and protect and enhance the water quality of watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the storm drainage system.

16.30.020. ACRONYMS, ABBREVIATIONS AND DEFINITIONS.

(a) **AUTHORIZED NON-STORM WATER DISCHARGES:** Categories of discharges that are not composed entirely of storm water but are not found to pose a threat to water quality as defined in the Storm Water Management Program.

(b) **BEST MANAGEMENT PRACTICES (BMPs):** Schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the direct and indirect discharge of pollutant to the County storm drainage system and to waters of the U.S. BMPS shall also be defined to include, but not limited to, structural controls, source controls, treatment controls, training requirements, operating and maintenance procedures, practices to control plant site runoff, erosion and sediment control reduction practices, spillage or leaks, sludge or waste disposal or drainage from raw materials storage.

(c) **BENEFICIAL USES:** Existing or potential uses of receiving waters as defined in a State of California Water Quality Control Plan.

(d) **BIOREMEDIATION:** the treatment of pollutants or waste by the use of microorganisms (such as bacteria) that break down undesirable substances.

(e) **CLEAN WATER ACT (CWA):** The Federal Water Pollution Control Act (33 U.S.C.125 et seq.) and any subsequent amendments thereto.

(f) **CODE ENFORCEMENT OFFICER:** The Planning and Building Services Director or his/her designee.

(g) **CORRECTIVE ACTION PLAN:** A required plan of action, which may include BMPs, to address non-storm water discharges and pollutants of concern to the maximum extent practicable (MEP).

(h) **COUNTY:** The County of Mendocino.

(i) **COUNTY WATER AGENCY:** The Mendocino County Water Agency.

(j) **COUNTY STORM DRAINAGE SYSTEM:** Those public facilities which are owned, operated, maintained or controlled by the County by which storm water may be collected and/or conveyed to waters of the U.S., including, but not limited to, any county roads, catch basins, water quality basins, detention basins, constructed wetlands, drainage channels, curbs, gutters, ditches, sumps, pumping stations, storm drain inlets, storm drains and other drainage structures which are not part of a publicly owned treatment works.

(k) **CONSTRUCTION ACTIVITY:** Activities subject to the NPDES Construction General Permits or successor permit issued by the State of California or any instrument of the County that established pollutant control provisions for construction activities. These include construction projects typically resulting in land disturbance of one (1) acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating and demolition.

(l) **DISCHARGE:** Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the County storm water drainage system or waters of the U.S.

(m) **DISCHARGER:** Any person who discharges, or causes to discharge, either directly or indirectly, storm water or any other material into the County storm drainage system or waters of the U.S.

(n) **ILLEGAL DISCHARGE:** Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 16.30.040 of this Ordinance.

(o) **Illicit Connection** means one of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which

allows an illegal discharge to enter the storm drainage system, including but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, backwash water, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

2. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by County.

(p) INFILTRATION: The process of water entry into a soil from rainfall, snowmelt, or irrigation.

(q) INDUSTRIAL ACTIVITY: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

(r) MAXIMUM EXTENT PRACTICABLE (MEP): Refers to the technology based standard established by Congress in the Clean Water Act U.S.C. S 1342 (p) (3) (B) (iii) that municipal dischargers of storm water must meet. To achieve the maximum extent practicable standard, jurisdictions must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility.

(s) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): A national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA.

(t) NON-STORM WATER DISCHARGE: Any discharge to the County storm drainage system or to waters of the U.S. that is not composed entirely of storm water.

(u) POLLUTANT: Anything that causes or contributes to pollution. Pollutants may include but are not limited to, solid waste, sewage, garbage, medical waste, wrecked or discarded equipment, radioactive material, dredged soil, rock and sand, industrial waste, feces, volatile organic carbon, surfactants, oil and grease, petroleum, hydrocarbon, organic solvents, metals, phenols, pesticides, nutrients, suspended or settleable solids, materials causing an increase in biochemical or chemical oxygen or total organic carbon, substances which alter pH, and those pollutants defined in Section 501(6) of the Federal Clean Water Act.

(v) POLLUTION: Human made or human induced alteration of the quality of waters by waste or pollutants to a degree which unreasonably affects, or has potential to unreasonably affect, either waters for beneficial uses or the facilities

which serve these beneficial uses.

(w) Porter Cologne Act: The Porter-Cologne Water Quality Control Act and as amended (California Water Code Sec. 13000 et seq.) A California state law that establishes enforceable water quality standards.

(x) RWQCB: The California Regional Water Quality Control Board, North Coast Region.

(y) SOURCE CONTROL: Means a site planning approach, a constructed component of a development project, or an operational activity that is included as part of a development project for the purpose of either 1) preventing pollutants from contacting storm water, or 2) reducing the quantity of runoff that drains from a developed site to the storm drainage system. Examples of source controls include site designs that promote infiltration by reducing impervious surfaces, trash storage enclosures, disconnecting roofs from the storm drainage system, street sweeping, and the regular inspection and cleaning of storm drain inlets.

(z) STATE CONSTRUCTION GENERAL PERMIT: The State Water Resources Control Board's Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity, and any successor documents.

(aa) STORM WATER: Surface runoff and drainage resulting from storm events and snowmelt.

(bb) STORM WATER MANAGEMENT PROGRAM: The County's documented strategy for reducing storm water pollution to the maximum extent practicable through the implementation of Best Management Practices (BMP's).

(cc) SUSMP: Standard Urban Storm Water Mitigation Plan. A set of guidelines intended to assist the engineer, architect, or builder with detailed storm water management practices or standards for designing new development and re-development.

(dd) SWPPP: Storm Water Pollution Prevention Plan. A plan that identifies specific Best Management Practices (BMP's) and describes the manner in which specific BMP's are to be implemented in order to protect storm water runoff from contamination from construction or on-going industrial activities. The required elements of a SWPPP are detailed in Section A of the Construction General Permit as administered by the RWQCB.

(ee) WATERCOURSE: a natural or artificial channel through which water flows.

(ff) WATER QUALITY CONTROL PLAN: A basin plan required by the California Water Code (Section 13240) that consists of a designation or establishment of beneficial uses to be protected in waters within a specific area (i.e., basin), water quality objectives to protect those uses, and a program of implementation needed for achieving the objectives.

(gg) Waters of the United States: Surface watercourses and water bodies as defined at Code of Federal Regulations, Title 40, Section 122, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

16.30.030. APPLICABILITY.

This chapter shall apply to all water entering the County storm drainage system or waters of the U.S., generated on any developed and undeveloped lands lying within the unincorporated urban boundary areas of Mendocino County as identified in the Storm Water Management Program (SWMP). The maps of the unincorporated urban boundary areas of Mendocino County are available and on file in Department of Planning and Building Services.

16.30.031. RESPONSIBILITY FOR ADMINISTRATION.

The Director of Planning and Building Services of the County or his/her designee shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the County may be delegated to persons or entities acting in the beneficial interest of or in the employ of the County.

16.30.032. REGULATORY CONSISTENCY.

This Ordinance shall be construed to ensure consistency with the requirements of the Clean Water Act, State Porter-Cologne Act, State NPDES permits, and statutes and regulations that amend or supplement those Acts or permits.

16.30.033. ULTIMATE RESPONSIBILITY OF DISCHARGER.

The requirements of this Section are minimum standards; therefore this Section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the United States caused by that person. This Section shall not create liability on the part of Mendocino County, or any agent or employee of the County, for any damages that result from any discharger's reliance on this Chapter or any administrative decision in compliance with this Chapter.

16.30.040. PROHIBITION OF ILLICIT DISCHARGES.

A. No person shall discharge or cause to be discharged into the County storm drainage system or watercourses any materials, including pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water, to the maximum extent practicable. The commencement, conduct or continuance of any other discharge to the storm drainage system and watercourses is prohibited, except for the following.

B. The following types of discharges will be considered authorized non-storm water discharges to the storm drainage system and watercourses when properly managed to ensure, to the maximum extent practicable, that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Porter-Cologne Act, Clean Water Act, or this Ordinance:

1. potable water line flushing;
2. uncontaminated pumped groundwater and other discharges from potable water sources;
3. diverted stream flows;
4. rising groundwater;
5. uncontaminated groundwater infiltration to the storm drain system as defined at Code of Federal Regulations, Title 40, Chapter Parts 122 and 123;
6. uncontaminated foundation and footing drains;
7. uncontaminated water from crawl space pumps;
8. air conditioning condensation;
9. uncontaminated non-industrial roof drains;
10. springs;
11. flows from riparian habitats and wetlands;
12. dechlorinated swimming pool discharges;
13. irrigation water;
14. landscape irrigation and lawn watering;
15. individual residential car washing and
16. flows from fire fighting.

C. This Ordinance shall not apply to non-urban Timber or Agricultural operations. Excepting therefrom illicit discharges from a timber or agricultural operation that enter the County's storm drainage system or watercourse shall be subject to this Chapter.

D. This prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.

E. With written concurrence of the Regional Water Quality Control Board, the County of Mendocino may exempt in writing other non-storm water discharges which are not a source of pollutants to the storm drainage system nor waters of the U.S.

F. Notwithstanding the requirements of Section 16.30.140 (Authority to Inspect), the County may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

16.30.050. PROHIBITION OF ILLICIT CONNECTIONS.

A. No person shall install, use or maintain a drain, conveyance, pipe, channel or other connection to the storm water drainage facilities, whether on the surface or subsurface, that may result in the discharge of a pollutant or pollutants into the County's storm drain system. For example, such illicit connections include but are not limited to those that could allow sewage, wastewater, and wash water to enter the storm water drainage system and connections from indoor drains and sinks, regardless of whether the connection had been previously allowed, permitted, or approved by the County.

B. No person shall install, use or maintain a drain or conveyance connected from a commercial or industrial premise to the County storm drainage systems where such connection or drain is not approved by the County and documented in County records.

16.30.060. WASTE DISPOSAL PROHIBITIONS.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drainage system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

16.30.070. REQUIREMENTS FOR REDUCING POLLUTANTS IN STORM WATER.

A. RESPONSIBILITY TO IMPLEMENT BEST MANAGEMENT PRACTICES. Notwithstanding the presence or absence of requirements promulgated in compliance with Section 16.30.090 (a) and Section–16.30.090 (b), any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm drainage systems, or waters of the U.S. shall implement BMPs to the *maximum extent practicable to prevent and reduce the pollutants*.

1. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drainage system or waters of the U.S.
2. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.
3. Best Management Practices required by the County can be obtained at the Planning and Building Services Department, Department of Transportation, or the County Water Agency.

B. Any construction contractor performing construction and grading work in the identified urban areas of the County shall implement appropriate Best Management Practices to prevent the discharge of construction waste, debris or contaminants from construction materials, tools and equipment from entering the storm water system. Best Management Practices shall include, but not be limited to the use of filter materials at drain inlets to retain debris, dirt or other pollutants generated by such work.

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

D. Projects disturbing less than an acre but create 5,000 square feet or more of new impervious surfaces shall meet the requirements of the Standard Urban Stormwater Mitigation Plan (SUSMP), by implementing appropriate source controls.

16.30.080. WATERCOURSE PROTECTION.

Every person owning property, through which a watercourse passes, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The owner or lessee shall obtain all necessary permits from outside agencies for any work done within the watercourse.

16.30.090. ADOPTION OF BEST MANAGEMENT PRACTICES.

A. AUTHORIZATION TO ADOPT AND IMPOSE BEST MANAGEMENT PRACTICES. The County may adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the storm drainage system or waters of the U.S. Where BMP requirements are promulgated by the County, any Federal, State, or regional agency for any activity, operation, or facility that would otherwise cause the discharge of pollutants to the storm drain system or water of the United States every person undertaking the activity or operation, or owning or operating the facility shall comply with these requirements.

B. NEW DEVELOPMENT AND REDEVELOPMENT. The County may adopt requirements identifying appropriate BMPs to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation,

transport and discharge of pollutants. The County may incorporate these requirements into land use entitlements and construction or building-related permits to be issued for the new development or redevelopment.

16.30.100. REQUIREMENT TO ELIMINATE OR SECURE APPROVAL FOR ILLICIT CONNECTIONS.

A. The County may require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this Chapter to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Chapter.

B. If, subsequent to eliminating a connection found to be in violation of this Chapter, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request County approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

16.30.110. REQUIREMENT TO REMEDIATE.

Whenever the County finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of stormwater, the storm drainage system, or waters of the U.S., the County may require by written notice to the owner of the property and/or the responsible person that the pollution be remediated and the affected property restored within a specified time as determined by a corrective action plan or in compliance with the Enforcement Section of this Ordinance.

16.30.120. REQUIREMENT TO MONITOR AND ANALYZE.

The County may require by written notice that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or non-stormwater discharges to the storm drainage system or watercourses, to undertake at that person's expense any monitoring and analyses and furnish reports to the County as deemed necessary to determine compliance with this Section.

16.30.130. NOTIFICATION OF SPILLS.

A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drainage system, or watercourses from said facility, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of the release. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the County Water Agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of the establishment shall also retain an on-site written record

of the discharge and the actions taken to prevent its recurrence. These records shall be retained for at least three years.

(1) In the event of a release of a hazardous material the person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911).

(2) In the event of a release of non-hazardous materials, the person shall notify the County Planning and Building Services in person or by phone or facsimile no later than 5:00 p.m. of the next business day.

16.30.140. INSPECTION AND MONITORING.

A. **AUTHORITY TO INSPECT.** Whenever necessary to make an inspection to enforce any provision of this Section, or whenever the County has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Section, the County may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the County is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

B. **AUTHORITY TO SAMPLE, ESTABLISH SAMPLING DEVICES, AND TEST.** During any inspection in compliance with this Section, the County may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

16.30.150. IMPLEMENTATION.

The intent of this Ordinance is not to punish and fine citizens of Mendocino County, but to educate them of ways to prevent and reduce pollution from entering the County storm drainage system and waters of the U.S. As such, education shall be the primary means to implement the provisions of this Ordinance. Where violations are discovered, initial contact with property owners and/or business operator shall be to gain compliance through education and a corrective action plan. If compliance is not gained through initial education and a corrective action plan, if necessary further enforcement actions shall be pursued in accordance with Chapter 8.75 "Uniform Nuisance and Abatement Procedure" of the Mendocino County Code.

16.30.160. ENFORCEMENT - VIOLATIONS.

A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Failure to comply with this Ordinance, including the failure to implement a corrective action plan shall be an infraction and shall be punishable by fines as specified in Government Code Section 25132 or any successor statute.

B. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare shall constitute a

public nuisance and a misdemeanor and shall be subject to enforcement in accordance with Chapter 8.75 "Uniform Nuisance and Abatement Procedure" of the Mendocino County Code.

C. Any person who violates any provision of this Ordinance or any provision of any requirement issued in compliance with this Ordinance may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Section shall also include written notice to the violator of this potential liability.

16.30.170. SEVERABILITY CLAUSE.

The provisions of this Ordinance are separate and severable. If any provision of the ordinance codified in this Chapter is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed the ordinance codified in this Chapter irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Chapter, or the validity of its application to other persons or circumstances.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

KENDALL SMITH, Chair
Board of Supervisors

ATTEST: Carmel J. Angelo
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
JEANINE B. NADEL, County Counsel

By: _____
Deputy