

## **13.32 - Illicit Discharge into Evans Storm Drainage System**

### **Chapter 13.32 - ILLICIT DISCHARGES INTO THE EVANS STORM DRAINAGE SYSTEM**

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#### **13.32.010 Definitions.**

A. For the purposes of this chapter, the following shall mean:

1. Authorized enforcement agency: Employees or designees of the City of Evans designated to enforce this chapter.
2. Best management practices (BMPs): Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
3. Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
4. Construction activity: Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
5. Hazardous materials: 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.
6. Illegal discharge: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section F of this chapter.
7. Illicit connections: An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm drain system including, but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, 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 an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to

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the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

8. Industrial activity: Activities subject to NPDES Industrial permit.

9. Municipal separate storm sewer system (MS4s): A conveyance or system of conveyances (including but not limited to roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by the state, city, town, county, or other public body (created to or pursuant to state law) including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the United States designed or used for collecting or conveying stormwater, that is not a combined sewer, and that is not part of a publicly owned treatment works.

10. National pollutant discharge elimination system (NPDES) stormwater discharge permit: A permit issued by the Colorado Department of Public Health and Environment.

11. Non-stormwater discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

12. Person: 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.

13. Pollutant: Anything that 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 and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, chapters, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; noxious or offensive matter of any kind; and any soil, rock, and any type of landscaping.

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

15. Storm drainage system: Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

17. Stormwater pollution prevention plan: A document that describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

18. Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility, including but limited to portable urinals. (Ord. 404-07)

**13.32.020 Applicability.** This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City. (Ord. 404-07)

**13.32.030 Responsibility for Administration.** The City of Evans shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated by the Director of Public Works to persons or entities acting in the beneficial interest of or in the employ of the City. (Ord. 404-07)

**13.32.040 Severability.** The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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. (Ord. 404-07)

**13.32.050 Ultimate Responsibility.** The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend nor imply that compliance by any person will ensure there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. 404-07)

### **13.32.060 Discharge Prohibitions.**

#### **A. Prohibition of Illegal Discharges**

1. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any

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materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

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

a. The following discharges are exempt from discharge prohibitions established by this chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, natural springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

b. Discharges specified in writing by the City as being necessary to protect public health and safety.

c. Dye testing is an allowable discharge, but requires a verbal notification to the city prior to the time of the test.

d. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered 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, and provided that written approval has been granted for any discharge to the storm drain system.

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 chapter, if the person connects a line conveying sewage to the storm drain system, or allows such a connection to continue. (Ord. 404-07)

#### **13.32.070 Suspension of Storm Drain System Access.**

A. Suspension Due to Illicit Discharges in Emergency Situations. The City of Evans may, without prior notice, suspend storm drain system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the storm drain system or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge. Any person discharging to the storm drain system in violation of this chapter may have their storm drain system access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its storm drain system access. The violator may petition the city for a reconsideration and hearing.

C. A person commits an offense if the person reinstates storm drain system access to premises terminated pursuant to this Section, without the prior approval of the city. (Ord. 404-07)

**13.32.080 Industrial or Construction Activity Discharges.** 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 City of Evans prior to the allowing of discharges to the storm drain system. (Ord. 404-07)

#### **13.32.090 Monitoring of Discharges.**

A. Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

B. Access to Facilities

1. The City of Evans shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Facility operators shall allow the City of Evans ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

3. The City of Evans shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.

4. The City of Evans has the right to require the discharger to install monitoring equipment as necessary. The

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facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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

6. Unreasonable delays in allowing the City of Evans access to a permitted facility is a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

7. If the City of Evans has been refused access to any part of the premises from which stormwater is discharged, and the City is able to demonstrate probable cause to believe there may be a violation of this chapter, or 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, and welfare of the community, then the City may seek issuance of a search warrant from district court of competent jurisdiction. (Ord. 404-07)

### **13.32.100 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices.**

The City of Evans has adopted requirements identifying best management practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a land development, commercial, or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drain system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 404-07)

**13.32.110 Watercourse Protection.** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. 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. (Ord. 404-07)

**13.32.120 Notification of Spills.** 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 drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by telephone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Evans within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. (Ord. 404-07)

### **13.32.130 Enforcement.**

A. Notice of Violation. Whenever the City of Evans finds that a person has violated a prohibition, or failed to meet a requirement of this chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;

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4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

5. Payment of a fine to cover administrative and remediation costs; and

6. The implementation of source control or treatment BMPs.

B. If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. (Ord. 404-07)

**13.32.140 Appeal of Notice of Violation.** Any person receiving a Notice of Violation may appeal the determination of the City. The notice of appeal must be received within 30 days from the date of the Notice of Violation. Hearing on the appeal before the Zoning Board of Appeals shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Zoning Board of Appeals shall be final. (Ord. 404-07)

**13.32.150 Enforcement Measures After Appeal.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 14 days of the decision of the Zoning Board of Appeals upholding the decision of the City, then representatives of the City shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above. (Ord. 404-07)

**13.32.160 Cost of Abatement of the Violation.** Within 14 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 14 days. If the amount due is not paid within a timely manner as determined by the decision of the City, or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The City may then certify the balance due to the County Treasurer, to be placed upon the tax list for the current year, to be collected in the same manner as other taxes are collected. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 18 percent per annum shall be assessed on the balance beginning on the 90th day following discovery of the violation. (Ord. 404-07)

**13.32.170 Injunctive Relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the city may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation. (Ord. 404-07)

**13.32.180 Compensatory Action.** In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the city may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. (Ord. 404-07)

**13.32.190 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 chapter is a threat to public 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. (Ord. 404-07)

**13.32.200 Remedies Not Exclusive.** The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies. (Ord. 404-07)

**13.32.210 Violation Penalty.** Any person who violates any of the provisions of this chapter shall be punished as provided in Section 1.16.010. The City may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses. (Ord. 404-07)

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