

**COUNTY ORDINANCE NO. 26-01**

**ORDINANCE TO DEVELOP, IMPLEMENT, AND ENFORCE THE STORMWATER MANAGEMENT PROGRAM REQUIRED BY THE MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT**

**WHEREAS**, El Paso County has been issued a Colorado Discharge Permit System (CDPS) General Permit for *Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems* (MS4 Permit) and must comply with all permit requirements therein; and

**WHEREAS**, pursuant to C.R.S. § 30-15-401, the Board of County Commissioners of El Paso County, Colorado (“Board”) has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

**WHEREAS**, C.R.S. § 30-15-401 (11)(a)(I), specifically authorizes El Paso County to adopt an ordinance to develop, implement and enforce the stormwater management program required by the MS4 Permit; and

**WHEREAS**, C.R.S. § 30-15-401 (11)(a)(II)(A), specifically authorizes El Paso County to provide for and compel the abatement of any condition that causes or contributes to a violation of the MS4 Permit, associated with any property located within the unincorporated portion of the County, at such time, upon such notice, and in such manner consistent with the terms of the MS4 Permit as the Board of County Commissioners may prescribe by ordinance; and

**WHEREAS, with regard to grading, erosion, and sediment control:**

Section I.E.3 of the MS4 Permit requires El Paso County to develop and implement a program to reduce or prevent the discharge of pollutants to the County Municipal Separate Storm Sewer System (MS4) from Applicable Construction Activities; and

Section I.E.3.a.ii of the MS4 Permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to require Control Measures be implemented for all Applicable Construction Activities from initial disturbance to Final Stabilization, as well as implement sanctions against entities responsible for Applicable Construction Activities when violations exist; and

Section I.E.3.a.iv of the MS4 Permit requires El Paso County to ensure the adequate selection, installation, implementation, and maintenance of Control Measures to prevent the discharge of pollutants and degradation of State Waters during each phase of construction; and

Section I.E.3.a.vii.(A) of the MS4 Permit requires El Paso County to implement procedures that include specific processes and sanctions to minimize the occurrence of, and to obtain compliance from, chronic and Recalcitrant Violators of Control Measure requirements; and

Section I.E.3.a.vii.(B) of the MS4 Permit requires El Paso County to implement appropriate enforcement procedures and actions to include informal, formal, and judicial enforcement responses; and

**WHEREAS, with regard to post-construction stormwater management:**

Section I.E.4 of the MS4 Permit requires El Paso County to develop and implement a program to reduce the discharge of pollutants to the County MS4 from Applicable Development Sites; and

Section I.E.4.a.ii.(A) of the MS4 Permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to require Permanent Control Measures (PCMs) be implemented for all Applicable Development Sites; and

Section I.E.4.a.ii.(C) of the MS4 Permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to require the long-term operation and maintenance of PCMs; and

Section I.E.4.a.ii.(E) of the MS4 Permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to implement sanctions against entities responsible for Applicable Development Sites and long-term operation and maintenance of PCMs, when violations exist; and

Section I.E.4.a.viii of the MS4 Permit requires El Paso County to implement appropriate enforcement procedures and actions to include informal, formal, and judicial enforcement responses; and

**WHEREAS, with regard to Illicit Discharge detection and elimination:**

Section I.E.2 of the MS4 Permit requires El Paso County to develop and implement a program to effectively prohibit Illicit Discharges; and

Section I.E.2.a.ii.(A) of the MS4 permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to prohibit Illicit Discharges into the MS4; and

Section I.E.2.a.ii.(B) of the MS4 permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism which includes procedures to request access to property as necessary to implement the Illicit Discharge procedures, to include judicial action; and

Section I.E.2.a.ii.(C) of the MS4 permit requires El Paso County, to the extent allowable under State or local law, to implement a regulatory mechanism to provide El Paso County the legal ability to cease or require to be ceased and remove, or require and ensure the removal of, and impose penalties for all Illicit Discharges; and

**WHEREAS**, the Board finds that this Ordinance is necessary to preserve the public health, safety and welfare of the citizens of El Paso County to comply with the federal and state requirements imposed by the MS4 Permit.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of El Paso County, Colorado:

**Section 1: Title.**

This Ordinance shall be titled *El Paso County Ordinance to Develop, Implement, and Enforce the Stormwater Management Program Required by the Municipal Separate Storm Sewer System Permit* (“Stormwater Ordinance”).

**Section 2: Definitions.**

**Applicable Construction Activity/Activities:** Construction Activities that result in either a land disturbance of greater than or equal to one acre or a land disturbance that is less than one acre but is part of a larger common plan of development or sale that would disturb, or has disturbed since March 2, 2001, one acre or more, unless such activities are excluded consistent with Section I.3 of the ECM, or the disturbed areas have been finally stabilized.

**Applicable Development Sites:** Sites where development will result in land disturbance of greater than or equal to one acre or in land disturbance less than one acre that are part of a larger common plan of development or sale since March 10, 2008, unless excluded consistent with Section I.6.1.B of the ECM. Applicable Development Sites include all New Development and Redevelopment sites for which PCMs are required in accordance with an MS4 Permit.

**Board:** The Board of County Commissioners of El Paso County, Colorado.

**Construction Activity/Activities:** Ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Activities that include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility are not considered Construction Activities. Activities to conduct repairs that are not part of regular maintenance and activities that are for replacement are considered Construction Activities and are not considered routine maintenance. Repaving activities where underlying or surrounding soil is cleared, graded, or excavated as part of the repaving operation are Construction Activities unless they are an excluded site pursuant to Section I.3.1 of the ECM. Construction Activity occurs from initial groundbreaking to Final Stabilization regardless of ownership of the Construction Activities.

**Construction Control Measure:** A Control Measure used to limit erosion and the transport of soil and other pollutants within or leaving construction sites. Construction Control Measures can be structural (e.g., silt fence) and non-structural (e.g., street sweeping). Additionally, Construction Control Measures may be temporary (e.g., erosion control log) or permanent (e.g., seeding).

**Contractor:** A person, partnership, corporation, subcontractor, or other legal entity that assumes responsibility to undertake an activity covered by Appendix I of the ECM as or on behalf of an Owner.

**Control Measure:** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the State. Control Measures also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage. Additionally, Control Measures include structural and non-structural controls and may be temporary or permanent.

**County:** The unincorporated areas of El Paso County, Colorado.

**Division:** Colorado Department of Public Health and Environment, Water Quality Control Division.

**Drainage Criteria Manual Volume 2:** The El Paso County Drainage Criteria Manual, Volume 2 adopted by the El Paso County Board of County Commissioners.

**ECM Administrator:** The El Paso County Engineer, or his or her authorized designee(s).

**Engineering Criteria Manual (ECM):** The El Paso County Engineering Criteria Manual adopted by the El Paso County Board of County Commissioners.

**Final Stabilization:** The condition reached when all Construction Activities at the site have been completed and permanent stabilization methods are complete. Final Stabilization also includes installation of permanent roads and structural PCMs and removal of all temporary Construction Control Measures. Refer to Section I.4.7.A of the ECM for further discussion regarding Final Stabilization requirements.

**Illicit Discharge:** Any discharge to any portion or component of the County MS4 that is not composed entirely of stormwater. Discharges from the following sources are excluded and are not considered an Illicit Discharge: (1) landscape irrigation, (2) lawn watering, (3) diverted stream flows, (4) irrigation return flow, (5) rising ground waters, (6) uncontaminated ground water infiltration as defined at 40 CFR 35.2005(b)(20), (7) uncontaminated pumped ground water (note that discharges containing groundwater that comes into contact with Construction Activity are not considered “uncontaminated”), (8) springs, (9) flows from riparian habitats and wetlands, (10) water line flushing or discharges from potable water sources in accordance with the Division’s *Low Risk Policy Discharge Guidance: Potable Water*, (11) foundation drains, (12) air conditioning condensation, (13) water from crawl space pumps, (14) footing drains, (15) individual residential car washing, (16) dechlorinated swimming pool discharges in accordance with the Division’s *Low Risk Policy Discharge Guidance: Swimming Pools*, (17) water incidental to street sweeping, including associated sidewalks and medians, that is not associated with construction, (18) dye testing in accordance with manufacturer’s recommendations, (19) stormwater runoff with incidental pollutants, (20) discharges resulting from emergency fire fighting activities, (21) discharges authorized by a CDPS or NPDES permit, (22) agricultural stormwater runoff, or (23) any discharge consistent with the Division’s Low Risk Discharge Policy guidance documents or

other Division policies and guidance documents where the Division has stated it will not pursue permit coverage or enforcement for specified point source discharges.

**Municipal Separate Storm Sewer System (MS4):** 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, city, town, county, district, association, or other public body and designed or used for collecting or conveying stormwater.

**New Development:** Land disturbing activities, structural development, including construction or installation of a building or structure, creation of impervious surfaces, or land subdivision for a site that does not meet the definition of Redevelopment.

**Notice to Proceed:** A document issued by the ECM Administrator authorizing a Permit Holder to begin construction of common development, subdivision or public improvements in accordance with an approved set of plans.

**Owner:** The person or legal entity that owns property or an interest in property.

**Permanent Control Measures (PCM):** Control Measures (e.g., extended detention basins, sand filter basins, runoff reduction and infiltration areas, etc.) designed to permanently mitigate water quality impacts of New Development and Redevelopment projects.

**PCM Owner:** The person or legal entity responsible for maintenance of a PCM pursuant to a recorded PCM Maintenance Agreement. Refer to Section I.3.5 of the ECM for further discussion regarding PCM Maintenance Agreements. Typically, the PCM Owner is the person or legal entity that owns the property or interest in property (i.e., the property owner) on which a PCM is located. In some cases, the PCM Owner (e.g. a property owner's association or metropolitan district) may differ from the property owner.

**Person:** Any individual, association of individuals, partnership, firm, corporation, agency, other legal entity, or agent or representative thereof.

**Permit Holder:** The persons or legal entities to whom a Stormwater Permit has been issued by El Paso County.

**Permitted Construction Activity/Activities:** Construction Activities that are covered under an active Stormwater Permit. A site is not considered a Permitted Construction Activity solely because it holds other types of permits, such as a construction permit or building permit.

**Public or Private Property:** Any land or real property, including but not limited to the right-of-way of any road or highway and any body of water or watercourse.

**Recalcitrant Violator:** Any Person who, after receiving written notice of a violation or other enforcement action under this Ordinance, continues to willfully or negligently violate any provision of this Ordinance, a Stormwater Permit, Appendix I of the ECM, stormwater regulations,

or related requirements. A Person may be designated by the ECM Administrator as a Recalcitrant Violator if one or more of the following criteria are met:

1. Failure to Correct Violations: Does not complete required corrective actions within the timeframe specified in the written notice, unless an extension is granted in writing by El Paso County.
2. Repeated Violations: Commits two or more similar violations of the same provision within a 12-month period, whether at the same site or multiple sites under the same ownership or control.
3. Non-Responsive to Enforcement: Fails to respond to two or more written communications from El Paso County related to stormwater compliance within the specified timeframe.
4. Obstruction or Refusal: Actively obstructs, denies access to, or refuses to cooperate with El Paso County inspectors or enforcement personnel.
5. Demonstrated Pattern of Non-Compliance: Has a documented history of three or more separate violations across multiple projects or properties within a 24-month period.

Designation as a Recalcitrant Violator may result in enhanced enforcement measures, including but not limited to increased inspection frequency, administrative penalties, permit suspension or revocation, or referral to the Colorado Department of Public Health and Environment (CDPHE) or the U.S. Environmental Protection Agency (EPA) for further enforcement action.

**Redevelopment:** Further development of a site that is already 35% or more impervious by adding impervious area (including removal or replacement of pervious materials), to include the expansion of a building footprint, addition to or replacement of a structure, engaging in structural development, replacing impervious area that is not part of a routine maintenance activity, or engaging in land disturbing activities.

**State Waters or Waters of the State:** As defined by CDPHE and may be amended: Any and all surface and subsurface waters which are contained in or flow in or through Colorado, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

**Stop Work Order (SWO):** Written order from County Staff to immediately cease all Construction Activities.

**Stormwater Permit:** An Erosion and Stormwater Quality Control Permit (ESQCP) or Associate Erosion and Stormwater Quality Control Permit (AESQCP) obtained from El Paso County prior to commencement of Applicable Construction Activities pursuant to Section I.3 of the ECM.

**Unpermitted Construction Activity/Activities:** Construction Activities that are not covered under an active Stormwater Permit.

### **Section 3: Purpose.**

- 3.1 **Grading, Erosion, and Sediment Control.** The purposes of this Ordinance with regard to MS4 Permit Section I.E.3. and Appendix I of the ECM are:

- (i) To require that Stormwater Permits are obtained pursuant to Section I.3 of the ECM prior to commencing Construction Activities requiring a Stormwater Permit;
- (ii) To require that Permit Holders maintain compliance with the requirements of the Stormwater Permit pursuant to Section I.4 of the ECM;
- (iii) To establish processes and sanctions to minimize the occurrence of, and obtain compliance from, chronic and Recalcitrant Violators of this Ordinance; and
- (iv) To ensure El Paso County is in compliance with its MS4 Permit.

3.2 **Post-Construction Stormwater Management.** The purposes of this Ordinance with regard to MS4 Permit Section I.E.4. and Appendix I of the ECM are:

- (i) To require the adequate selection, design, and implementation of PCMs for all Applicable Development Sites;
- (ii) To require the long-term operation and maintenance of PCMs;
- (iii) To establish sanctions against entities responsible for Applicable Development Sites and for the long-term operation and maintenance of PCMs; and
- (iv) To ensure El Paso County is in compliance with its MS4 Permit.

3.3 **Illicit Discharge Detection and Elimination.** The purposes of this Ordinance with regard to MS4 Permit Section I.E.2. and Appendix I of the ECM are:

- (i) To prohibit Illicit Discharges into the County MS4;
- (ii) To require the cessation of and removal of Illicit Discharges;
- (iii) To establish procedures to impose penalties for Illicit Discharges; and
- (iv) To ensure El Paso County is in compliance with its MS4 Permit.

**Section 4: Authority and Effect.**

4.1 This Ordinance is authorized pursuant to, inter alia, C.R.S. §§30-11-101, *et seq.*, and §§ 30-15-401, *et seq.*

4.2 El Paso County Ordinance 07-01, enacted on December 5, 2023, is hereby repealed and replaced in its entirety by this Ordinance.

4.2 Nothing in this Ordinance shall be construed to preclude the enforcement of other applicable county, state, and federal laws and regulations.

**Section 5: Applicability.**

- 5.1 **Grading, Erosion, and Sediment Control.** This Ordinance shall apply to all Construction Activities requiring a Stormwater Permit pursuant to Section I.3 of the ECM throughout the County.
- 5.2 **Post-Construction Stormwater Management.** This Ordinance shall apply to all Applicable Development Sites throughout the County.
- 5.3 **Illicit Discharge Detection and Elimination.** This Ordinance shall apply throughout the County.

**Section 6: Violations.**

- 6.1 **Grading, Erosion, and Sediment Control.** It shall be unlawful for any Person to cause or allow any Construction Activity to be conducted in a manner that violates this Ordinance or Appendix I of the ECM, which are incorporated herein in their entirety by this reference.
  - (i) A Stormwater Permit must be obtained prior to commencing Construction Activities requiring a Stormwater Permit pursuant to Section I.3 of the ECM.
  - (ii) Construction Control Measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices.
  - (iii) Construction Control Measures must be selected, designed, installed, implemented, and maintained in operational condition to provide control of all potential pollutants associated with all Construction Activities requiring a Stormwater Permit.
  - (iv) Construction Control Measures must be implemented prior to the start of all Construction Activities requiring a Stormwater Permit, must control potential pollutants during each phase of construction, and must be continued through Final Stabilization.
  - (v) Permit Holders must maintain compliance with all Stormwater Permit requirements, to include all pre-construction, Construction Control Measure, Permit Holder inspections, and recordkeeping requirements pursuant to Section I.4 of the ECM.
- 6.2 **Post-Construction Stormwater Management.** It shall be unlawful for any Person to cause or to allow any PCM to be constructed, operated, maintained, modified, or to fail to be constructed, in a manner that violates this Ordinance, the PCM Maintenance Agreement, Appendix I of the ECM, or the El Paso County Drainage Criteria Manual Volume 2, which is incorporated herein in its entirety by this reference.
  - (i) PCMs must be constructed in accordance with the El Paso County approved

construction drawings, grading and erosion control plan, and drainage report.

- (ii) PCMs must be operated and maintained at all times such that their water quality control functions and maintenance access operate in accordance with the El Paso County approved design. Operation and maintenance of the PCMs must be conducted in accordance with the El Paso County accepted Operations and Maintenance Manual, the PCM Maintenance Agreement, Appendix I of the ECM, and the El Paso County Drainage Criteria Manual Volume 2.
- (iii) Any modification to a previously approved PCM shall require prior written approval by El Paso County.

### 6.3 **Illicit Discharge Detection and Elimination**

- (i) It shall be unlawful for any Person to cause an Illicit Discharge by knowingly, recklessly or negligently dumping or depositing any non-stormwater material directly into any portion or component of the County MS4.
- (ii) It shall be unlawful for any Person to knowingly, recklessly or negligently dump or deposit any non-stormwater material onto public or private property when such dumping or deposit results in an Illicit Discharge.
- (iii) It shall be unlawful for any Owner to allow any non-stormwater material originating from any lot, parcel or tract of land in the County under such Owner's control, possession, or ownership to enter into any portion or component of the County MS4, thereby causing an Illicit Discharge.

6.4 **Failure to Pay Inspection Fees.** It shall be unlawful for any Person to fail to timely pay any inspection fees imposed pursuant to Section 8.

## **Section 7: Enforcement Notification**

To the extent practicable, considering the nature and extent of the violation, County Staff shall provide written notice to Persons violating this Ordinance and require corrective actions to remediate the violations. Such written notice shall include, at a minimum, a description of the violation and allowable timeframe for corrections.

### 7.1 **Grading, Erosion, and Sediment Control**

- (i) **Informal Notice of Noncompliance.** An Informal Notice of Noncompliance is a written notice issued by County Staff to the Permit Holder. An Informal Notice of Noncompliance is issued in conjunction with a Compliance Inspection Report documenting the Stormwater Permit violations that remain uncorrected from the previous Compliance Inspection Report. The Informal Notice of Noncompliance notifies the Permit Holder that a subsequent Compliance Inspection will be conducted within fourteen (14) days to ensure the violations have been corrected.

- (ii) **Formal Notice of Noncompliance.** A Formal Notice of Noncompliance is a written notice issued by County Staff to the Permit Holder. A Formal Notice of Noncompliance is issued in conjunction with a Compliance Inspection Report documenting the Stormwater Permit violations that remain uncorrected from the previous Informal Notice of Noncompliance and Compliance Inspection Reports. The Formal Notice of Noncompliance notifies the Permit Holder that a subsequent Compliance Inspection will be conducted within fourteen (14) days to ensure the violations have been corrected.
- (iii) **Stop Work Order (Permitted Construction Activity).** An SWO may be issued by County Staff to the Permit Holder in conjunction with a Compliance Inspection Report documenting the Stormwater Permit violations that remain uncorrected from the previous Informal Notice of Noncompliance, Formal Notice of Noncompliance, and Compliance Inspection Reports. The SWO may be issued without prior issuance of an Informal or Formal Notice of Noncompliance when: (1) the Permit Holder has failed to obtain a Notice to Proceed prior to commencing Construction Activities; (2) the impacts of the Permit Holder's violations are great enough to warrant issuance of an SWO, as determined by the ECM Administrator; or (3) the Permit Holder is deemed a Recalcitrant Violator. The SWO notifies the Permit Holder that all Construction Activities, except those activities necessary to correct the Stormwater Permit violations, must cease until the Permit Holder receives a Resolution of SWO Memo issued by County Staff. No further land use approvals relative to the site will be allowed by El Paso County until a Resolution of SWO Memo has been issued.
- (iv) **Stop Work Order (Unpermitted Construction Activity).** An SWO may be issued by County Staff to the Owner without prior issuance of an Informal or Formal Notice of Noncompliance when a Construction Activity is taking place or has taken place that requires a Stormwater Permit. The SWO notifies the Owner that all Construction Activities, except those activities necessary to implement Construction Control Measures to prevent any offsite discharge and stabilize all land disturbance using temporary or permanent stabilization measures, must cease until the Owner obtains a Stormwater Permit and receives a Resolution of SWO Memo issued by County Staff. Alternatively, if the Owner does not wish to obtain a Stormwater Permit and continue Construction Activities, the Owner may return the property to the original grade and stabilize all land disturbance using permanent stabilization measures. Unless the approval is intended to correct the violation, no further land use approvals relative to the site will be allowed by El Paso County until a Resolution of SWO Memo has been issued.

## 7.2 Post-Construction Stormwater Management

- (i) **Informal Notice of Noncompliance.** An Informal Notice of Noncompliance is a written notice issued by County Staff to the PCM Owner. An Informal Notice of Noncompliance is issued in conjunction with a PCM Inspection Report documenting any PCM Maintenance Agreement violations. The Informal Notice of

Noncompliance notifies the PCM Owner that a PCM Follow-Up Inspection will be conducted within ninety (90) days to ensure the violation has been corrected, unless an extension to correct the violation has been approved in writing by County Staff.

- (ii) **Formal Notice of Noncompliance.** A Formal Notice of Noncompliance is a written notice issued by County Staff to the PCM Owner. A Formal Notice of Noncompliance is issued in conjunction with a PCM Inspection Report documenting the PCM Maintenance Agreement violations that remain uncorrected from the previous Informal Notice of Noncompliance and PCM Inspection Report. The Formal Notice of Noncompliance notifies the PCM Owner that a PCM Follow-Up Inspection will be conducted within sixty (60) days to ensure the violation has been corrected, unless an extension to correct the violation has been approved in writing by County Staff.
- (iii) **Final Notice of Noncompliance.** A Final Notice of Noncompliance is a written notice issued by County Staff to the PCM Owner. A Final Notice of Noncompliance is issued in conjunction with a PCM Inspection Report documenting the PCM Maintenance Agreement violations that remain uncorrected from the previous Informal Notice of Noncompliance, Formal Notice of Noncompliance, and PCM Inspection Reports. The Final Notice of Noncompliance notifies the PCM Owner that a final PCM Follow-Up Inspection will be conducted within thirty (30) days to ensure the violation has been corrected, and that if the violation has not been corrected, El Paso County may pursue additional enforcement action pursuant to this Ordinance and the PCM Maintenance Agreement, unless an extension to correct the violation has been approved in writing by County Staff.
- (iv) **Notice of Enforcement Action.** A Notice of Enforcement Action is a written notice issued by County Staff to the PCM Owner. A Notice of Enforcement Action is issued to notify the PCM owner that all outstanding PCM Maintenance Agreement violations documented in the previous PCM Inspection Reports, Informal Notice of Noncompliance, Formal Notice of Noncompliance, and Final Notice of Noncompliance remain uncorrected and that El Paso County may pursue additional enforcement action pursuant to this Ordinance.
- (v) The timeframe within which County Staff may conduct a PCM Follow-Up Inspection to confirm correction of a violation may be reduced based on the severity of the violation.

### 7.3 **Illicit Discharge Detection and Elimination**

- (i) **Notice of Violation.** A Notice of Violation is a written notice issued to a Person or Owner participating in acts that have resulted in an Illicit Discharge. A Notice of Violation includes a description of the violation and notifies the Person or Owner participating in such acts to contact County Staff and remove the Illicit Discharge within two (2) business days of receipt of the Notice of Violation.

- 7.4 If a violation has not been corrected pursuant to the requirements set forth in the written notices as described in subsections 7.1, 7.2, and 7.3 of this Ordinance, the ECM Administrator may pursue enforcement proceedings pursuant to Sections 9, 10, and 11 of this Ordinance. The ECM Administrator shall work with such persons to correct any violations of this Ordinance prior to the commencement of enforcement proceedings.
- 7.5 Nothing in this Section shall be construed to bar the commencement of criminal or civil enforcement proceedings for violations of this Ordinance as provided herein without prior notice.

## **Section 8: Enforcement Inspection Fees.**

- 8.1 **Grading, Erosion, and Sediment Control.** Inspection fees will be assessed in conjunction with an SWO issued for Grading, Erosion, and Sediment Control violations pursuant to subsection 6.1. No inspection fees will be assessed for violations associated with Post-Construction Stormwater Management or Illicit Discharge Detection and Elimination violations. See Stormwater Ordinance Fee Schedule (Attachment A).
- 8.2 **Permitted Construction Activity.** SWO Follow-Up Inspection fees and SWO Resolution Inspection fees for Construction Activities associated with an active Stormwater Permit.
- (i) **Stop Work Order Follow-Up Inspection Fee.** Following the issuance of an SWO, an SWO Follow-Up Inspection will be conducted by County Staff once per seven (7) day period to ensure Construction Activities have ceased until the violations have been corrected and the SWO has been resolved. An SWO Follow-Up Inspection fee will be assessed for each SWO Follow-Up Inspection. Additional inspections may be conducted in response to receiving a complaint regarding the subject property. An SWO Follow-Up Inspection fee will not be assessed in the event Construction Activities are not occurring at the subject property during an inspection conducted in response to a complaint.
  - (ii) **Stop Work Order Resolution Inspection Fee.** Following the issuance of an SWO, the Permit Holder shall notify County Staff, in writing, requesting an SWO Resolution Inspection once all violations have been corrected. County Staff will conduct an SWO Resolution Inspection of the subject property to ensure violations have been corrected prior to resolving the SWO and assess an SWO Resolution Inspection fee. Upon passing the SWO Resolution Inspection and receipt of payment of all associated fees (e.g., any remaining SWO Follow-Up Inspection fees and the SWO Resolution Inspection fee), County Staff will issue a Resolution of SWO Memo to the Permit Holder, allowing Construction Activities to resume at the subject property.
  - (iii) Recalcitrant Violators will be subject to an increased SWO Follow-Up Inspection fee and SWO Resolution Inspection fee in accordance with the Stormwater Ordinance Fee Schedule (Attachment A).

8.3 **Unpermitted Construction Activity.** SWO Follow-Up Inspection fees and SWO Resolution Inspection fees for Construction Activities that are not associated with an active Stormwater Permit.

- (i) **Stop Work Order Follow-Up Inspection Fee.** Following the issuance of an SWO, an SWO Follow-Up Inspection will be conducted by County Staff once per seven (7) day period to ensure Construction Activities have ceased until the violations have been corrected and the SWO has been resolved. An SWO Follow-Up Inspection fee will be assessed for each SWO Follow-Up Inspection. The Owner has the option to implement temporary stabilization measures at which point the SWO Follow-Up Inspection frequency may be reduced to once per forty-five (45) day period. If the temporary stabilization measures are found to be inadequate, the SWO Follow-Up Inspections will return to a once per seven (7) day period until the temporary stabilization measures are found to be adequate. During an SWO Follow-Up Inspection, if it has been determined by County Staff that Construction Activities have not ceased upon issuance of an SWO, an additional fee shall be assessed. Additional inspections may be conducted in response to receiving a complaint regarding the subject property. For additional inspections conducted in response to a complaint, an SWO Follow-Up Inspection fee will not be assessed if Construction Activities are not occurring during the inspection.
- (ii) **Stop Work Order Resolution Inspection Fee.** Following the issuance of an SWO, the Owner shall notify County Staff, in writing, requesting an SWO Resolution Inspection once all violations have been corrected. County Staff will conduct an SWO Resolution Inspection of the subject property to ensure violations have been corrected prior to resolving the SWO. Upon passing the SWO Resolution Inspection and receipt of payment of all associated fees (e.g., any remaining SWO Follow-Up Inspection fees and the SWO Resolution Inspection fee), County Staff will issue a Resolution of SWO Memo to the Owner.

In the event the Owner obtains a Stormwater Permit in order to continue Construction Activities at the site, the SWO Resolution Inspection and fee requirement shall be waived. Once the site has an active Stormwater Permit, and upon receipt of payment of all associated fees (e.g., any remaining SWO Follow-Up Inspection fees), County Staff will issue a Resolution of SWO Memo, allowing Construction Activities to resume at the subject property. Refer to Section I.4.1 of the ECM for all Permit Holder requirements prior to the start of Construction Activities at the site.

8.4 The Stormwater Ordinance Fee Schedule, set forth as Attachment A to this Ordinance, is subject to an automatic administrative annual increase based on the Consumer Price Index (Denver-Aurora-Lakewood CPI-U).

8.5 Processing and inspection fees shall be assessed at the discretion of the ECM Administrator pursuant to the Stormwater Ordinance Fee Schedule contained herein.

- 8.6 All fees shall be paid within thirty (30) days of receipt and shall be deposited into the General Fund of El Paso County.

**Section 9: El Paso County Abatement Action and Performance of Remedial Work.**

**9.1 Grading, Erosion, and Sediment Control.**

- a. **Permitted Construction Activity:** If an SWO has been issued for a violation of subsection 6.1 of this Ordinance and the Permit Holder fails to correct or abate such violation within the specified timeframe, El Paso County may perform remedial work by and through El Paso County forces, contract, or otherwise at the expense of the Permit Holder pursuant to the grant of authority in the Stormwater Permit. El Paso County may draw on posted collateral to cover such costs. Such costs shall include the actual costs of any work deemed necessary by El Paso County. If the total of such costs exceeds the Permit Holder's financial assurances, the Permit Holder shall be responsible for payment of the remaining balance pursuant to subsections 9.1.c and 9.1.d below.
- b. **Unpermitted Construction Activity:** If an SWO has been issued to an Owner operating without a Stormwater Permit in violation of subsection 6.1 of this Ordinance and said Owner fails to correct or abate such violation within the specified timeframe, El Paso County may contact the Owner to request written permission to enter the property to perform remedial work by and through El Paso County forces, contract, or otherwise at the expense of the Owner. If the ECM Administrator does not receive written permission from the Owner to enter the property to perform remedial work after such permission has been requested, the ECM Administrator may refer the matter to the El Paso County Attorney's Office for application to the courts for an administrative entry and seizure warrant for such cleanup pursuant to Section 12 below.
- c. Failure to pay the cost of the remedial work within ten (10) days after the ECM Administrator mails an invoice for such cost, the whole cost thereof, including five percent (5%) for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcel, and tracts upon which such remedial work occurred. Any assessment pursuant to this subsection 9.1.c shall be a lien against such lot, parcel, or tract of land until paid and, once recorded, shall have priority based upon its recording date.
- d. In case the assessment imposed pursuant to subsection 9.1.c above is not paid within ninety (90) days from the date of remedial work by El Paso County, such assessment may be certified to the El Paso County Treasurer, who shall collect the assessment, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to subsection 9.1.d of this Ordinance.

## 9.2 **Post-Construction Stormwater Management.**

- a. If a Final Notice of Noncompliance has been issued for a violation of subsection 6.2 of this Ordinance and the PCM Owner fails to correct or abate such violation within the specified timeframe, El Paso County may perform remedial work by and through El Paso County forces, contract, or otherwise at the expense of the PCM Owner pursuant to the grant of authority in the PCM Maintenance Agreement.
- b. If the PCM Owner fails to pay the cost of the remedial work within ten (10) days after the ECM Administrator mails an invoice for such cost, the whole cost thereof, including five percent (5%) for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcel, and tracts upon which such remedial work occurred. Any assessment pursuant to this subsection 9.2.b of this Ordinance shall be a lien against such lot, parcel, or tract of land until paid and, once recorded, shall have priority based upon its recording date. El Paso County may, in its discretion, elect to concurrently or alternatively pursue enforcement of the PCM Maintenance Agreement in accordance with its terms.
- c. In case the assessment imposed pursuant to subsection 9.2.b above is not paid within ninety (90) days from the date of remedial work by El Paso County, such assessment may be certified to the El Paso County Treasurer, who shall collect the assessment, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection 9.1.c of this Ordinance.

## 9.3 **Illicit Discharge Detection and Elimination.**

- a. If a Notice of Violation has been issued for a violation of subsection 6.3 of this Ordinance and the responsible Person or Owner fails to cleanup or abate such violation within the specified timeframe, the ECM Administrator may contact the Owner to request written permission to enter the property for cleanup purposes.
- b. If the ECM Administrator does not receive written permission from an Owner to enter the property for cleanup purposes after such permission has been requested, the ECM Administrator may refer the matter to the El Paso County Attorney's Office for application to the courts for an administrative entry and seizure warrant for such cleanup pursuant to Section 12 below.
- c. Upon obtaining either written permission from an Owner or an administrative entry and seizure warrant, the ECM Administrator shall have the authority to perform the cleanup or abatement by and through El Paso County forces, contract, or otherwise at the expense of the Owner. If the Owner fails to pay the cost of cleanup within ten (10) days after the ECM Administrator mails an invoice for such cost, the whole cost

thereof, including five percent (5%) for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcel, and tracts upon which such cleanup occurred. Any assessment pursuant to this subsection 9.3.c of this Ordinance shall be a lien against such lot, parcel, or tract of land until paid and, once recorded, shall have priority based upon its recording date.

- d. In case the assessment imposed pursuant to subsection 9.3.c above is not paid within ninety (90) days from the date of cleanup by El Paso County, such assessment may be certified to the El Paso County Treasurer, who shall collect the assessment, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection 9.3.d of this Ordinance.
- e. If the need for cleanup or abatement required under this Section 9.3 lies within any portion of component of the County MS4, the ECM Administrator may recover the cost therefore through a Civil Enforcement proceeding pursuant to Section 10 below.

**Section 10: Civil Enforcement.**

- 10.1 The ECM Administrator may refer violations of this Ordinance to El Paso County Attorney's Office for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation or to seek reimbursement for El Paso County abatement or remediation work.
- 10.2 If a violation of this Ordinance is not corrected within the time period established in the enforcement notification or approved extension of time, the ECM Administrator may issue an executive determination to the Owner authorizing the El Paso County Attorney's Office to pursue remedies under subsection 10.1 of this Ordinance, subject to appeal as set forth below.
- 10.3 The ECM Administrator shall provide or mail first class to the Owner the executive determination. The executive determination shall specify the nature of the violation and provide ten (10) calendar days after the date of the executive determination for the Owner to request an appeal, at no cost to the Owner, to the Board of County Commissioners prior to the El Paso County Attorney's Office pursuing remedies under subsection 10.1 of this Ordinance.
- 10.4 The executive determination shall state that the Owner may appeal the ECM Administrator's decision to the Board of County Commissioners. The Owner must submit an appeal in writing to the ECM Administrator. Any written appeal must be received by the ECM Administrator with ten (10) calendar days after the date of the executive determination. Any such appeals received beyond ten (10) calendar days shall be deemed untimely.

- 10.5 If no appeal is received within ten (10) calendar days after the date of the ECM Administrator's executive determination, then the ECM Administrator's executive determination shall be final and the El Paso County Attorney's Office may proceed with litigation to seek remedies pursuant to subsection 10.1 of this Ordinance.
- 10.6 If the ECM Administrator receives a timely appeal of his or her executive determination as set forth in Section 10 of this Ordinance, then the ECM Administrator shall place the matter on the Board of County Commissioner's next available hearing agenda which meets the requirements of section 10.7 below.
- 10.7 The Owner shall be notified of the date, time, and place of the hearing via first class mail to the Owner's mailing address as listed in the records of the El Paso County Assessor's Office no less than five (5) calendar days prior to the hearing.
- 10.8 At the hearing, the Owner shall have the opportunity to present evidence and testimony to show cause why further enforcement action should not be taken. The Board of County Commissioners shall consider all such evidence and testimony, along with any presentation, evidence, or testimony offered by the Department of Public Works or other El Paso County staff, in reaching its decision to affirm or overturn the decision to issue the executive determination.
- 10.9 At the conclusion of the appeal hearing, the Board of County Commissioners may decide to overturn the decision to issue the executive determination or may affirm the decision and instruct the ECM Administrator to proceed with one or more of the enforcement mechanisms provided in subsection 10.1 of this Ordinance.

**Section 11: Criminal Prosecution.**

- 11.1 After receiving Board approval at a public hearing, the ECM Administrator may initiate the criminal prosecution of violations of this Ordinance in the county court.
- 11.2 The ECM Administrator shall have the authority to issue citations or summonses and complaints for the purpose of enforcing this Ordinance.
- 11.3 Any person who violates this Ordinance commits a civil infraction, and, upon conviction thereof, shall be punished by a fine of up to one thousand dollars (\$1,000) for each separate violation.
- 11.4 The penalty assessment procedure provided in C.R.S. § 16-2-201 shall be followed in enforcing this Ordinance.
- 11.5 All fines and forfeitures collected by the court for the violation of this Ordinance shall be paid to the El Paso County Treasurer within thirty (30) days of receipt and shall be deposited into the General Fund of El Paso County.

11.6 In addition to the penalties prescribed in subsection 11.3 of this Ordinance, persons convicted of a violation of this Ordinance are subject to a surcharge of ten (10) dollars that shall be paid to the clerk of the court by the defendant, as provided by C.R.S. § 30-15-402 (2)(a).

**Section 12: Administrative Entry and Seizure Warrant.**

12.1 Except where allowed by an active Stormwater Permit or PCM Maintenance Agreement and Easement, no entry upon private property without the Owner’s permission for the purpose of cleanup, abatement, or remedial work shall be made until an administrative entry and seizure warrant has been obtained from a court of competent jurisdiction.

12.2 A sworn or affirmed affidavit shall be prepared and submitted to the court which shall establish the factual basis for the warrant, including a reasonably specific description of the location of the property, a general list or site plan describing the material to be cleaned up and the corrective action(s) needed, evidence that the Owner has received notice of the violation and has failed to cleanup or abate the same within a reasonable prescribed period, and evidence that the Owner has received a request for permission to enter the property and has failed to provide the same. Said affidavit shall be accompanied by a copy of this Ordinance.

12.3 Within ten (10) days following the date of issuance of an administrative entry and seizure warrant, such warrant shall be executed in accordance with directions by the issuing court, a copy of such issued warrant shall be provided or mailed first class to the Owner, and proof of the execution of such warrant shall be submitted to the issuing court.

**Section 13: Safety Clause.**

The Board hereby finds, determines, and declares that this Ordinance is necessary for the health, safety, and welfare of the citizens of El Paso County, Colorado.

**Section 14: Severability Clause.**

If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 15: Effective Date.**

This Ordinance shall take effect on May 1, 2026.

Attachment A:

<b>Stormwater Ordinance Fee Schedule</b>	
<b>Permitted Construction Activity</b>	
Fee Category	Fee
SWO Follow-Up Inspection <i>(Construction Activities have ceased)</i>	\$100 per inspection Recalcitrant Violator: \$200 per inspection
SWO Follow-Up Inspection <i>(Construction Activities have not ceased)</i>	\$500 per inspection Recalcitrant Violator: \$1000 per inspection
SWO Resolution Inspection	\$150 per inspection Recalcitrant Violator: \$250 per inspection
<b>Unpermitted Construction Activity</b>	
Fee Category	Fee
SWO Follow-Up Inspection <i>(Construction Activities have ceased)</i>	\$100 per inspection Recalcitrant Violator: \$200 per inspection
SWO Follow-Up Inspection <i>(Construction Activities have not ceased)</i>	\$500 per inspection Recalcitrant Violator: \$1000 per inspection
SWO Resolution Inspection	\$150 per inspection Recalcitrant Violator: \$250 per inspection