

Attachment 1

San Luis Obispo County Code 8.68.010:

**County of San Luis Obispo
Stormwater Pollution Prevention and Discharge Control Ordinance**

Ordinance No. _____

AN ORDINANCE AMENDING TITLE 8 OF THE SAN LUIS OBISPO COUNTY CODE
TO ADD CHAPTER 8.68 REGARDING
STORMWATER POLLUTION PREVENTION AND DISCHARGE CONTROL

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Title 8 of the San Luis Obispo County Code is hereby amended by adding chapter 8.68 to read as follows:

Article I. Title, Purpose and General Provisions

8.68.010 Title.

The ordinance codified in this chapter shall be known as the "County of San Luis Obispo Stormwater Pollution Prevention and Discharge Control Ordinance" and may be so cited.

8.68.020 Purpose and intent.

The purpose and intent of this chapter is to ensure the health, safety, and general welfare of the citizens of San Luis Obispo County by protecting and enhancing the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Clean Water Act (33 U.S.C. §1251 et seq.) by:

- A. Controlling non-stormwater discharges to the municipal separate storm drain system;
- B. Reducing pollutants in stormwater discharges to the maximum extent practicable; and
- C. Protecting urban watercourses from pollution.

8.68.030 Definitions.

The terms used in this chapter shall have the following meanings:

- A. "Best Management Practices" means activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and natural watercourses. Best Management Practices include but are not limited to: treatment facilities to remove pollutants from stormwater; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-stormwater, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures determined to be appropriate for the control of pollutants.

- B. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- C. "County" means the County of San Luis Obispo.
- D. "Illicit discharge" means any non-permitted discharge to the County storm drain system that is not composed entirely of stormwater.
- E. "Illicit Connection" means any drain or conveyance, whether on the surface or subsurface, which has not been documented in permits, plans, maps, or equivalent records, approved by the County, and which allows an illicit discharge to enter the storm drain system.
- F. "Industrial Activity" means activities subject to National Pollutant Discharge Elimination System Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).
- G. "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permits" means general, group, and individual stormwater discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.
- H. "Non-Stormwater Discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.
- I. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, 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 (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.
- J. "Pollution" means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses (California Water Code §13050).
- K. "Porter-Cologne Act" means the Porter-Cologne Water Quality Control Act and as amended (California Water Code §13000 et seq.).
- L. "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

- M. "Storm Drain System" means and includes those facilities owned or operated by the County by which stormwater may be conveyed to waters of the State or waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains, which are not part of a publicly-owned treatment works as defined at 40 CFR Section 122.2.
- N. "Stormwater" means any surface flow, runoff, and drainage consisting entirely of water from rain or snow storm events.
- O. "Waters of the State" means any surface water or groundwater, including saline waters, within the boundaries of the State of California (California Water Code §13050(e)).
- P. "Waters of the United States" means surface watercourses and water bodies as defined at 40 CFR § 122.2. 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 stormwater at and during all times and seasons.

8.68.040 Responsibility for administration.

This chapter shall be jointly administered for the County by the Director of Planning and Building, the Director of Public Works and Transportation, and the Health Agency Director.

8.68.050 Construction and application.

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CAS000004 and any amendment, revision, or reissuance thereof.

8.68.060 Severability and validity.

If any portion of the ordinance codified in this chapter is declared invalid, the remaining portions of such ordinance are to be considered valid.

8.68.070 Minimum standards.

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 that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the United States or waters of the State caused by said person. This chapter shall not create liability on the part of the County, or any agent

or employee thereof for any damages that result from any discharger's reliance on this Article or any administrative decision lawfully made hereunder.

Article II. Discharge Regulations and Requirements

8.68.080 Discharge of pollutants.

Non-stormwater discharges to the County storm drain system are prohibited.

- A. Exceptions to Discharge Prohibition. The following discharges are exempt from the prohibition set forth above:
1. Any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations;
 2. Any discharge regulated under a Storm Drain Discharge Permit issued to the discharger and administered by the County of San Luis Obispo under authority of Article III of this chapter.
 3. Flows from fire-fighting.
 4. Agricultural discharges regulated by the State Water Resources Control Board and/or Regional Water Quality Control Board pursuant to waiver and/or formal policy, provided compliance with all relevant permit, waiver or policy conditions established by the State Water Resources Control Board and/or Regional Water Quality Control Board is maintained.

8.68.090 Discharge in violation of permit.

Any discharge that would result in or contribute to a violation of NPDES Permit No. CAS000004 and of any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge.

8.68.100 Illicit discharge and illicit connections.

It is prohibited to establish, use, maintain or continue illicit connections to the County storm drain system and to commence or continue any illicit discharges to the County storm drain system. This prohibition is expressly retroactive and applies to illicit connections made prior to the effective date of this ordinance regardless of whether permissible under the practices applicable or prevailing at the time of the illicit connection.

8.68.110 Reduction of pollutants in stormwater.

Any person engaged in activities which will or may result in pollutants entering the County storm drain system shall undertake all practicable measures to reduce such pollutants. The following requirements shall apply.

A. Littering.

1. Except when deposited into containers or in lawfully established dumping grounds, no person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, placed, left or maintained any refuse, rubbish, garbage or other discarded or abandoned objects, articles and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, or other drainage structures, business place, or upon any public or private lot of land in the County, so that the same might be or become a pollutant.
2. The occupant or tenant, or, in the absence of occupant or tenant, the owner, lessee or proprietor, of any real property adjacent to a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on such real property as required for the disposal of garbage.

B. Standard for Parking Lots and Similar Structures. Persons owning or operating a parking lot, gas station pavement, or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the County storm drain system.

C. Compliance with Best Management Practices. Where best management practices have been adopted by the County for any activity, operation, or facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the storm drain system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements.

8.68.120 Urban watercourse protection.

Within any Urban Reserve or Village Reserve Line as shown on the County Land Use Element Official Maps:

- A. Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the bed, bank, and channel of the watercourse within the property free of pollutants, as defined at section 08.68.030(I) of this title.

- B. All prohibitions, exceptions, and requirements contained in this chapter regarding non-stormwater discharges to the County storm drain system are extended to natural watercourses.

Article III. Storm Drain Discharge Permit

8.68.130 Issuance of encroachment permits.

The Board of Supervisors finds and declares that discharge of non-stormwater flows into the County storm drain system is an encroachment as described in chapter 13.08 of the San Luis Obispo County Code.

- A. The Director of Public Works and Transportation may issue written encroachment permits for the discharge of non-stormwater flows into that part of the County storm drain system that is incidental to the County road system provided all of the following conditions, and the requirements of chapter 13.08, are met:
 - 1. No practicable alternative exists to the discharge of non-stormwater flows into the County owned storm drain system. As used in this article, “practicable alternative” is an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
 - 2. Such flows to be permitted consist only of clean water. “Clean water” means water that contains pollutants at levels below the applicable state or federal standard for discharge into the water body located at the receiving end of the storm drain system proposed to accept the permitted discharge.
 - 3. The applicant for the encroachment permit demonstrates through written evidence, prepared by competent authority, that such flows have no potential to:
 - I. Result in a condition that could be detrimental to public health and safety;
 - II. Result in the violation of any local, state, or federal water quality standard at or beyond the point of proposed discharge into the storm drain system;
 - III. Result in the substantial alteration of any environmental resource, including the alteration of essential life processes of any plant or animal species.
- B. Where the exercise of any permit issued under this article results in a violation of any other provision of this chapter, the Clean Water Act or the Porter-Cologne Water Quality Control Act, the County Engineer shall revoke such permit with not less than five days prior notice.

Nothing in this section relieves any applicant of the requirement to obtain any other permit or authorization necessary to allow the discharge.

Article IV. Inspection and Enforcement.

8.68.140 Authority to inspect.

A. General Procedures.

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the official by this chapter; provided that:
 - a. If such building or premises is occupied, he or she shall first present proper credentials and request entry; and
 - b. If such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. In the event the owner or occupant refuses entry after such request has been made, or in the event that the owner or person in charge of the building or premises cannot be located, or under other circumstances as authorize by law, an inspection warrant authorizing entry may be obtained, when necessary. The official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such warrant authorizing entry.
3. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of non-stormwater to the storm drain system, or similar factors.

- ###### B. Notification of Spills.
- As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste which may result in pollutants or non-stormwater discharges entering the County storm drain system, such person shall take all necessary steps to ensure the discovery and containment and cleanup of such release, and shall notify the County of the occurrence by telephoning the County's Director of Public Works and Transportation and confirming the notification by correspondence to the same.

- C. Requirement to Test or Monitor. Any authorized enforcement official may require that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the stormwater system, undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained.

8.68.150 Violations constituting misdemeanors or infractions.

Unless otherwise specified by ordinance, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor; except that, notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter may, in the discretion of the County, be charged and prosecuted as an infraction.

8.68.160 Penalty for violation.

- A. Any person convicted of a misdemeanor under this chapter shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.
- B. Any person convicted of an infraction under this chapter shall be punished by a fine not exceeding one hundred dollars for the first violation; by a fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; and by a fine not exceeding five hundred dollars for each additional violation of the same ordinance committed by that person within one year.
- C. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this chapter.

8.68.170 Continuing violation.

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization, and shall be punishable accordingly as herein provided.

8.68.180 Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision.

8.68.190 Acts in violation of Federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean Water Act and/or Porter-Cologne Water Quality Control Act and may be subject to the sanctions of those Acts, including civil and criminal penalty.

8.68.200 Violations deemed a public nuisance.

- A. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is declared and deemed a public nuisance.
- B. The cost of such abatement and restoration shall be borne by the owner of the property, and the cost thereof shall be a lien upon and against the property.
- C. If violation of this chapter constitutes a seasonal and recurrent nuisance, the Board of Supervisors shall so declare. Thereafter, such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

8.68.210 Civil actions.

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the District Attorney. In any such action, the District Attorney may seek any or all of the following remedies:

- A. A temporary and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
- C. Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life.

8.68.220 Administrative enforcement powers.

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official has the authority to utilize the following administrative remedies:

- A. Cease and Desist Orders. When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this chapter, the official may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (1) comply with the requirement, (2) comply with a time schedule for compliance, and/or (3) take appropriate remedial or preventive action to prevent the violation from recurring.
- B. Notice to Clean. Whenever an authorized enforcement official finds any oil, earth, dirt, grass, weeds, dead trees, cans, rubbish, refuse, waste, or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the County storm drain system or a non-stormwater discharge to the County storm drain system, the official may give notice to the property owner and/or to the tenant, if any, to remove such oil, earth, dirt, grass, weeds, dead trees, cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

8.68.230 Authority to issue citations or arrest.

- A. Authorized enforcement officials may issue a citation for an infraction and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code or as the same may hereafter be amended. It is the intent of the Board of Supervisors that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter.
- B. Peace officers, but not authorized enforcement officials, shall have and are hereby vested with the authority to arrest or cite any person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation for misdemeanors or infractions as prescribed by Chapter 5, 5c, and 5d of Title 3, Part 2 of the Penal Code, or as the same may be hereinafter amended.

8.68.240 Remedies not exclusive.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

SECTION 2: The Board of Supervisors has considered the initial study prepared and conducted with respect to the matter described above. The Board of Supervisors has, as a result of its consideration, and the evidence presented at the hearings on said matter, determined that the proposed negative declaration as heretofore prepared and filed as a result of the said initial study, is appropriate, and has been prepared and is hereby approved in accordance with the California Environmental Quality Act and the County's guidelines implementing said Act. The Board of Supervisors, in adopting this ordinance, has taken into account and reviewed and considered the information contained in the negative declaration approved for this project and all comments that were received during the public hearing process. On the basis of the Initial Study and any comments received, there is no substantial evidence that the adoption of this ordinance will have a significant effect on the environment.

SECTION 3: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the _____ day of _____, 2007, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 2007, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairman of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION

James B. Lindholm Jr.
County Counsel

By: _____
Deputy County Counsel

Dated: _____