

BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. _____

1 **AN ORDINANCE AMENDING BERNALILLO COUNTY CODE, CHAPTER 38 ARTICLE IV,**
2 **STORMWATER QUALITY**

3
4 ARTICLE IV

5 DIVISION 1. - GENERALLY
6

7 **Sec. 38-400. - Purpose and intent of article.**

8 It is the purpose of this article to promote the public health, safety and general welfare, and to
9 improve the quality of stormwater discharges, and to:

- 10 (1) Establish policies, criteria and requirements related to stormwater quality protection
11 that complement and supplement Articles II (Floods) and Article III (Storm Drainage) of
12 this chapter.
13
- 14 (2) Integrate stormwater quality policies, criteria and requirements with Chapter 30: Article
15 V (Water Protection Advisory Board) and Article VII (Water Conservation), and with
16 applicable elements of: Chapter 6 Animals (Sec 6-54, Animal Waste); with Chapter 70
17 Solid Waste (Sec 70-33, Definitions), (Sec 70-37, Ownership of Solid Waste), (Sec 70-
18 42, Dumping, Accumulating and Scattering of Solid Waste).
19
- 20 (3) Provide assistance and guidance for county officials, county staff, co-permittees, and
21 all persons and entities within the jurisdiction of the county.
22
- 23 (4) As to flood control, storm drainage, and erosion control to:
24
- 25 (a) Prevent the loss of or injury to human life and minimize flood damages to public
26 and private property.
27
- 28 (b) Prevent the creation of public safety hazards and seek to eliminate existing
29 drainage control problems.
30
- 31 (c) Prevent the increased risk of damage to private property caused by storm runoff
32 from other private property.
33
- 34 (d) Provide for timely and effective construction and maintenance of storm drainage

1 facilities and provide for full utilization of flood control and storm drainage
2 infrastructure.

3
4 (e) Protect the hydraulic capacity of flood control and storm drainage facilities from
5 losses due to sedimentation and degradation while preserving public health,
6 safety, and convenience.

7
8 (f) Manage stormwater quality discharge volumes to mimic predevelopment
9 hydrology.

10
11 (3) As to stormwater quality to:

12
13 (a) Improve the quality of stormwater runoff within the context of mimicking
14 predevelopment hydrology and within the limits of New Mexico water law.

15
16 (b) Integrate stormwater quality protection requirements with related County
17 Ordinances, standards and guidelines.

18
19 (c) Address ordinance implementation requirements of the County's watershed-
20 based stormwater discharge permit (i.e. MS4 Permit, NPDES Permit).

21
22 (d) Address construction and post-construction stormwater quality management
23 within the limits of New Mexico water law and within flood control agency
24 authorities and limitations.

25
26 (e) Ensure, to the maximum extent practicable, that discharges to and from the
27 County's stormwater drainage system and facilities do not cause or contribute to
28 exceedances of applicable surface water quality standards.

29
30 (f) Prohibit non-stormwater discharges and minimize release of floatables and gross
31 pollutants to the County's stormwater drainage system, and provide for
32 appropriate enforcement procedures and actions.

33
34 (g) Address discharges from industrial activities to the County's stormwater drainage
35 system.

36
37 (h) Work cooperatively with the MRGCD, AMAFCA, the City of Albuquerque and
38 other co-permittees, best manage the discharge of storm runoff into MRGCD and
39 co-permittee facilities, maximize efficient use of stormwater facilities, and
40 minimize impact on downstream water quality and storm drainage facilities.

41
42 (i) Promote and encourage the use of Green Infrastructure / Low Impact
43 Development in the treatment of stormwater prior to discharge to the waters of
44 the US.

1 **Sec. 38-401. - Definitions.**

2 The following words, terms, and phrases, when used in this article shall have the meanings
3 ascribed to the in this section, except where the context clearly indicates a different meaning.

4 All definitions provided in Article II Section 38-32 and in Sec 38-142 are adopted for use in this
5 Article unless otherwise specifically defined or delimited.

6 *BMP / Best Management Practices* means the schedules of activities, prohibitions of practices,
7 maintenance procedures, and other management practices (public or private) to prevent or
8 reduce the pollution of waters of the United States. BMPs include devices, practices or
9 methods for removing, reduction, retarding, or preventing targeted stormwater runoff
10 constituents, pollutants, and contaminants from reaching receiving waters. BMPs also include
11 treatment requirements, operating procedures, and practices to control facility site runoff,
12 spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

13 *Burden of Proof* means reasonable evidence or presumptions regarding ownership of wastes
14 and/or the responsible party involved in an IDDE event. In the presence of prima facie evidence
15 and reasonable assumption, the burden of proof to establish a non-violation of this article falls to
16 the responsible party.

17 *Co-permittee* means any entity discharging stormwater within the Urbanized Area under the
18 auspices of the EPA-issued NPDES General Permit No. NMR04000 or successor permits.

19 *Cooperator / Cooperative Agreement* means any arrangement, organization, or joint functioning
20 of the co-permittees, or in combination with other governmental agencies, which works
21 constructively with the County to address mutual stormwater issues. The cooperation,
22 agreements, and functionality may be informal, customary, or more formally documented
23 through written agreement, contracts, joint planning documents, or ordinances.

24 *Directly Connected Impervious Area (DCIA)* means the portion of impervious area at the site,
25 parcel, common area of development, or municipal scale with a direct surface or infrastructure
26 hydraulic connection to the County's stormwater system or receiving waters via continuous
27 impervious area or by other means of impervious conveyance features such as gutters, pipes,
28 and drains.

29 *Discharge* means the release of stormwater, in whatever manner or composition, to or from the
30 County's stormwater system

31 *Dispose, Disposal, Discharge, Release* means causing, allowing, abandoning, depositing,
32 placing, injecting, releasing, spreading, dumping, spilling, leaking, or other similar actions by
33 whatever term of use, of wastes in whatever manner or composition to stormwater or to the
34 stormwater drainage system of the County or its co-permittees

35 *GI/LID, Green Infrastructure (GI), Low Impact Development (LID)* means any array of products,
36 technologies, and practices that preserve or use natural systems, or engineered systems that
37 mimic natural processes and systems, to enhance overall environmental quality and more

1 specifically that provide treatment resulting in stormwater quality improvement.

2 *Floatables/ Floatable Debris* means rubbish / litter / wastes and vegetative debris in stormwater
3 runoff. Litter and other man-made pollutants such as plastic, paper products, polystyrene,
4 cigarette butts, diapers, aluminum cans, bottles, construction trash, wood products, and
5 vegetative debris including leaves, tumbleweeds, twigs, grass clippings, yard waste and like
6 items, that float or remain suspended in stormwater flows.

7 *Gross Pollutants means floatables* and coarse sediments of relatively large size.

8 *IDDE, Illicit Discharge Detection and Elimination* means the detection and elimination of non-
9 stormwater discharges and pollutants to the stormwater system. This may be used
10 synonymously with any number of terms of a nature similar to *illicit discharge, illegal disposal, or*
11 *illegal dumping*.

12 *Illicit Discharge / Illegal Disposal / Illegal Dumping* means, in the context of this Article,
13 discharges not composed entirely of stormwater into the County's or other co-permittees
14 stormwater system, except discharges pursuant to an NPDES permit or those otherwise
15 allowed by exception of the County, or the placement or release of any manner of materials
16 defined as waste, solid waste, or pollutant directly into or in a manner that can reasonably be
17 expected to result in a direct release of materials into the County's or a co-permittees
18 stormwater system.

19 From Chapter 70 Article II Section 70-33 the term "dispose or disposal" and from Section 70-42,
20 the terms "Dumping", "Unauthorized accumulation", and "Scattering of solid waste" as described
21 therein are also adopted, but within this Article are extended more specifically to apply to any
22 such action which results, or may be reasonably expected to result, in a direct discharge or
23 release (whether in solid, sludge, liquid, gaseous, or any other state of matter) to the County's
24 stormwater drainage system. Collectively, these various terms are included within the general
25 terms "dispose" or "discharge" "or release" as used in this Article.

26 *Impervious Surface / Impervious Area* means conventional constructed surfaces such as
27 pavements, sidewalks, driveways, roadways, parking lots, and rooftops that are intended to be
28 impermeable or water-resistant. Highly compacted soils may also be considered to be
29 impervious as may be landscaped areas which are underlain by plastic sheeting which is not
30 intended to allow the passage of water into the underlying soil layer.

31 *Industrial facility/ Industrial activity* means a property that has discharges associated with
32 industrial activity as defined by federal regulations in 40 C.F.R. 122.26(B)(214)I-XI and the
33 activities which occur on the property.

34 *Managed on site* means to control, direct, and treat the stormwater quality design volume on the
35 property, or if from an area of common development, then at an alternate location designed for
36 stormwater management or as otherwise approved by the County Engineer. The control and
37 treatment will be for water quality and/or flood volume purposes prior to discharge of the
38 stormwater to the County or a co-permittees MS4. Nothing in this definition shall be construed
39 to require an action which the applicant or the County deems to be contrary to state law, or to

1 verbal or written state agency guidance regarding flood control or surface water capture, or
2 which requires acquisition or amendment of a water right to legally implement.

3 *MEP / Maximum Extent Practicable* means a technology-based discharge standard for MS4
4 operators regulated under the NPDES Stormwater Program to reduce pollutants in stormwater
5 discharges. The water quality standard may be quantitative or in the form of a narrative
6 discharge limitation, requiring BMPs designed to satisfy the technology requirement of the
7 Clean Water Act (CWA) and protect water quality. BMPs are determined by permittee and
8 permit authority.

9 *MS4 or municipal separate storm sewer system.* The system of stormwater conveyances and
10 drainages owned, operated, or under the control of the County, or any such facilities or
11 conveyances owned, operated or under control of the co-permittees to which or from which, the
12 County discharges or receives discharges of stormwater, and within the Urbanized Area. This
13 includes all manner of natural and man-made, lined or unlined, ditches, arroyos, channels,
14 canals, inlets, drains, and piping, inclusive of MRGCD facilities allowed for such use, that are
15 used to convey stormwater. The term is used interchangeably to refer individually to the
16 County's MS4 specifically and also collectively to that of the County and co-permittees.

17 *Multisector General Permit (MSGP)* means the EPA-issued permit for stormwater discharge
18 associated with industrial activity. The MSGP has general requirements as well as industry
19 sector-specific requirements as described in Subparts A through AD of the MSGP.

20 *Narrative Discharge Limitations* means criteria and limitations that describe a desired water
21 quality control.

22 *NPDES / NPDES Permit / Permit* means the National Pollutant Discharge Elimination System
23 administered by the EPA under Title 33 of the United States Code. EPA administers the
24 NPDES program through issuance and enforcement of permits (such as the general permit,
25 individual permits, and general sector permits) that authorizes discharges to waters of the
26 United States.

27 *Organics / Organic Debris* means organic material including leaves, branches, seeds, twigs,
28 grass clippings and like items, including yard wastes.

29 *Pollutant/Pollution* means the alteration of the physical, chemical, or biological quality of any
30 waters of the United States that renders the water harmful, detrimental, or injurious to humans,
31 fauna, flora, property, or public health and safety, or otherwise degrades or impairs (per Section
32 303 of the Clean Water Act) the quality of water and stormwater. Pollutants include but are not
33 limited to those materials and substances included within the terms "waste" and "solid waste."
34 This includes all manner of dredged spoil, solid waste, incinerator residues, filter back-wash,
35 sewage, garbage, sewage and septic sledges, drill fluids and cuttings, petroleum products and
36 lubricants, floatable materials and fats oils and grease (FOG). It also includes munitions,
37 chemical waste, biological materials, radioactive materials (except those regulated on the
38 Atomic Energy Act of 1954 as amended), heat, wrecked or discarded vehicles and equipment,
39 earthen materials, and industrial, municipal, and agricultural waste. Pollution occurs when

1 pollutants are improperly, illicitly, or illegally discharged, dumped, or otherwise disposed in the
2 County's or co-permittees stormwater system. The definitions of pollutant and pollution are
3 intended to be inclusive and liberally construed.

4 The following definitions from Chapter 70 Article II Section 70-33 are hereby adopted for use in
5 this Article: ashes, construction and demolition (C&D) debris, garbage, hazardous waste,
6 household waste, industrial solid waste, refuse, rubbish, sludge, solid waste, and yard refuse
7 and are intended to be included within the general terms "waste", "solid waste", and "pollutant"
8 as used in this Article. Additionally, for purposes of this Article, those materials excluded in the
9 Section 70-33 definition for "solid waste" are hereby specifically included.

10 *Predevelopment Hydrology* means, in general, the rainfall volume at which runoff would be
11 produced from an area in its natural condition, prior to development disturbances. For the
12 purposes of this ordinance, this includes managing the stormwater runoff volume prior to
13 discharge to mimic the release of runoff volumes which would have occurred had the site
14 remained in its natural condition prior to disturbance and in relation to a designated design
15 storm event.

16 *Responsible Party* means the person(s) or entity that has ownership or control of wastes. All
17 wastes generated within or brought into the County are owned by and are the responsibility of
18 the generator and/or person in control of the waste, jointly and severably, until such time as the
19 waste is properly and legally disposed or removed by a licensed private contractor except where
20 transfer of ownership is prohibited by state or federal requirements. Barring determination/proof
21 of a responsible party other than the property owner on which wastes are found to have been
22 disposed, ownership of the waste defaults to the property owner and/or the person(s) or entity
23 having control of the subject property, excepting ownership by the County and co-permittees
24 when such wastes are disposed in the public right-of-ways.

25 *Sediment(s)* means soil, sand, and mineral conveyed in or deposited from stormwater runoff.

26 *Solid Waste* see *Pollutant*

27 *Stormwater Quality Design Storm / Event* means the 90th percentile storm event for new
28 development and the 80th percentile storm for redevelopment using the methodologies specified
29 in EPA Publication Number 832-R-14-007, or developed for site specific application using
30 methodology described therein, or based on a site-specific pre-development hydrology and
31 associated storm event discharge volume specified therein.

32 *Stormwater Quality Design Volume* means the discharge volume associated with the
33 stormwater quality design storm/event.

34 *Stormwater Program Compliance Manager / Stormwater Manager* means the County staff
35 person designated by the County Engineer to oversee and ensure regulatory compliance with
36 regards to the Permit, who serves as the primary liaison to co-permittees regarding Permit and
37 stormwater quality issues, and who is responsible for application review as relates to
38 stormwater quality issues. This is a separate but interrelated function to the Flood Plain
39 Administrator, Drainage Engineer, and Water Conservation Planner and may be one or

1 separate persons or staff positions as may directed by the County Engineer.

2 *Targeted Controls* means practices, techniques, or infrastructure implemented to address
3 particular contaminants of concern.

4 *Waste* see *Pollutant*

5 *Water Quality Volume* means the Stormwater Quality Design Volume.

6 *Waters of the United States* means any of the various waters as defined in 33CFR Part 328 and
7 as designated by the US Army Corps of Engineers.

8 **Section 38-402. - Violations of article; procedures for remedy; penalty**

9 (1) The provisions of Article III Section 38-143 apply with regard to all matters of Article IV
10 with the exception of penalties for illicit discharge, illegal disposal, and illegal dumping.

11
12 (2) The provisions of Chapter 70 Section 70-44 apply with regard to matters of Article IV
13 pertaining directly to penalties imposed for illicit discharge, illegal disposal, and illegal
14 dumping (Division 4 or this Article)

15
16 (3) Nothing in this section shall be construed to prevent enforcement and penalties taken
17 under state and federal statutes or to prevent private actions.

18 **Sec. 38-403. - Interpretation of article.**

19 In the interpretation and application of this article, all provisions shall be:

20 (1) Considered as minimum requirements;

21 (2) Liberally construed in favor of the county;

22 (3) Deemed neither to limit nor repeal any other powers granted under state statutes;

23 (4) Deemed not to limit any ordinance unless expressly stated herein; and,

24 (5) In the event of conflicts with provisions in Article II and Article III as pertains to design
25 requirements and standards to be protective of public health and safety, preference
26 shall be given to flood control (Article II), then drainage control (Article III), then
27 stormwater quality protection (Article IV), then to other related ordinances as needed.

28 **Sec. 38-404. - Warning and disclaimer of liability.**

29 The degree of stormwater quality protection required by this article is considered reasonable for
30 regulatory purposes and is based on scientific and engineering considerations and on mandated
31 federal action. This article shall not create liability on the part of the county or on any officer or
32 employee of the county for any damages that result from reliance on this article or any
33 administrative decision lawfully made under this article.

1 **Sec. 38-405. - Jurisdiction of article / Applicability.**

2 This article shall apply to all unincorporated lands within the county with respect to site
3 development, land use changes, building permits, major or minor subdivisions, and compliance
4 with zoning, health and sanitation, and environmental ordinance and enforcement.

5 The requirements of this Article and of the related NPDES Permit shall apply to all
6 unincorporated lands within the county, including those lands and drainages located outside of
7 the Urbanized Area

8 This article shall not apply to federal lands and reservations, or as regards stormwater, to the
9 lands of the city or other co-permittees with jurisdictional authority to pass and enforce
10 ordinances, unless specifically mentioned and included. The jurisdiction of this Article is not
11 exclusive. In particular, AMAFCA, the City, and the MRGCD, where applicable, share
12 jurisdiction in matters of flood control, drainage and stormwater quality. In the event of conflict
13 with ordinance or regulations of overlapping jurisdictions, the more stringent of the requirements
14 as determined by the County engineer shall apply.

15 **DIVISION 2. - ADMINISTRATION AND ENFORCEMENT**

16

17 **Sec. 38-406. - Generally.**

18 (1) The provisions for administration and enforcement of Article III Section 38-171 apply to
19 this Article with the following exceptions:

20

21 (a) The requirements of Section 171(i) and its subsections shall be expanded to
22 include:

23 i. review of the planned controls to be used to manage runoff created after
24 development,

25 ii. stormwater quality treatment for the stormwater quality design volume,

26 iii. evaluation of opportunities for use of GI/LID practices including but not
27 limited to the use of rooftop discharge and passive water harvesting or
28 other water conservation methods as permissively allowed without water
29 right by state water law and state agency interpretation.

30 iv. incorporation of design elements to manage the stormwater quality
31 design volume on-site, or the basis for requesting and the proposed
32 method for an alternative treatment option.

33

34 (b) The Section 171 i (5) Special Provisions for the East Mountain Area do not apply
35 to the stormwater quality requirements of this Article.

36

37 (c) The Section 171 (I) provisions for the design storm do not apply for the
38 stormwater quality design storm. Rather, the stormwater quality design storm
39 shall be the 90th percentile storm event for newly developing properties and the
40 80th percentile event for re-development properties. The definition of the 90th

1 percentile and 80th percentile stormwater quality design volume shall be as
2 determined by direction of the County Engineer or designee. In no case shall it
3 be less than that event as defined in the NPDES Permit as related to post-
4 construction stormwater management. Nothing in this article shall preclude the
5 definition of the stormwater quality design storm to be greater than prescribed in
6 the NPDES Permit. In the event of conflicting design storm events with
7 provisions of in Article II or Article III, the design storm with the larger associated
8 runoff volume shall be utilized for flood and drainage control purposes. A storm
9 event resulting in a discharge volume larger than the stormwater quality design
10 volume may be utilized for stormwater management design and stormwater
11 quality purposes.

12 **Sec. 38-407. - Appeals from county engineer determinations.**

13 The provisions of Article III Section 38-172 apply to this Article

14 **Sec. 38-408. - Rule change procedures; criteria and standards.**

15 The provisions of Article III Section 38-173 apply to this Article

16 **Sec. 38-409. - Inspections.**

- 17 (1) The provisions of Article III Section 38-174 apply to this Article.
18
19 (2) Within the scope of this Article, the County Engineer is hereby authorized to make
20 such inspections, surveys and investigations of buildings, lots, premises, and
21 establishments, together with their operations, as are necessary to administer and
22 enforce the provisions of this article.
23
24 (3) In the event a recognized or observable spill, release, illicit discharge, illegal dumping,
25 or illegal disposal, in the opinion of the County Engineer or Stormwater Compliance
26 Manager, constitutes an imminent threat to the waters of the US or its tributaries, to
27 the MS4, to environment generally, or to the public health or public safety, immediate
28 entry to the property under the direction of Fire or Law Enforcement officials or state
29 environmental officials is authorized for the purposes of stabilizing, containing,
30 neutralizing, or otherwise removing the imminent threat. The costs of such remedies
31 may be addressed per the provisions of Article III Section 38-143 and imposed against
32 the responsible party and/or the property owner.
33
34 (4) Subject to the provisions above, no person having charge, care or control of any
35 building or premises shall fail or neglect, after proper request or identification is made,
36 to promptly permit entry therein by the County Engineer or other authorized County or
37 State official or enforcement or inspection personnel for the purpose of inspection,
38 investigation, or emergency response pursuant to this article or other laws relating to
39 storm water quality.
40

1

2 **Sec. 38-410. – Signature Authorizations for NPDES Permit Submittals**

3 (1) The NPDES Permit requires the signature of the principal executive official or ranking
4 elected official (i.e. for the County, either the County Manager or the Chairman of the
5 Board of County Commissioners) or alternately, a duly authorized representative of
6 that person, so long as that individual or position has an overall responsibility for
7 environmental matters for the County. The duly authorized representative may be
8 either a named individual or any individual occupying a named position. The signature
9 authority may be delegated.

10

11 (2) For any submittals such as the Notice of Intent or those addressing substantial
12 enforcement actions such as Administrative Orders from the EPA, other significant
13 legal matters, and for formal cooperative agreements and contracts as directed by
14 County policies, the final signature authority remains with the County Manager unless
15 otherwise and specifically delegated in writing.

16

17 (3) For all reports, plans, or other submittals required annually by the Permit (such as the
18 Annual Report and the Stormwater Management Plan) and for any required
19 notifications to co-permittees or other entities such as the Tribes and for items not
20 specifically reserved for the County Manager, the delegation of signature authority is
21 hereby assigned to the Deputy County Manager for Public Works or their designee.

22

23 (4) For all routine matters and submittals addressing items such as Data Monitoring
24 Reports, sampling plans, and implementation procedures, routine correspondence with
25 co-permittees, letters of agreement regarding joint and cooperative efforts, and all
26 other lesser matters, signature authority is hereby delegated to the County Engineer,
27 the County's Drainage Engineer, and/or the Stormwater Compliance Manager as
28 appropriately relates to their respective area of responsibilities.

29 **Sec. 38-410. – Role of the Water Protection Advisory Board in Stormwater Protection**

30 (1) Bernalillo County Code, Chapter 30, Article V establishes the formation, membership,
31 terms, structure, duties and powers, and interagency composition of the Water
32 Protection Advisory Board (WPAB) and states that responsibilities and powers may be
33 jointly delegated to it by the City, the Albuquerque Bernalillo County Water Utility
34 Authority (ABCWUA), and the County.

35

36 (2) The duties of the Water Protection Advisory Board regarding surface water are
37 described in Section 30-157 and are adopted herein and are taken by the County to
38 apply equally to stormwater quality protection, in as much as stormwater is an element
39 of surface water and contributes to surface water flows.

40

41 (3) Given the intergovernmental nature of the WPAB through appointment of membership

1 by the City, County, and the ABCWUA as prescribed through ordinance, subject to the
2 County's continued participation in and County staff support of and interaction with the
3 WPAB and the related Policy Implementation Committee, the WPAB is hereby
4 considered by the County to be a Cooperative Agreement for purposes of NPDES
5 Permit compliance with regard to all elements of the NPDES Permit where cooperative
6 agreements are encouraged.
7

8 (4) The WPAB is hereby designated by the County as the primary citizen advisory board
9 for the County regarding stormwater quality protection policy matters. The WPAB is
10 directed in these policy and implementation matters to work jointly and cooperatively
11 with other boards and technical advisory groups of the City, the ABCWUA, AMAFCA,
12 and other NPDES co-permittees as the WPAB deems appropriate and necessary.
13

14 (5) The WPAB is hereby designated as the County's "water committee/advisor group" and
15 "stormwater management panel" as mentioned in the NPDES Permit for purposes of
16 public education, outreach, and public participation process, and provides the
17 opportunity to serve as a citizen representative on a local stormwater management
18 panel through the vacancy notice and appointment processes of the respective
19 governmental bodies.
20

21 (6) The WPAB is hereby assigned the responsibility to assist County staff in stormwater
22 quality policy matters and will facilitate annual public review and comment of the
23 County's Stormwater Management Plan and Annual Report as required per the
24 NPDES Permit. The WBAP will be briefed on the County's NPDES stormwater
25 program at least annually or more frequently as the WPAB may request.

26 **DIVISION 3. - DESIGN STANDARDS**
27

28 **Sec. 38-410. - General provisions.**

29 (1) The provisions of Article III Section 38-201 apply to this article and are extended to
30 stormwater quality facilities and features where not specifically addressed. This article
31 is intended to complement and supplement Article III of this Chapter, and shall be
32 administered in concert therewith.
33

34 (2) *No non-stormwater discharges.* Site development, major or minor subdivisions, or
35 replats for industrial activities shall be designed and constructed such that non-
36 stormwater discharges into the storm sewers, arroyos or watercourses will not
37 intentionally occur.
38

39 (3) For all new industrial and commercial development and for all new residential
40 development requiring a grading and drainage permit, all stormwater discharge
41 resulting from the stormwater quality design storm event must be managed on-site for
42 water quality prior to discharge from the property. Implementation of stormwater best

1 management practices into the landscape and grading design plans to minimize runoff
2 and to increase on-site rainwater retention will be required .No discharge from Directly
3 Connected Impervious Areas resulting from the stormwater quality design storm or
4 lesser storms will be allowed without on-site treatment prior to release to the MS4, or
5 provision of means to minimize such discharges to the maximum extent practicable.
6

- 7 (4) For all new and redevelopment of industrial and commercial properties requiring a
8 paving permit, the site plan will be evaluated by the applicant for the treatment of
9 stormwater from Directly Connected Impervious Areas, particularly driveways and
10 parking lots. If, in the opinion of the County Engineer, control and treatment of
11 stormwater prior to discharge from such areas to the MS4 is practicable, such
12 measures shall be implemented, or other practical measures or alternatives to
13 minimize such discharges may be utilized as approved by the County Engineer.

14 **Sec. 38-411. – Construction Phase Stormwater Quality Protection**

- 15 (1) For all grading, construction, development, and redevelopment projects with land
16 disturbances equal to or greater than one acre, including sites which disturb less than
17 one acre but are part of a larger common plan of development, a stormwater pollution
18 prevention plan in accordance with EPA NPDES regulations for construction site storm
19 water runoff control shall be submitted to the County Engineer, prior to the issuance of
20 a grading or drainage, building, or paving permit. This requirement is in addition to any
21 other provisions of this article that may apply.
22
- 23 (2) The stormwater pollution prevention plan shall outline the BMPs to be undertaken by
24 the operator/owner of the project to protect stormwater quality during the construction
25 phase of the project. These BMPs shall be maintained by the owner of the property.
26 Inspection of these BMPs shall be made at a minimum of once per week by the owner,
27 and a log of this inspection shall be kept on-site for review by the county engineer. The
28 county shall also inspect these BMPs on a periodic basis. These BMPs shall be
29 subject to the approval of the county engineer.

30 **Sec. 38-412. – Post-Construction Phase Stormwater Quality Protection**

- 31 (1) State Water Law, Flood Control Authorities, and Application to Post-Construction
32 BMP Selection and Limitations
33
- 34 (a) It is the County’s understanding for the purposes of this Ordinance that the Office
35 of the State Engineer’s position on state water rights laws and the Interstate
36 Stream Commissions interpretation of federal interstate compacts as pertains to
37 the post construction requirements are at best inchoate, if not in direct conflict, to
38 the NPDES permit requirement to capture and infiltrate stormwater runoff (as
39 opposed to “manage”).
40
- 41 (b) It is the County’ s understanding that the release of all water within 96 hours and

1 local flood control authority requirements prevail over the requirements of the
2 NPDES permit.

3
4 (c) The NPDES Permits provides that where New Mexico water law limits the ability
5 to fully manage stormwater quality design volume on site, measures to minimize
6 increased discharge consistent with requirements under New Mexico water law
7 must still be implemented, and also that local flood control requirements and
8 NPDES Permit requirement may be met through a combination of on-site and off-
9 site controls.

10
11 (d) A list of possible infeasibility considerations for post-construction BMPs is
12 included in the NPDES permit and includes: the lot being too small to allow for
13 infiltration capacity; soil instability; a site use that is inconsistent with capture and
14 reuse; other physical conditions; and compliance with on-site flood-control
15 requirements leaves insufficient area. The Permit allows for consideration of
16 "multiple criteria that rule out an adequate combination of the practices" set forth
17 in the Permit, and further indicates that New Mexico water law may limit the
18 ability to fully manage the stormwater quality design volume on site.

19
20 (e) Given the inordinate burden placed on developers to obtain a State Engineer
21 waiver for water law related matters and the general unavailability of water rights
22 to address BMPs requiring infiltration and reuse or other beneficial use as
23 opposed to discharge of predevelopment flow volume in accordance with state
24 requirements and flood control authority requirements, the selection of BMPs
25 requiring waivers to state water law or acquisition of water rights to implement
26 are considered by the County to be "not practicable" and contrary to the intent of
27 the NPDES permit to implement BMPs for the purpose of mimicking pre-
28 development hydrology "to the maximum extent practicable."

29
30 (2) Post-Construction BMP Design Requirements and Implementation

31
32 (a) For all development and redevelopment projects with land disturbances equal to
33 or greater than one acre, including sites which disturb less than one acre but are
34 part of a larger common plan of development, that discharge into the county's
35 storm drainage system, post construction water quality BMPs to manage the
36 stormwater quality design volume are required. This requirement is in addition to
37 any other requirements that may apply. These BMPs shall be subject to the
38 approval of the County Engineer and Stormwater Compliance Manager.

39
40 (b) The selection of management BMPs must be included in a stormwater quality
41 design (incorporated into the grading and drainage plan as part of the
42 preconstruction review process and as such, subject to inspection during
43 construction, at final inspection, and as a condition of final construction approval)
44 that manages the 90th percentile stormwater quality design volume for new

1 development and the 80th percentile stormwater quality design volume
2 associated with redevelopment sites. Managing (specifically defined herein as
3 “control, direct, and treat”) the stormwater quality design volumes on-site may be
4 implementable in large part – particularly for new development and consistent
5 with the NPDES permit intent to reduce pollutants in stormwater (e.g. a water
6 quality facility).
7

8 (c) Where practicable, BMPs will be selected and designed to first and primarily
9 manage flow from the contributing area impervious surfaces.
10

11 (d) The BMPs must include evaluation by the applicant of the GI/LID practices as
12 provided in the County’s *Development Guidelines for Water Conservation* and
13 the *Development Process Manual* and determination and inclusion of the viable
14 BMPs that will be implemented. These can and should be integrated with water
15 conservation techniques such as passive water harvesting, rooftop harvesting as
16 allowed by state water law, and/or soil amendment programs that improve the
17 capacity of the soil texture to retain water.
18

19 (e) The County encourages stormwater quality treatment to incorporate any or
20 several of the following elements to improve on-site stormwater and dry weather
21 runoff quality:
22

- 23 i. Grade impervious surfaces, such as driveways, during construction to
24 drain to vegetated areas.
- 25 ii. Minimize the area of impervious surfaces such as paved areas, roof and
26 concrete driveways.
- 27 iii. Incorporate pervious or porous surfaces where allowable (e.g., gravel,
28 permeable pavers or blocks, pervious or porous concrete) that minimize
29 runoff.
- 30 iv. Direct runoff from paved surfaces and roof areas into planting beds or
31 landscaped areas to maximize site water capture and reuse.
- 32 v. Incorporate rain gardens, cisterns, and other rain harvesting or catchment
33 systems.
- 34 vi. Incorporate beds, swales, basins and other such features to manage
35 storm water and dry weather runoff and increase percolation into the soil
36 for landscape use.
37

38 (f) BMP(s) must be inspected by the Stormwater Compliance Manager or other
39 County-designated qualified person and found to be in compliance with all
40 approved plans and specifications prior to the release of certificate of occupancy
41 permits for the site.
42

43 (g) As-built plans for stormwater quality designs must be submitted within ninety (90)
44 days of completion of construction projects, and preferably prior to the request for
45 final inspection. Plans must specifically identify post construction BMPs that must

1 be maintained and inspected.

2
3 (h) Post construction inspection and maintenance requirements and agreements are
4 as outlined in Section 38-415 through Section 38-409.

5
6 (3) Alternative Compliance for Post-Construction Due to Infeasibility

7
8 (a) The applicant may submit to the County Engineer a request for a determination of
9 infeasibility for on site management of all or a portion of the stormwater quality
10 design volume based on the limitations provided in Section 38-412 (1)(d) above. If,
11 at the discretion of the County Engineer, the request is confirmed, an alternative
12 compliance strategy acceptable to the County Engineer shall be implemented to
13 address predevelopment hydrology concern prior to discharge to waters of the US.

14
15 (b) The limitations of Section 38-412(1)(d) above should not be construed to be
16 exclusive, and other valid basis, other than costs, may also be considered. Such
17 basis may include, but are not limited to:

- 18
19 i. Entitlements granted prior to the effective date of the Permit.
20 ii. Previously authorization from the County or co-permittees to utilize
21 existing public off-site infrastructure granted prior to the effective date of
22 the Permit.
23 iii. Proposed use of a public, common, or private facility that is not strictly on
24 site, but that is designed to be utilized by an area or plan of common
25 development (i.e. minor facilities incorporated into a master plan, planned
26 community, subdivision, or village center).
27 iv. Proposed and contracted use of a joint private facility (minor facility), with
28 agreement terms subject to approval by the County Engineer, though not
29 an area of common development, and located prior to a discharge to the
30 MS4 (e.g. reciprocal drainage agreements and easements).
31 v. Instances where post-development drainage does not and/or cannot
32 practically connect to the Rio Grande or the MS4.
33 vi. Instances where appropriate public or private drainage facilities are
34 available offsite and will be used in a manner consistent with the goals
35 and intent of this Ordinance to manage the stormwater quality design
36 volume to mimic predevelopment hydrology and to address stormwater
37 quality improvement, and located prior to discharge to waters of the US,
38 and as determined and approved by the County Engineer.

39
40 (c) Availability of off-site private facilities will be demonstrated through appropriate
41 engineering reports demonstrating the shared capacity of the facility and a joint
42 voluntary agreement between parties that addresses ownership, maintenance,
43 and inspection responsibilities that is equally, jointly, and severably enforceable
44 against and between all parties.

1
2 (d) Availability of off-site public facilities (major facilities) of the County or other co-
3 permittees as documented by and subject to:

- 4
5 i. A determination by the County, a letter from AMAFCA or other co-
6 permittee, as pertains to their respective facilities conditioned as needed,
7 indicating that:
- 8 a. existing infrastructure capacity is adequate to accept the stormwater
9 quality design volume from the fully developed watershed or sub-
10 watershed within which the development or redevelopment is
11 located.
 - 12 b. the requirement for on-site retention from the releasing property
13 may, accordingly, be waived for all or a portion of the stormwater
14 quality design volume, and clearly stating the proportional volume
15 that must be addressed on-site.
 - 16 c. specifying any water quality treatment that is required prior to
17 release.
 - 18 d. assurance to the County that water quality compliance will be fully
19 addressed by the accepting parties' infrastructure prior to discharge
20 to waters of the US.
- 21 ii. Full or partial on-site treatment for stormwater quality treatment acceptable
22 to the County engineer and to owner and operator of the alternate
23 compliance facility will be required prior to discharge to the receiving facility.
24 The more stringent of treatment requirements specified by the County
25 Engineer or the co-permittee will apply.
- 26 iii. No discharge of any portion of the stormwater quality design volume (other
27 than under those approved through other NPDES Permit means) will be
28 discharged from the site to any MS4 without a minimum level of treatment
29 (GI/LID or structural) to address floatables, gross pollutants, and/or site
30 specific pollutants of concern as determined by the County Engineer and
31 the Stormwater Compliance Manager.
- 32 iv. The maintenance of the on-site stormwater quality feature remains the
33 responsibility of the property owner / operator, subject to the provisions of
34 Section 38-415 through 38-417 and related enforcement provisions.
- 35 v. Annual inspection of the installed on-site water quality feature will be
36 performed and documented by the owner/operator and records will be
37 provided upon request of the County Engineer and/or equivalent position of
38 the co-permittee. Because of the reliance on off-site public facilities, the
39 annual inspection, rather than the three year inspection schedule for private
40 facilities specified for post-construction inspection and maintenance
41 applies.

1 (4) Post Construction Inspection and Maintenance
2

3 (a) Private stormwater facilities shall be maintained by the facility or property owner
4 to standards established by the County Engineer and published in the
5 Development Process Manual or in related County rules.
6

7 (b) Periodic inspection and certification of private facilities by a New Mexico
8 Professional Engineer or otherwise qualified stormwater person (as determined
9 by the County Engineer) are required of the facility/property owner and shall
10 occur no less frequently than once every 3 years from the date of final
11 construction inspection. The responsibility and cost for the inspection is the
12 responsibility of the private facility owner and/or property owner. The owner and
13 property owner of each structural BMP shall keep records of inspections,
14 maintenance, and repairs for at least five years from the date of creation of the
15 record, whether the inspection schedule is annual or every three years.
16

17 (c) Documentation of the inspection, maintenance activities, and repairs shall be
18 provided to the County Engineer upon request and once presented shall be
19 maintained electronically as part of the County's permit tracking system. Copies
20 of the inspection reports shall be kept on file at the subject property/facility or at
21 the offices of the property owner and/or manager, and shall be made available
22 within two working days of an inspection request (whether verbal or written). A
23 facility or BMP that cannot be certified or for which records cannot be provided in
24 a timely manner shall be certified by current inspection and/or deficiencies
25 corrected within 90 days of notice from the County that such correction or
26 inspection is needed unless a more immediate action is deemed necessary by
27 the County Engineer.
28

29 (d) All on-site post construction BMPs or alternate compliance methods and
30 techniques are subject to random inspections by the County Engineer per the
31 inspection provisions of Section 38-409.
32

33 (e) Inspections and inspection programs by the County may be conducted or
34 established on any reasonable basis, including but not limited to routine
35 inspections; random inspections; inspections based upon complaints or other
36 notice of possible violations; and joint inspections with other agencies inspecting
37 under environmental or safety laws. Inspections may include, but are not limited
38 to: reviewing maintenance and repair records; sampling discharges of surface
39 water, groundwater, and material or water in BMPs; and evaluating the condition
40 of BMPs.

1 **Sec. 38-413. – Industrial Facilities Stormwater Quality Protection and the Multi-Sector**
2 **General Permit (MSGP)**

3 (1) For any existing industrial activities subject to the MSGP, proof of compliance with the
4 relevant EPA industrial sector permit provisions shall be provided to the County
5 Engineer prior to issuance of any building permit, drainage permit, zoning, special use,
6 development or redevelopment approval. For new industrial development projects,
7 such proof will be provided no later than 90 days after receipt of the Certificate of
8 Occupancy.

9
10 (2) The County Engineer or Stormwater Compliance Manager may require monitoring of
11 non-stormwater discharges if the engineer/manager reasonably believes that such
12 discharges violate the provisions of this Article or of the terms of the MSGP
13 provisions. Within the sub-watersheds serviced by the Adobe Acres Drain, Alameda
14 Outfall Channel, Paseo del Norte Outfall Channel and Sanchez Farms Drainage Area,
15 as part of the development and redevelopment review processes, the County Engineer
16 or Stormwater Compliance Manager may, at their discretion, request an evaluation of
17 the site, based on prior use and history for potential past use and disposal of PCBs. If
18 there is documentable concern with previous PCB use, release, or accumulation at a
19 site, the County Engineer or the Stormwater Compliance Manager may require
20 sediment and shallow soil sampling on the site and in downstream drainages to
21 determine the concentration of PCBs that may be present at the site and or in
22 sediments originating from the site. If present at levels above background, the County
23 Engineer may require sediment retention BMPs on-site or accept alternatives from the
24 developer, to address PCB concerns.

25
26 (3) Upon request by the County Engineer or the Stormwater Compliance Manager, an
27 industrial facility subject to the MSGP shall submit the results of any sampling or
28 monitoring undertaken pursuant to the MSGP or other water-related discharge permit.

29 **Sec. 38-414. - Surface use of streets for stormwater quality purposes.**

30 (1) The provisions of Article III Section 38-202 apply to this article and are extended to
31 stormwater quality facilities and features where not specifically addressed.

32
33 (2) Excepting the specified depth, flowline, and velocity restrictions of Section 38-202,
34 nothing in this section should be construed to prohibit the use of GI/LID in medians
35 and within off-pavement right-of-ways for stormwater quality treatment purposes.

36 **Sec. 38-415. - Financial responsibility and guarantee.**

37 The provisions of Article III Section 38-204 apply to this article and are extended to
38 stormwater quality facilities and features where not specifically addressed.

1 **Sec. 38-416. - Multiple use rights-of-way and easements.**

2 The provisions of Article III Section 38-205 apply to this article and are extended to
3 stormwater quality facilities and features where not specifically addressed.

4 **Sec. 38-417. - Maintenance responsibility.**

5 The provisions of Article III Section 38-206 apply to this article and are extended to
6 stormwater quality facilities and related BMPs.

7
8 **Section 417-450 Reserved**

9 **DIVISION 4. – ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)**

10 **Sec. 38-451. – General Provisions.**

- 11 (1) Authorized non-stormwater discharges are described in the NPDES Permit, Part I.A.4
12 subject to determination by the Stormwater Compliance Manager or County Engineer
13 that such discharges do not constitute a significant contributor of pollutants to the MS4.
14
- 15 (2) The IDDE provisions listed herein do not apply to discharges resulting from a spill
16 where discharge to the MS4 is necessary for emergency response personal to
17 prevent, control, or minimize loss of life, personal injury, property damage, or facilitate
18 a flood control response. These functions are, for the purposes of this ordinance,
19 considered a fire fighting activity. However, the responsible party shall remain liable
20 for all costs, damages, liabilities, and penalties that may have occurred due to the
21 initial spill and all costs related to emergency spill response and remediation.
22
- 23 (3) Persons discharging to the County's MS4 as a result of an accidental spill or
24 accidental release who voluntarily and immediately self-identify and notify the State
25 spill response hotline and the County, and who actively cooperate and demonstrate
26 financial responsibility and willingness to address and appropriately remediate the spill
27 and address resulting damages, and who properly and promptly dispose of resulting
28 remediation wastes, will not be considered to have illicitly discharged to the MS4 for
29 enforcement penalty purposes under this Ordinance. This provision does not alleviate
30 the Responsible Party for costs, damages, liabilities, and penalties that may be
31 incurred under other local, state, or federal law or regulations – but does protect
32 against enforcement penalties (but not actions) under the IDDE requirements of this
33 Ordinance.
34
- 35 (4) The provisions of this Division do not apply to irrigation water to or from agricultural
36 irrigation operations, but do apply to certain livestock operations as described below.
37
- 38 (5) The provisions of this Division also apply to Industrial Facilities addressed under
39 Section 38-413.

1 **Sec. 38-452. – Specific IDDE Protections**

2 (1) No person or entity shall:

3
4 (a) Attempt to dispose, release, or discharge wastes, other than pollutant-free
5 stormwater into or through the MS4 except as addressed by an authorized
6 NPDES permit as described in Section 38-413.

7
8 (b) Attempt to dispose, release or discharge household hazardous wastes (including,
9 but not limited to: paint, solvents, fertilizers, pesticides, herbicides, and other
10 hazardous materials) to the MS4; nor dispose, release, or discharges fats, oils,
11 and grease to the MS4.

12
13 (c) Knowingly allow, or neglect routine property maintenance, to a degree that allows
14 the discharge or release of floatables and gross pollutants into the MS4 from
15 industrial, commercial or private property under their control or ownership.

16
17 (d) Leave, accumulate, discharge, or allow animal waste of a companion animal
18 (Chapter 6, Article V, Section 6-54) on publicly owned property whatsoever, or on
19 private property under their control or ownership in such a manner that it drains
20 or can reasonably be anticipated to drain to the MS4.

21
22 (e) Accumulate, pile, compost, or dispose of animal waste of livestock or exhibition
23 animals on public owned property without approval of the County, or on private
24 property under their control or ownership in such a manner that it drains or can
25 reasonably be anticipated to drain to the MS4. Animal wastes resulting from
26 exhibition, stabling, corralling, dairying, feed lot, and confined feeding operations
27 and all operations of a similar manner are included in this prohibition. Nothing in
28 this Article should be construed to prohibit handling of livestock or exhibition
29 animal wastes allowed under other ordinances and permits or permissions on
30 either public or private property, so long as the methods and protections
31 employed minimizes or eliminates disposal, discharge, or drainage to the MS4 to
32 maximum extent practicable. Animal wastes associated with normative pasturing
33 and range feeding of agricultural livestock or exhibition animals does not
34 constitute accumulation, piling, composting or disposing of livestock wastes.

35
36 Allow fluids, wastes, or materials from any motor vehicle, equipment, contractor
37 yards, outdoor storage areas, or any related storage or maintenance activities
38 from such areas under their control or ownership to drip, flow, accumulate, or
39 spread onto public property, or onto or through private properties of others such
40 that it drains or spreads or can reasonably be anticipated to drain or spread to
41 the MS4.

- 1 (f) Illegally dispose of waste, solid waste, or yard wastes originating from private
2 property under their control or ownership or allow it to drain or spread to any
3 public property whatsoever, or the property of others in such a manner that it
4 drains or can reasonably be anticipated to drain to the MS4.
5
- 6 (g) Allow the commercial application of pesticides, herbicides, and fertilizers by any
7 person or enterprise not specifically licensed by the state and permitted, by virtue
8 of business license from the County, to perform such applications. Applications
9 by private individuals or business owners or their employees is allowed so long
10 as the application is for routine maintenance and sanitation, is performed in
11 accordance with manufacturer directions, purpose of use, and application rates,
12 and the use and application is in accordance with laws and ordinances pertaining
13 to its use.
14
- 15 (h) Allow sanitary sewer, septic overflows, or overflows from grease traps or flows
16 from grease and fat accumulation areas to flow from private property under their
17 control or ownership and enter publicly owned property or the MS4, or property of
18 others in such a manner that it drains or can reasonable be anticipated to drain to
19 the MS4.
20
- 21 (i) Allow flows from sanitary sewers, on-site wastewater treatment facilities, or other
22 wastewater treatment devices to enter the MS4 through a cross-connection of
23 sanitary sewer pipe or from an open discharge from property under their control
24 or ownership.
25
- 26 (j) Attempt to dispose, release, or discharge septage waste at any location within
27 the County that is not specifically designated by the state to receive such wastes,
28 nor dispose of septage waste to any public facility or infrastructure without the
29 express authorization of the owner of that public facility.
30
- 31 (k) Allow, cause, or take any action or fail to take an appropriate action that is
32 committed/or omitted within their span of control and that in the opinion of the
33 County Engineer or the Stormwater Compliance Manager results in the release
34 or disposal of non-stormwater discharge to the County's MS4 or that of its co-
35 permittees.
36
- 37 (2) It is the sole responsibility of all industrial and commercial enterprises to remove
38 (preferably), or obscure identifying labels and markings, to mark as empty, and to
39 document disposal or disposition of containers to be recycled or reused, prior to
40 release from owners control or disposition. Or alternately, to render such containers
41 unusable for reuse prior to proper disposal. Presence of an identifying label on an
42 illegally disposed container is considered prima facie evidence of waste ownership as
43 described below for IDDE responsible party determinations.

1 **Sec. 38-453. – County IDDE Response and Responsibilities**

2 (1) Upon notification of a possible IDDE event, the Stormwater Compliance Manager will
3 determine the severity of the event and determine the likely jurisdiction. In the case of
4 a significant/severe illicit discharge, the Stormwater Compliance Manager shall initiate,
5 either on behalf of the County or jointly with appropriate co-permittees, an investigation
6 of the event within 48 hours of notification, and shall address other lesser IDDE events
7 as soon as practicable in a similar and timely manner.
8

9 (2) The County Engineer or Stormwater Water Compliance Manager may make such
10 inspections as are reasonably necessary for investigation and elimination of such
11 discharges as expeditiously as possible. Barring an imminent or emergency situation,
12 such inspections will be conducted in accordance with Section 38-409 of this Article.
13

14 (a) If the IDDE event is found to be within the jurisdiction of a co-permittee or other
15 jurisdictional entity, the County Engineer or Stormwater Compliance Manager will
16 promptly notify the appropriate entity upon such determination and document the
17 notification and transfer of responsibility and control of the event to the
18 appropriate entity.
19

20 (b) The County Engineer or Stormwater Compliance Manager may offer assistance
21 to the lead entity as best meets the County's interests in remediating the incident
22 in a timely manner.
23

24 (c) If the IDDE event falls within County jurisdiction, the Stormwater Compliance
25 Manager or other County employee recognizing such an event, shall initiate an
26 IDDE record of complaint, initiate a site inspection request, and the Stormwater
27 Compliance Manager shall ensure notification of the appropriate state authorities
28 as required based on the nature and magnitude of the event and shall document
29 such notification.
30

31 (d) Other cooperative agreements for addressing cross-jurisdictional IDDE events
32 and remediation may be developed and used in lieu of the provisions of this
33 Section.
34

35 (3) Once the County Engineer or Stormwater Compliance Manager has determined that an
36 IDDE event has occurred within County jurisdiction and an inspection has been
37 performed:
38

39 (a) The burden of proof for determining the Responsible Party is presumed to have
40 been satisfied if a person's, company, or entities name or other identification
41 other than the original manufacture is affixed or found:

- 1 i. on three or more items of general rubbish or wastes of a solid nature
- 2 except as noted below,
- 3 ii. on one or more items of construction debris or other wastes of a
- 4 commercial nature,
- 5 iii. on one or more drums, bucket, or container containing wastes of a
- 6 gaseous, sludge, semi-solid or liquid nature,
- 7 iv. or there is documented and traceable evidence of disposal by parties
- 8 other than the property owner, such as eye witness reports, photos, or
- 9 license plate information, suspicious activity reported to law
- 10 enforcement, County environmental enforcement personnel or
- 11 inspectors at or near the time of the event, or other similar documentary
- 12 evidence.
- 13 (b) Barring such evidence, the property owner and/or person in control of the
- 14 property is the presumed owner and disposer of such wastes.
- 15
- 16 (4) The burden-of-proof to establish a non-violation of this article, and transfer of costs for
- 17 remedy of the situation, damages, and liabilities, shall shift to the Responsible Party,
- 18 but shall not provide for a delay in addressing any imminent threat to the public health,
- 19 safety, or environment as determined by the County.
- 20
- 21 (5) The Stormwater Compliance Manager or County Engineer shall have the authority to
- 22 require immediate cessation of illicit discharges.
- 23
- 24 (6) If, in the judgement of the County Engineer, Stormwater Compliance Manager, or
- 25 Fire or Law Enforcement Official, the general safety, public health, the
- 26 environment, or the waters of the US are at imminent risk, or the public interest
- 27 otherwise requires that the site be cleaned rapidly, the County may require the
- 28 Responsible Party (as determined above) to provide sufficient manpower and
- 29 resources supplied by the owner to clean the site within 24 hours. If the
- 30 responsible party or owner cannot be readily determined or contacted, or if the
- 31 responsible party or property owner fails to remedy the IDDE event within the
- 32 specified time, then the County will require corrective action be started at the site
- 33 immediately, at the expense of the owner of the property, and recoup related
- 34 costs by the means described in Section 38-171 and/or by any other legal means
- 35 available.

36 **Sec. 38-454. – Enforcement and Penalties**

37 The inspection, enforcement, violation and penalty provisions of Section 38-406 through 38-409
38 shall apply to IDDE events and remediation activities.

1 **APPROVED AS TO FORM**

BOARD OF COUNTY COMMISSIONERS

2 _____
3 W. Ken Martinez, County Attorney

Art De La Cruz, Chair

4 _____
5 _____

Wayne A, Johnson, Vice Chair

6 _____
7 _____
8 _____

Debbie O'Malley, Member

9 **ATTEST:**

10 _____
11 _____
12 Maggie Toulouse Oliver, County Clerk

Maggie Hart Stebbins, Member

Lonnie C. Talbert, Member

