

ORDINANCE NUMBER 2006-06

TOWN OF PALISADE, COLORADO

**AN ORDINANCE OF THE TOWN OF PALISADE, COLORADO
AMENDING CHAPTER 7 OF THE PALISADE MUNICIPAL
CODE BY ADDING CERTAIN PROVISIONS CONCERNING
STORM WATER POLLUTION PREVENTION**

WHEREAS, the Town of Palisade is required as a condition of its State of Colorado storm water discharge permit to establish by ordinance methods for controlling the introduction of pollutants into the storm drain system in order to protect and enhance the water quality of the State's watercourses, water bodies and wetlands in a manner pursuant to and consistent with the State and Federal Clean Water Act; and

WHEREAS, §18-4-511, C.R.S., makes it a crime to place any foreign substance, whether solid or liquid, into any body of water or watercourse; and

WHEREAS, §31-15-401(1)(b), C.R.S., provides that the Town of Palisade is authorized 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, §31-15-401(1)(c), C.R.S., provides that the Town of Palisade is authorized to declare what is a nuisance and abate the same, and

WHEREAS, this ordinance is necessary to protect the health, safety, and general welfare of the citizens of Town of Palisade through the regulation of non-storm water discharges to the storm drainage system.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PALISADE:

Section 1. That Chapter 7 of the Palisade Municipal Code is hereby amended to include a new Article IX to read as follows:

ARTICLE IX

STORM WATER POLLUTION PREVENTION

Sec. 7-181. Purpose.

The purpose of this Article is to protect the public from the harm caused by the discharge of pollutants to and from the Town's storm sewer system, to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act. The discharge of pollutants into the Storm Drainage System is considered a public nuisance.

The objectives of this Article are:

- (a) To comply with mandated provisions of the Colorado Water Quality Control Act;
- (b) To regulate the contribution of pollutants to the municipal separate storm sewer system by storm water discharges by any user;
- (c) To prohibit illicit connections and discharges to the municipal separate storm sewer system;
- (d) To establish legal authority to carry out all inspection, observation and monitoring procedures necessary to ensure compliance with this Article;
- (e) To promote public awareness of the hazards involved in the improper discharge of pollutants into the Storm Drainage System;
- (f) To regulate the contribution of pollutants to the municipal separate storm sewer system by storm water discharges from construction activity and development and to facilitate compliance with State and federal standards and permits by owners of construction sites, developments and implement permanent best management practices (BMPs).
- (g) To reduce pollutants in storm water discharges from construction activity by guiding, regulating and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land;
- (h) To require permanent storm water runoff controls to be constructed along with development to prevent the deterioration of water quality;
- (i) To establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained and do not threaten public safety.
- (j) To establish timely and appropriate enforcement actions for violations of this Article.

Section 7-182. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Best Management Practices (BMPs) means the specific management practices used to control pollutants in storm water. BMPs are of two types: "source controls" (nonstructural) and "treatment controls" (structural). Source or nonstructural controls are practices that prevent pollution by reducing potential pollutants at their source, such as proper chemical containment at municipal shops or construction sites before they come into contact with storm water. Treatment or structural controls, such as constructed water quality detention facilities, remove pollutants already present in

storm water. Best Management Practices can either be temporary, such as silt fence used during construction activity, or permanent detention facilities to control pollutants in storm water.

CDPS means the Colorado Discharge Permit System.

Clean Water Act (CWA) means the Clean Water Act, also known as the Federal Water Pollution Control Act, and including amendments thereto by the Clean Water Act of 1977, 33 U.S.C. section 466 *et seq.* as amended.

Colorado Water Quality Control Act means Title 25, Article 8 of the Colorado Revised Statutes.

Commercial means any business, trade, industry or other activity engaged in for profit.

Construction means to make or form by combining or arranging building parts or building elements to include, but not limited to, examples such as road construction, commercial shopping center development, residential development or parks development, and including the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

Construction Site means any location where construction or construction related activity occurs.

Contaminated means containing harmful quantities of pollutants that exceed state or federal guidelines.

Construction Storm Water Management Plan (SWMP) means a specific individual construction plan that describes the Best Management Practices (BMPs), as found in the current SWMM, to be implemented at a site to prevent or reduce the discharge of pollutants. The purpose of a SWMP is to identify possible pollutant sources to storm water and to set out BMPs that, when implemented, will reduce or eliminate any possible water quality impacts.

Contractor means any person or firm performing or managing construction work at a Construction Site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors and material suppliers delivering materials to the site.

CDPS Permit means a permit issued by the state of Colorado under Part 5 of the Colorado Water Quality Control Act (Title 25, Article 8 of the Colorado Revised Statutes) that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to a person, group or area.

Development means any public or private construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure within the jurisdiction of the Town, as well as any manmade change or alteration to the landscape including, but not limited to, mining, drilling, dredging, grading, paving, excavating and/or filling.

Discharge means any addition or release of any pollutant, storm water, subsurface, groundwater or any other substance whatsoever to the Storm Drainage System.

Domestic Animal Waste means excrement and other waste from domestic animals including household pets.

Domestic Sewage means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

Drainageway means any natural or artificial (man-made) channel that provides a course for water flowing either continuously or intermittently to downstream areas.

Environmental Protection Agency or EPA means the United States Environmental Protection Agency (USEPA), the regional office thereof, any federal department, agency or commission that may succeed to the authority of the USEPA and any duly authorized official of the USEPA or such successor agency.

Fertilizer means a substance or compound that contains an essential plant nutrient element in a form available to plants and used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or a mixture of two or more fertilizers.

Fire Protection means any water and any substance(s) or material(s) contained therein, used by any person to control or extinguish a fire or to inspect or test fire equipment.

Fungicide means a substance that destroys or inhibits the growth of fungi.

Garbage means putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities and the handling and sale of produce and other food products.

Groundwater means any water residing below the surface of the ground or percolating into or out of the ground.

Harmful Quantity means the amount of any substance that may cause an adverse impact to the Storm Drainage System and/or will contribute to the failure of the Town

to meet the water quality based requirements of the CDPS / NPDES permit for discharges from the Municipal Separate Storm Sewer System.

Hazardous Substance means any substance listed in Table 302.4 of 40 CFR Part 302 as amended.

Hazardous Waste means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR, Part 261 as amended.

Herbicides means a chemical substance used to destroy plants, especially weeds.

Illegal Discharge means Illicit Discharge.

Illicit Connection means any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the Storm Drainage System. Such connection includes any physical connection to a publicly maintained storm drain system composed of non-storm water that has not been permitted by the public entity responsible for the operation and maintenance of the system.

Illicit Discharge means any discharge to a storm drain system that is not composed entirely of storm water, except discharges pursuant to a CDPS/ NPDES permit, discharges resulting from fire fighting activities, and discharges further exempted by this Article.

Industrial Waste means any wastes produced as a by-product of any industrial, manufacturing, agriculture, commerce, trade or business, as distinguished from domestic or residential waste.

Mechanical Fluid means any fluid used in the operation and maintenance of machinery, vehicle(s) and any other equipment. Includes, but is not limited to, mechanical fluid, lubricants, antifreeze, petroleum products, oil and fuel.

Minimum Measure means a mandated part of a storm water management program that reduces the amount of pollutants entering streams, lakes and rivers as a result of runoff from residential, commercial and industrial areas during a storm event.

Mobile Commercial Cleaning means washing, steam cleaning and any other method of mobile cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.

Municipal Separate Storm Sewer System (MS4) means a conveyance or the system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the Town and designed or used for collecting or

conveying storm water and is not a combined sewer or used for collecting or conveying sanitary sewage.

MSDS means the Material Safety Data Sheet for hazardous chemicals.

NPDES means the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act.

NPDES Permit means a permit issued pursuant to EPA authority. An NPDES permit allows the discharge of pollutants to navigable waters of the United States or waters of the state, whether the permit is applicable on an individual, group, or area basis.

Notice of Violation (NOV) means a written notice detailing any violations of this Article and any action expected of the violator(s).

Oil means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, vegetable or animal fat, grease, sludge, oil refuse and oil mixed with waste.

Owner means a person having dominant and/or servient interest in property, having sufficient interest to convey property, and/or having possessory interest in property. The term “owner” also includes the owner’s agent.

Part of a larger common plan of development or sale means a contiguous area where multiple separate and distinct construction activities will be taking place at different times on different schedules under one plan. An example would be a commercial development with multiple separate buildings constructed over the course of multiple construction schedules.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or its legal representative(s), agent(s), or assign(s), including all federal, state and local governmental entities.

Pesticide means a substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest.

Petroleum Product means a product that is obtained from distilling and processing crude oil that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and #1 and #2 diesel.

Pollutant means any substance attributable to water pollution, including but not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, septic waste, sewage sludge, rubbish, garbage, solid waste, munitions, chemical

wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, rock, dirt, sand, mud, soil, sediment, industrial, municipal waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, domestic animal waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances and hazardous waste.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property or public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Potable Water means water that has been treated to federal Safe Drinking Water Act standards and/or is safe for human consumption.

Private Drainage System means all privately owned ground, surfaces, structures or systems, excluding the Municipal Separate Storm Sewer System, that contribute to or convey storm water, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface

Property Owners Association is an association formed by a land owner or owners to manage and maintain property in which they own an undivided common interest. The association may be referred to as a homeowners association (HOA) for residential developments or as a business owners association (BOA) for commercial developments.

Qualified Person means a person who possesses the required certification, license and appropriate competence, skills, and ability as demonstrated by sufficient education, training and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity and may, for certain duties, be required to be a professional engineer licensed in the state of Colorado or as required under § 12-25-101, C.R.S.

Release means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the Storm Drainage System.

Receiving waters means creeks, streams, rivers, lakes, estuaries or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in man-made systems.

Rubbish means nonputrescible solid waste, excluding ashes, that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Sanitary Sewage means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to the publicly owned treatment works for treatment.

Sanitary Sewer means the system of pipes, conduits and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the publicly owned treatment works (and to which storm water, surface water and groundwater are not intentionally admitted).

Sediment means soil, mud, dirt, gravel and rocks that have been disturbed, eroded and/or transported naturally by water, wind or gravity, and/or mechanically by any person, vehicle or equipment.

Septic Tank Waste means any domestic sewage from holding tanks such as vessels, grease interceptors, chemical toilets, campers, trailers, septic tanks and aerated tanks.

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid Waste means any garbage, rubbish, refuse, yard waste and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations and residential, community and institutional activities.

Storm Drainage System means all surfaces, structures and systems that contribute to or convey storm water, including private drainage systems, to the Municipal Separate Storm Sewer System, and any non-municipal drain or pipe, channel or other conveyance, including natural and man-made washes and ditches for conveying water, groundwater, drainage water or unpolluted water from any source, excluding sewage and industrial wastes, to waters of the state and United States.

Storm Water means surface runoff resulting from precipitation and other storm events.

Stormwater Management Manual means the Stormwater Management Manual (SWMM) adopted by Mesa County, containing policy and criteria pertaining to storm water runoff; federal, state and local regulations pertaining to storm water law and water quality; and grading and drainage criteria, adopted by the Town of Palisade.

Surface Water means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channeled flow and runoff.

Town means the Town of Palisade.

Town Administrator means the Town of Palisade Administrator or his/her duly authorized representative.

Toxic means a substance that is harmful or poisonous according to the MSDS standards.

Uncontaminated means not containing harmful quantities of pollutants that exceed State or federal guidelines.

Upset means an exceptional incident in which there is an unintentional and temporary noncompliance because of factors beyond reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment, lack of preventive maintenance, or careless or improper operation.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility or the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with any incidental groundwater, surface water and storm water that may be present.

Waters of the State means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

Waters of the United States means all waters which are currently used, used in the past or susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "Waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds or lagoons designed to meet the requirements of the federal Clean Water Act.

Water Quality Standard means the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or federal regulatory standards to be necessary to protect those uses.

Wetland means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Yard Waste means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

Section 7-183. Illicit Discharges Prohibited Into Storm Drainage System.

(a) Prohibitions

(1) No person shall release or cause to be released into the Storm Drainage System any discharge that is not composed entirely of storm water, except as allowed in Section 7-183(b). Common storm water contaminants which cannot be released into the Storm Drainage System include herbicides and lawn chemicals, construction debris and wastes, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, dirt and other toxic substances, including substances defined as “pollutants.”

(2) Notwithstanding the provisions of Section 7-183(b), any discharge shall be prohibited by this Article if the discharge in question has been determined by the Town Administrator to be a source of pollutants to the Storm Drainage System.

(3) The construction, use, maintenance or continued existence of illicit connections to the Storm Drainage System are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(4) No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste to the Storm Drainage System or allow such a connection to continue. Any existing connection must be removed and is strictly prohibited.

(5) No person shall maliciously damage, destroy or interfere with Best Management Practices (BMPs) implemented pursuant to this Article.

(b) Exemptions. Subject to changing federal and State regulations, the following non-storm water discharges are not a violation of this Article. Note that even if one of the

following discharges is not covered under this Article it may still require a federal and/or State-issued permit.

(1) Intermittent uncontaminated discharge from landscape irrigation, lawn watering, or irrigation return flows.

(2) Uncontaminated discharge from foundation, footing or crawl space drains and sump pumps. (Commercial air conditioning condensation and water from commercial cooler drains shall be discharged to the sanitary sewer system only.)

(3) Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs.

(4) Diverted stream flows and natural riparian habitat or wetland flows.

(5) Uncontaminated discharges from the occasional noncommercial or charity washing of vehicles or occasional not-for-profit car washing events.

(6) Dechlorinated and uncontaminated swimming pools and hot tubs may be drained to the storm drain system. Swimming pool and hot tub drainages may be drained to the sanitary sewer system without dechlorination.

(7) Discharges approved by the Town Administrator as being necessary to protect property and/or public health and safety, such as flows from firefighting.

(8) Waterline flushing and other infrequent discharges from potable water sources and waterline repair work as necessary to protect public health and safety.

(9) Street wash water after mechanical cleanup (sweeping) has taken place.

(10) Town activities as determined necessary by the Town Administrator. The intent of these activities is to reduce pollution in the storm drain system. For this exemption to apply, the participant(s) must comply with the directions and specified time frame determined by the Town Administrator.

(11) A discharge authorized by and in compliance with a CDPS or NPDES permit, other than the CDPS permit for discharges from the Municipal Separate Storm Sewer System. This type of discharge must receive advance approval by the Town before the CDPS permit can be issued.

(12) Agricultural activities and normal maintenance and improvement of land used for agricultural activities.

Sec. 7-184. Requirements Applicable to Certain Dischargers.

Process waters generated from any industrial or commercial source, including carpet and rug cleaners and mobile commercial power cleaning operations, shall not discharge to the Storm Drainage System without a valid CDPS discharge permit. In the absence of a CDPS discharge permit, discharges from power cleaning operations shall be reclaimed via wet vacuum sweeping or other type of containment before entering the Storm Drainage System. (Discharge to the sanitary sewer is allowed with prior Town authorization.)

Sec. 7-185. Release Reporting and Cleanup.

Any person responsible for a known or suspected release of materials which results in, or may result in, illegal discharges to the Storm Drainage System shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a material, said person shall comply with all state, federal and local laws requiring reporting, cleanup, containment and any other appropriate remedial action in response to the release. Notice shall be given to the Town Administrator and followed by a written report of the remedial action(s) taken.

Sec. 7-186. Authorization to Inspect, Adopt and Impose Best Management Practices.

The Town has the authority to conduct storm water inspections at commercial and industrial facilities and residential facilities under common ownership (for detention ponds owned by POAs) and to require implementation of Best Management Practices (BMPs) where appropriate. The selection, application and maintenance of BMPs must be sufficient to prevent or reduce the likelihood of pollutants entering the Storm Drainage System. The Town may adopt and impose requirements identifying specific BMPs in the Stormwater Management Manual for any activity, operation or facility, which may cause a discharge of pollutants to the Storm Drainage System. Where specific BMPs are required, every person undertaking such activity or operation or owning or operating such facility shall implement and maintain BMPs at the person's own expense.

Section 7-187. Control of Storm Water Discharges From Construction and Post-Construction Activities.

(a) General Requirements for Construction Sites

(1) Control of Discharges. All proposed development as described in Section 7-187 (a)(2) must provide for on-site erosion and sediment control, control of illegal discharges, and runoff collection and conveyance in accordance with the Stormwater Management Manual and applicable federal and State laws.

(2) Disruption of Soil and Vegetation. The owner of a construction site and/or conducting construction activity, including but not limited to subdivision development, subsequent lot development, individual home and building construction, and developments as defined, that disrupt or expose soil or remove vegetation on one (1) or more acres of land during the life of the construction project, shall be responsible for obtaining a state discharge permit and compliance with the requirements of this Article, and to utilize BMPs as required in the Stormwater Management Manual. All BMPs designed to meet the requirements of this Article shall comply with the Stormwater Management Manual and the Construction Storm Water Management Plan.

(3) Waste Disposal. Solid waste, industrial waste, yard waste, rubbish, discarded building materials, chemicals, sanitary wastes and any other pollutants or waste on any construction site shall be controlled through the use of BMPs. Waste containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste, rubbish and other pollutants or toxins that may blow, wash or otherwise be released from the site are prohibited.

(4) Ready-mixed Concrete. Ready-mixed concrete or any materials resulting from the washing or cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained in a designated area on construction sites for proper disposal. All washing-out of concrete mixer truck bowls and chutes and release of these materials in to storm drains is prohibited.

(5) Erosion and Sediment Control. BMPs shall be implemented to prevent the release of sediment from construction sites and development. Disturbed area(s) shall be minimized and disturbed soil, including but not limited to construction sites and entrances and exits therefrom, shall be managed to prevent tracking, blowing and fugitive emissions release. Any water used in cleaning operations shall not be disposed into the storm sewer system. Sediment, dirt and mud tracked onto public streets shall be removed immediately by sweeping, scooping and shoveling at the owner's expense. Sediment not removed within the specified time limits as stated in a notification will be removed by the Town or designated contractor. Such removal costs will be billed to the property owner and, if not paid, become a lien on the property.

(6) Materials storage. Construction materials stored on public streets or required as part of a public construction project occurring in the Right-of-Way will require BMPs if determined appropriate by the Town Administrator.

(b) Construction Sites Requiring an Approved Construction Storm Water Management Plan. Where any public or private construction, including subdivision development, will disturb or expose soil or remove vegetation on one (1) or more acres of land during the

life of the construction project, including the disturbance of less than one (1) acre of total land that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb one (1) or more acres, or on smaller projects as designated by the Town, a Construction Storm Water Management Plan for the project must be provided to the Town and implemented by the construction site owner as follows:

(1) The preparation, content and implementation of the Construction Storm Water Management Plan shall comply with this Article, the Stormwater Management Manual and all applicable laws.

(2) The area included in the Construction Storm Water Management Plan shall be assumed to include the entire property area, unless the applicable Construction Storm Water Management Plan specifically excludes certain areas from disturbance.

(3) Construction Storm Water Management Plans must be provided for all phases of development, including sanitary sewer and storm drainage system construction, waterline, street and sidewalk construction, grading, installation of other utilities, the construction of all buildings and/or individual site development and landscaping for common areas owned and maintained by the property owners association.

(4) The Construction Storm Water Management Plan must be provided by the owner and submitted to the Town Administrator for approval during the development review process, subdivision review process or building permit review process, as applicable.

(5) The Town will review the Construction Storm Water Management Plans as part of the development review process, subdivision review process or planning clearance for a building permit review process, as applicable, and approval must be provided before commencement of construction.

(6) Construction activity, including any soil disturbance, stockpiling or transport, or removal of vegetation, shall not commence on the site until the Town Administrator has issued a Construction Storm Water Management Plan Acceptance.

(7) The property owner bears all legal and financial responsibility for implementation, monitoring of and for the approved Construction Storm Water Management Plan, for all construction activity within the development and for notification of all contractors and utility agencies on the site regarding compliance with the same. The requirement to follow the terms of the Construction Storm Water Management Plan shall be recorded as a note on the property plat, if applicable. The owner shall provide a copy of the approved Construction Storm Water Management Plan to all utility agencies, subcontractors and other agencies

or person(s) prior to working on or within the construction site or subdivision development. If a property is sold, the owner is responsible for insuring the Plan is part of the property sale and is included when a Planning Clearance is obtained for a building permit. The Construction Storm Water Management Plan must be attached to the application for a planning clearance to obtain a building permit.

(c) Construction Storm Water Management Plans. Preparation, content and implementation of Construction Storm Water Management Plans for all public and private construction activity shall, in addition to the requirements in the Storm Water Management Manual and all applicable laws:

(1) Be prepared under the direction of a “qualified person”, as defined in Section 7-182 of this Article.

(2) Provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.

(3) Specify and provide detail for all BMPs necessary to meet the requirements of this Article, including any applicable BMPs that have been adopted and imposed by the Town.

(d) Implementation of Approved Construction Storm Water Management Plans.

(1) BMPs shall be installed and maintained by a “qualified person(s)”.

(2) The owner shall be able to provide upon request a copy of the Construction Storm Water Management Plan on site during construction.

(3) The owner shall inspect all BMPs at least once every fourteen (14) days, and after any precipitation or snowmelt event that causes surface erosion. The owner must provide consent to the Town for the Town to inspect any BMP without advance notice or permission from the owner.

(4) Based upon inspections performed by the owner or by authorized Town personnel, modifications to the Construction Storm Water Management Plan shall be necessary if at any time the specified BMPs do not meet the objectives of this Article.

(5) If modification is required, the owner shall meet and confer with authorized Town personnel to determine the nature and extent of modification(s). All approved modification(s) shall be completed in a timely manner, but in no case more than seven (7) calendar days after the inspection showing that modification is needed. Modification(s) shall be recorded on the owner's copy of the Construction Storm Water Management Plan. In the case of an emergency, the

contractor shall implement conservative BMPs and follow up with Town personnel the next working day.

(e) Post-Construction Requirement of Permanent BMPs.

(1) Land development that meets the requirements of Section 7-187(b) shall implement storm water runoff controls through the use of permanent BMPs. All permanent BMPs shall be maintained in good working condition for the life of the development.

(2) Developments that have permanent BMPs installed shall maintain those BMPs in good working condition for the life of the development.

(3) Structural BMPs located on property shall be owned, operated, inspected and maintained by the owner(s) of the property and those persons responsible for the property on which the BMP is located. The legal responsibility to maintain the BMPs shall be included in property owners association articles of incorporation and/or the declaration of covenants, conditions and restrictions. As a condition of approval of the BMP(s), the owner and those persons responsible for the property shall also agree to maintain the BMP(s) to its design capacity unless or until the Town shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP(s) shall be recorded on the property plat or site plan, as applicable. The development or subdivision improvements agreement shall provide for any and all maintenance easements required to access and inspect the BMP(s) and to perform routine maintenance as necessary to ensure proper functioning of the storm water BMP. The building of any structures on such maintenance easements is prohibited. Any agreement arising out of or under this Article shall be recorded in the office of the Mesa County Clerk and/or the Mesa County land records.

(4) The Town will issue annual notices to property owners associations to ensure inspections and maintenance of permanent BMPs are performed properly.

(f) Certification of Permanent BMPs. Upon completion of a construction project and before a certificate of occupancy is granted by the Mesa County Building Department, the Town shall be provided a written certification signed by a qualified person stating that the completed project is in compliance with the approved Construction Storm Water Management Plan. All applicants are required to submit "as built" plans for any permanent BMP(s) after final construction is completed. A digital copy of the "as-built" plans in current Autocad format may be required. A final inspection by the Town is required before the release of any performance securities may occur.

(g) Ongoing Inspection and Maintenance of Permanent BMPs. Permanent BMPs included in a Construction Storm Water Management Plan which is subject to an inspection and maintenance agreement must undergo ongoing annual inspections by a

qualified person or professional engineer to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the Construction Storm Water Management Plan and this Article.

Section 7-188. Enforcement.

(a) The Town Administrator shall have the right to enter the premises at any time to investigate if the discharger is complying with all requirements of this Article when there is reason to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Article. Investigation may include, but is not limited to, the following: the sampling of any suspected discharge, the taking of photographs, interviewing of any person having any knowledge related to the suspected discharge or violation and access to any and all facilities or areas within the premises that may have any effect on the discharge or alleged violation. In the event that the owner or occupant refuses entry after a request to enter has been made, the Town is hereby empowered to seek assistance from the Town Attorney and the Municipal Court in obtaining such entry pursuant to Rule 241(a)(2) of the Colorado Municipal Court Rules of Procedure and other applicable law.

(b) Whenever the Town finds that any person has violated any portion of this Article, the Town Administrator shall serve a Notice of Violation (NOV), a written notice stating the nature of the violation. Within the time specified after the date of such notice the person shall submit to the Town Administrator evidence of the satisfactory correction of the violation.

(c) Whenever the Town Administrator finds that any person has violated or is violating this Article or a permit or Administrative Order issued hereunder, the Town Administrator may have served upon said person an Administrative Order. Such order may be a Compliance Order, a Show Cause Order, a Cease and Desist Order or an order assessing an administrative fine. Compliance with an Administrative Order shall not relieve the user of liability for any violations occurring before or after the issuance of the Administrative Order or prevent the Town Attorney from taking any other enforcement action.

(d) Upset condition.

(1) An upset condition determination constitutes an affirmative defense to an action brought for noncompliance when the terms of this Article are met. An owner who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the cause(s) of the upset can be identified; and
- b. The facility or operation was at the time being properly operated; and
- c. Notice of the upset was submitted as required in Section 7-182 (D); and
- d. Remedial measures were complied with as required.

(2) Burden of proof. In any enforcement proceeding the one seeking to establish the occurrence of an upset has the burden of proof.

(e) Any person wishing to appeal any decision, action, Administrative Order, assessment of administrative fine, or determination made and issued by the Town Administrator in interpreting, enforcing or implementing the provisions of this Article, or the provision of any Administrative Order issued under this Article, shall file with the Town Administrator a written request for reconsideration within ten (10) working days of such decision, action, Administrative Order or determination. That written request shall set forth in detail the facts supporting the request. The Town Administrator shall hold a hearing within ten (10) working days of such request. All requests for reconsideration shall be heard by the Town Administrator within ten working days from the date of the hearing. The decision, action, Administrative Order or determination shall remain in effect during the reconsideration period.

(f) Any person entitled to appeal an order of the Town Administrator pertaining to a violation of this Article may do so by filing an appeal with the Town Administrator within ten (10) working days from the date of the Town Administrator's determination or order. The appeal shall contain the following items:

(1) A heading in the words "Before the Storm Water Hearing Board of the Town of Palisade, Colorado" or "Before the Storm Water Hearing Officer of the Town of Palisade, Colorado";

(2) A caption reading "Appeal of _____," giving the names of all participating appellants;

(3) A statement of the legal interest of the appellants in the affected facility, together with the name of the authorized representative thereof;

(4) A concise statement of the action protested, together with any material facts;

(5) Verified signatures of all appellants, together with official mailing addresses and telephone numbers; and

(6) Verification by declaration under perjury of at least one (1) appellant as to the truth of the matters stated in the appeal.

Upon receipt of a properly filed appeal, the Town Administrator shall notify the Town Board of Trustees, and the Town Administrator shall convene a Storm Water Hearing Board or appoint a hearing officer. The hearing shall commence no sooner than ten (10) days, but no later than sixty (60) days, after the appeal is filed.

(g) The Town Administrator is authorized to order any user who causes, makes, or allows an unauthorized direct or indirect discharge or a harmful contribution to the Storm Drainage System to show cause why appropriate enforcement action should not be taken.

In such case, a notice shall be served on the respondent user specifying the time and place of a hearing regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served upon the user personally or by certified mail, return receipt requested, at least ten (10) days before the hearing. Service may be made on any agent or authorized representative of a corporation or partnership.

(h) The Town Administrator may appoint a hearing officer or may instead convene a Storm Water Hearing Board to conduct the hearing or appeal. The board may consist of a member of the Town Board of Trustees or designee, the Town Administrator, a 5-2-1 Drainage Authority Board member or designee and an employee of the Town. The hearing officer or Storm Water Hearing Board shall have the power to:

(1) Issue in the name of the Town Board of Trustees notices of hearings requiring the attendance and testimony of witnesses and the production of evidence.

(2) Hold a quasi-judiciary hearing, and receive relevant evidence relating to compliance with the requirements set forth in this Article. Hearings shall be conducted informally. Rules of civil procedure and evidence shall not solely determine the conduct of the hearing or the admissibility of evidence. All testimony shall be given under oath, and a tape recording or other evidence of the verbatim content of the hearing shall be made. The burden of persuasion in either an appeal or show cause hearing shall be upon the appellant or respondent. The standard of proof to be utilized by the officer or board in making its findings or recommendations shall be a preponderance of the evidence.

(3) Determine and find whether just cause exists for not taking the proposed enforcement actions, or whether the order or action appealed is unwarranted.

(4) Transmit a report of the evidence and hearing, including transcripts, tapes, and copies of other evidence requested by any party, together with findings and recommendations to all parties to the hearing and to the Town Board of Trustees.

(i) Findings and recommendations of the hearing board or officer shall be final and binding upon the Town Administrator and parties to the hearing, provided, however, that if the Town Board of Trustees disapproves the recommendations of the hearing board or officer within thirty (30) days thereof, the Board of Trustees may conduct its own hearing, make its own findings, and issue its own orders. An order consistent with findings and recommendations of the hearing board or officer, or the Town Board of Trustees, as the case may be, shall be issued by the Town Administrator. The order may provide for imposition of appropriate penalty charges, and shall provide for administrative fines designed to reimburse the Town for the costs of the permit enforcement action; including any hearings. Further orders and directives, as are necessary and appropriate to enforce the provisions of this Article may be issued by the Town Administrator.

(j) Any person who violates a prohibition or fails to meet a requirement of this Article will be subject, without prior notice, to one (1) or more of the enforcement actions identified herein, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge, which presents or may present imminent danger to the environment, or to the health or welfare of persons or to the well being of the Storm Drainage System.

(k) Any person who fails to comply with a Notice of Violation shall be subject to any of the following:

(1) The Town Administrator may issue a Stop Work Order to the owner and contractors on a construction site, by posting the order at the construction site. Unless express written exception is made, the Stop Work Order shall prohibit all further construction activity at the site and shall bar any further inspection or approval(s) necessary to commence or continue construction or to assume occupancy of the site. A Notice of Violation shall accompany the Stop Work Order, and shall define the compliance requirements.

(2) The Town Administrator may order Town representatives to terminate an illicit connection to the Municipal Separate Storm Sewer System. Any expense related to abatement by Town or its contractor(s) or agent(s) shall be fully reimbursed by the property owner. Failure to pay may result in the property being lien-ed as provided herein.

(3) When a property owner is not available, not able or not willing to correct a violation, the Town Administrator may order Town personnel, contractor(s) or agent(s) to enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow Town representatives to enter upon the premises for these purposes. Any expense related to such abatement by Town representatives shall be fully reimbursed by the property owner. Failure to pay may result in the property being lien-ed as provided herein.

(4) Within 30 days after abatement by Town representatives, the Town Administrator shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. Said costs, from the time the same shall become due and payable, shall become and remain a lien on the subject property until said costs have been paid to the Town. This lien on the property may be foreclosed by an action at law or in equity in the name of the Town in any court having jurisdiction thereof. In the event said costs are not paid when due, the Town Treasurer may certify the amount of the same to the Mesa County Treasurer, to be placed on the tax list for the current year, and to be collected in the same manner as other taxes are collected, with twenty-five percent (25%) added thereto as an administrative fee to defray the cost of collection pursuant to Section 31-20-105, C.R.S., as amended. All laws of this

State for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same shall apply.

(5) Where necessary for the reasonable implementation of this Article, the Town Administrator may, by written notice, order any owner of a construction site or subdivision development to post surety, in a form approved by the Town Attorney not to exceed a value determined by the Town Administrator to be necessary to achieve consistent compliance with this Article. The Town may deny approval of any clearance for a building permit, certificate of occupancy, subdivision plat, site development plan, or any other Town permit or approval necessary to commence or continue construction or to assume occupancy, until such surety has been filed with the Town.

(l) Any person who violates or continues to violate a prohibition or requirement of this Article shall be subject to criminal prosecution to the fullest extent of the law and shall be subject to criminal penalties.

(m) The violation of any provision of this Article or with any orders, rules, regulations, permits and permit conditions shall be deemed a municipal offense. Any person violating this Article shall, upon an adjudication of guilt or a plea of guilty or no contest, be punished by a fine of up to \$300.00 for each violation and may be sentenced to imprisonment up to ninety (90) days. Each separate day on which a violation is committed or continues shall constitute a separate offense.

(1) If any person violates any order of the Town Administrator, a hearing board or officer or the Board of Trustees, or otherwise fails to comply with any provisions of this Article or the orders, rules, regulations and permits issued hereunder, or discharges into the Storm Drain System or into State waters contrary to the provisions of this Article, federal or State requirements, or contrary to any order of the Town, the Town may commence an action in a court of record for appropriate legal and equitable relief. In such action, the Town may recover from the defendant reasonable attorney fees, including legal assistant's fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the Town prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Article shall become liable to the Town for any expense, loss, or damage to the Town or to the Storm Drain System occasioned by such violation. The Town Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

(2) Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this Article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this Article, shall be guilty of a municipal offense, and upon

conviction thereof shall be punished by a fine not to exceed \$300.00 per day for each violation and/or imprisonment not to exceed ninety (90) days or both.

(3) The remedies provided for in this Article, including recovery of costs, administrative fines and treble damages, shall be cumulative and in addition to any other penalties, sanctions, fines and remedies that may be imposed. Each day in which any such violation occurs, whether civil and/or criminal, shall be deemed a separate and distinct offense.

Section 2. All Ordinances and any part of any Ordinance expressly in conflict herewith are hereby repealed.

Section 3. If any section, subsection, or clause or a phrase of this Ordinance is for any reason held to be invalid by a court of law, such decision shall not affect the validity of the remaining portions of this Ordinance.

INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED by the Palisade Board of Trustees this ____ day of _____, 2006.

BOARD OF TRUSTEES OF THE TOWN
OF PALISADE, COLORADO

By: _____
Douglas R. Edwards, Mayor

ATTEST:

Tina Darrah, Town Clerk

Publication Date:

Trustee _____ introduced, read and moved the adoption of the ordinance titled,

**AN ORDINANCE OF THE TOWN OF PALISADE, COLORADO,
AMENDING CHAPTER 7 OF THE PALISADE MUNICIPAL
CODE BY ADDING CERTAIN PROVISIONS CONCERNING
STORM WATER POLLUTION PREVENTION**

be passed on first reading, and that public notice be published in the Palisade Tribune on _____, 2006.

Trustee _____ seconded the motion. On roll call, the following Trustees voted "Aye":

_____, _____,
_____, _____,
_____, _____,
_____.

Trustees voted "Nay":

_____, _____,
_____.