

**ORDINANCE 2015-03**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, ADDING  
TITLE 14 TO THE FRUITA MUNICIPAL CODE CONCERNING  
STORMWATER MANAGEMENT**

**WHEREAS**, the City of Fruita meets the requirements of an MS4 permittee with the State of Colorado and has adopted a stormwater protection program pursuant to State and Federal environmental protection laws, and such program has included public education, adoption of stormwater regulations, and an enforcement program; and

**WHEREAS**, Periodically the State of Colorado performs audits of permittees to determine compliance with its Colorado Discharge Permit System (“CDPS”) program requirements. Following the audits, the State issues guidelines and requires its permittees to come into compliance with such guidelines; and

**WHEREAS**, this stormwater ordinance is intended to conform the City’s stormwater protection program to State requirements following the most recent round of audits.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA,  
COLORADO:**

**Section 1.** That Title 14 of the Fruita Municipal Code is hereby adopted to read as follows:

**TITLE 14**

**STORMWATER MANAGEMENT**

**CHAPTER 14.01**

**DEFINITIONS**

**14.01.005 DEFINITIONS.** The following words, terms and phrases, when used in this Title, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

**14.01.010 BEST MANAGEMENT PRACTICES (BMPS)** means the specific management practices used to control pollutants in stormwater. 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 stormwater. Treatment or structural controls, such as constructed water quality detention facilities, remove pollutants already present in stormwater. Best management practices can either be temporary, such as a silt fence used during construction activity, or permanent detention facilities, to control pollutants in stormwater.

**14.01.015 CDPS** means the Colorado Discharge Permit System.

**14.01.017 CITY** means the City of Fruita, Colorado.

**14.01.018 CITY MANAGER** means the Fruita City Manager or his duly appointed representative.

**14.01.020 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.

**14.01.025 COLORADO WATER QUALITY CONTROL ACT** means Title 25, Article 8, C.R.S.

**14.01.030 COMMERCIAL** means any business, trade, industry or other activity engaged in for profit.

**14.01.035 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, 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).

**14.01.040 CONSTRUCTION SITE** means any location where construction or construction-related activity occurs.

**14.01.045 CONSTRUCTION STORMWATER 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 stormwater and to set out BMPs that, when implemented, will reduce or eliminate any possible water quality impacts.

**14.01.050 CONTAMINATED** means containing harmful quantities of pollutants that exceed State or federal guidelines.

**14.01.055 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.

**14.01.060 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 C.R.S.) that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to a person, group or area.

**14.01.065 DEVELOPMENT** means any public or private construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure within the jurisdiction of the City, 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.

**14.01.070 DISCHARGE** means any addition or release of any pollutant, stormwater, subsurface, groundwater or any other substance whatsoever to the storm drainage system.

**14.01.075 DOMESTIC ANIMAL WASTE** means excrement and other waste from domestic animals, including household pets.

**14.01.080 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.

**14.01.090 DRAINAGEWAY** means any natural or artificial (manmade) channel which provides a course for water flowing either continuously or intermittently to downstream areas.

**14.01.095 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.

**14.01.100 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.

**14.01.105 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.

**14.01.110 FUNGICIDE** means a substance that destroys or inhibits the growth of fungi.

**14.01.115 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.

**14.01.120 GROUNDWATER** means any water residing below the surface of the ground or percolating into or out of the ground.

**14.01.125 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 City to meet the water quality based requirements of the CDPS/NPDES permit for discharges from the municipal separate storm sewer system.

**14.01.130 HAZARDOUS SUBSTANCE** means any substance listed in Table 302.4 of 40 CFR Part 302 as amended.

**14.01.135 HAZARDOUS WASTE** means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR, Part 261 as amended.

**14.01.140 HERBICIDES** means a chemical substance used to destroy plants, especially weeds.

**14.01.145 ILLEGAL DISCHARGE** means illicit discharge.

**14.01.150 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-stormwater that has not been permitted by the public entity responsible for the operation and maintenance of the system.

**14.01.155 ILLICIT DISCHARGE** means any discharge to a storm drain system that is not composed entirely of stormwater, except discharges pursuant to a CDPS/NPDES permit, discharges resulting from fire fighting activities, and discharges further exempted by this Title.

**14.01.160 INDUSTRIAL WASTE** means any wastes produced as a byproduct of any industrial, manufacturing, agriculture, commerce, trade or business, as distinguished from domestic or residential waste.

**14.01.165 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.

**14.01.170 MINIMUM MEASURE** means a mandated part of a stormwater 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.

**14.01.175 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.

**14.01.180 MSDS** means the Material Safety Data Sheet for hazardous chemicals.

**14.01.185 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 City and designed or used for collecting or conveying stormwater and is not a combined sewer or used for collecting or conveying sanitary sewage.

**14.01.190 NOTICE OF VIOLATION (NOV)** means a formal written notice delivered, either by hand delivery, certified mail or posted on the subject property, to a person or entity who has violated any provision of the Palisade Municipal Code. The notice shall contain the parcel number or address, name or entity to whom the notice is being delivered, section(s) of the code being violated, time frame in which to correct the violation and information regarding remedies the City may take to achieve compliance. An NOV may also be referred to as a “compliance advisory.”

**14.01.195 NPDES** means the National Pollutant Discharge Elimination System under Section 402 of the Clean Water Act.

**14.01.200 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.

**14.01.205 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.

**14.01.210 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.

**14.01.215 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.

**14.01.220 PERSON** means any individual, partnership, co-partnership, 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.

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

**14.01.230 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 No. 1 and No. 2 diesel.

**14.01.235 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 and agricultural 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.

**14.01.240 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.

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

**14.01.250 PRIVATE DRAINAGE SYSTEM** means all privately owned ground, surfaces, structures or systems, excluding the municipal separate storm sewer system, that contribute to or convey stormwater, 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.

**14.01.255 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.

**14.01.260 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 Section 12-25-101, C.R.S.

**14.01.265 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 manmade systems.

**14.01.270 RELEASE** means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

**14.01.275 RUBBISH** means non-putrescible 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 (1,600 to 1,800 degrees Fahrenheit).

**14.01.280 SANITARY SEWAGE** means the domestic sewage and/or industrial waste that is discharged into the City's sanitary sewer system and passes through the sanitary sewer system to the City's wastewater treatment plant for treatment.

**14.01.285 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 City's wastewater treatment plant (and to which stormwater, surface water and groundwater are not intentionally admitted).

**14.01.290 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.

**14.01.295 SEPTIC TANK WASTE** means any domestic sewage from holding tanks such as vessels, grease interceptors, chemical toilets, campers, trailers, septic tanks and aerated tanks.

**14.01.300 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.

**14.01.305 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.

**14.01.310 STORM DRAINAGE SYSTEM** means all surfaces, structures and systems that contribute to or convey stormwater, 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 manmade 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.

**14.01.315 STORMWATER** means surface runoff resulting from precipitation and other storm events.

**14.01.320 STORMWATER HEARING BOARD** means a review board appointed by the City Manager to hear an appeal to an administrative action in response to a violation. The Fruita City Council may serve as the Stormwater Hearing Board.

**14.01.325 STORMWATER MANAGEMENT MANUAL** means the Mesa County Stormwater Management Manual (SWMM) that contains the policies and criteria pertaining to stormwater runoff; federal, State and local regulations pertaining to stormwater law and water quality; and grading and drainage criteria under Section 5.2.7(B)(2)(d) of the City's Land Development Code, dated 2008, and as amended or replaced.

**14.01.330 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.

**14.01.335 TOXIC** means a substance that is harmful or poisonous according to the MSDS standards.

**14.01.340 UNCONTAMINATED** means not containing harmful quantities of pollutants that exceed State or federal guidelines.

**14.01.345 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.

**14.01.350 WASTEWATER** means any water or other liquid, other than uncontaminated stormwater, 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 stormwater that may be present.

**14.01.355 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.

**14.01.360 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.

**14.01.365 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.

**14.01.370 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.

**14.01.375 YARD WASTE** means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

## **CHAPTER 14.10**

### **ILLICIT DISCHARGES PROHIBITED INTO STORM DRAINAGE SYSTEM**

#### **14.10.005 PROHIBITIONS.**

- A. No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed in Section 14.10.010 of this Chapter. Common stormwater 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.”
- B. Notwithstanding the provisions of Section 14.10.010 of this Chapter, any discharge shall be prohibited by this Section if the discharge in question has been determined by the City Manager to be a source of pollutants to the storm drainage system.
- C. 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.
- D. No person shall connect a line conveying sanitary sewage or wastewater, domestic sewage or wastewater, or industrial waste to the storm drainage system or allow such a connection to continue. Any existing connection must be removed.
- E. No person shall maliciously damage, destroy or interfere with best management practices (BMPs) implemented pursuant to this Title.

**14.10.010 EXEMPTIONS.** The following non-storm water discharges are not a violation of this Title. Note that even if one of the following discharges is not covered under this Title it may still require a federal and/or State-issued permit.

- A. Intermittent uncontaminated discharge from landscape irrigation, lawn watering, or irrigation return flows.
- B. 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.)
- C. Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs.
- D. Diverted stream flows and natural riparian habitat or wetland flows.

- E. Uncontaminated discharges from the occasional noncommercial or charity washing of vehicles or occasional not-for-profit car washing events.
- F. 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 de-chlorination.
- G. Discharges approved by the City Manager as being necessary to protect property and/or public health and safety, such as flows from emergency fire fighting.
- H. Waterline flushing and other infrequent discharges from potable water sources and waterline repair work as necessary to protect public health and safety.
- I. Water incidental to street sweeping (including associated sidewalks and medians) that is not associated with construction.
- J. City activities as determined necessary by the City Manager, such as spring cleanup and fall leaf pickup programs. The intent of these activities is to reduce pollution in the storm drainage system. For this exemption to apply, the participant(s) must comply with the directions and specified time frame determined by the City Manager.
- K. 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 City before the CDPS permit can be issued.

**14.10.015 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 either discharged to land following the conditions of the CDPHE Low Risk Discharge Guidance: Discharges From Surface Cosmetic Power Washing Operations To Land or Discharge of Potable Water, or be reclaimed via wet vacuum sweeping or other type of containment, then discharged to the sanitary sewer, before entering the storm drainage system. (Discharge to the sanitary sewer is allowed only with prior City authorization at the City's wastewater treatment plant.)

**14.10.020 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 City Manager and followed by a written report of the remedial action(s) taken.

**14.10.025 AUTHORIZATION TO INSPECT, ADOPT AND IMPOSE BEST MANAGEMENT PRACTICES.** The City has the authority to conduct stormwater 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 City 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.

## **CHAPTER 14.20**

### **CONTROL OF STORM WATER DISCHARGES FROM CONSTRUCTION AND POST-CONSTRUCTION ACTIVITIES**

#### **14.20.005 GENERAL REQUIREMENTS FOR CONSTRUCTION SITES.**

- A. All proposed development as described in Paragraph B of this Section 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.
- B. 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 Title, and to utilize specific BMPs adopted by the City and within the Stormwater Management Manual. All BMPs designed to meet the requirements of this Title shall comply with the Stormwater Management Manual and the construction stormwater management plan.

- C. 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.
- D. 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 into storm drains is prohibited.
- E. 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 City or its designated contractor. Such removal costs will be billed to the property owner and, if not paid, become a lien on the property.
- F. 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 City Manager.

**14.20.010 CONSTRUCTION SITES REQUIRING AN APPROVED CONSTRUCTION STORMWATER 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 City, a construction stormwater management plan for the project must be provided to the City and implemented by the construction site owner as follows:

- A. The preparation, content and implementation of the construction stormwater management plan shall comply with this Title, the Stormwater Management Manual and all applicable laws.
- B. The area included in the construction stormwater management plan shall be assumed to include the entire property area, unless the applicable construction stormwater management plan specifically excludes certain areas from disturbance.
- C. Construction stormwater 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 POA.
- D. The construction stormwater management plan must be provided by the owner and submitted to the City Planner and the 5-2-1 Drainage Authority for approval during the development review process.
- E. The City and the 5-2-1 Drainage Authority will review the construction stormwater management plans as part of the development review process and approval must be provided before commencement of construction.
- F. Construction activity, including any soil disturbance, stockpiling or transport, or removal of vegetation, shall not commence on the site until the City Planner and the 5-2-1 Drainage Authority has issued written approval of the construction stormwater management plan acceptance.
- G. The property owner bears all legal and financial responsibility for implementation, monitoring of and for the approved construction stormwater 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 stormwater management plan shall be recorded as a note on the property plat. The owner shall provide a copy of the approved construction stormwater 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 ensuring the plan is part of the property sale and is included when a planning clearance is obtained for a building permit. The construction stormwater management plan must be attached to the planning clearance to obtain a building permit.

**14.20.015 CONSTRUCTION STORMWATER MANAGEMENT PLANS.** Preparation, content and implementation of construction stormwater management plans for all public and private construction activity shall, in addition to requirements in the Stormwater Management Manual (SWMM) and all applicable laws:

- A. Be prepared under the direction of a qualified person as defined in Section 14.01.260 of this Title.
- B. Provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.
- C. Specify and provide detail for all BMPs necessary to meet the requirements of this Title, including any applicable BMPs that have been adopted and imposed by the City.

**14.20.020 IMPLEMENTATION OF APPROVED CONSTRUCTION STORMWATER MANAGEMENT PLANS.**

- A. BMPs shall be installed and maintained by a qualified person(s).
- B. The owner shall be able to provide upon request a copy of the construction stormwater management plan on site during construction.
- C. 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 City for the City to inspect any BMP without advance notice or permission from the owner.
- D. Based upon inspections performed by the owner or by authorized City personnel, modifications to the construction stormwater management plan shall be necessary if at any time the specified BMPs do not meet the objectives of this Title.
- E. If major modification is required, such as addition or deletion of a sediment basin, the owner shall meet and confer with authorized City personnel to determine the nature and extent of modification(s). Minor modifications necessary to meet the objectives of this Title may be performed without City authorization. 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. All modification(s) shall be recorded on the owner's copy of the construction stormwater management plan. In the case of an emergency, the contractor shall implement conservative BMPs and follow up with City personnel the next working day.

**14.20.025 POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPS.**

- A. Land development that meets the requirements of Section 14.20.010 of this Chapter shall implement stormwater runoff controls through the use of permanent BMPs. All permanent BMPs shall be maintained in good working condition for the life of the development.
- B. Developments that have permanent BMPs installed shall maintain those BMPs in good working condition for the life of the development.
- C. 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 POA incorporation articles and covenant restrictions, and development agreements for commercial sites. 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 to its design capacity unless or until the City shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP(s) shall be recorded on the property plat. The development agreement and/or final plat shall include 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 stormwater BMP. The building of any structures on such maintenance easements is prohibited. Any agreement arising out of or under this Title shall be recorded in the office of the Fruita City Clerk and/or the Mesa County land records.
- D. The cITY and/or the 5-2-1 Drainage Authority will issue annual notices to POAs to ensure inspections and maintenance of permanent BMPs are performed properly.

**14.20.030 CERTIFICATION OF PERMANENT BMPS.** Upon completion of a construction project and before a certificate of occupancy or clearance by the City Planner shall be granted, the City shall be provided a written certification signed by a qualified person stating that the completed project is in compliance with the approved construction stormwater 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 is required in current AutoCAD format. A final inspection by the City is required before the release of any performance securities may occur.

**14.20.035 ONGOING INSPECTION AND MAINTENANCE OF PERMANENT BMPS.**

Permanent BMPs included in a construction stormwater 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 stormwater management plan and this Title.

## **CHAPTER 14.25**

### **ENFORCEMENT**

**14.25.005 RIGHT OF ENTRY.** The City Manager shall have the right to enter the premises at any time to investigate if the discharger is complying with all requirements of this Title 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 Title. 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 City Manager is hereby empowered to seek assistance from the City Attorney and the Municipal Court in obtaining such entry.

**14.25.010 VIOLATIONS.** Whenever the City finds that any person has violated any portion of this Title, the City Manager shall serve a compliance advisory or a notice of violation (NOV). Within the time specified after the date of such notice, the person shall submit to the City Manager evidence of the satisfactory correction of the violation.

Whenever the City Manager finds that any person has violated or is violating this Title or a permit or administrative order issued hereunder, the City Manager may give a verbal warning or 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 City Attorney from taking any other enforcement action.

#### **14.25.015 UPSET CONDITION.**

- A. An upset condition determination constitutes an affirmative defense to an action brought for noncompliance when the terms of this Title 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:

1. An upset occurred and that the cause(s) of the upset can be identified; and
  2. The facility or operation was at the time being properly operated; and
  3. Notice of the upset was submitted as required in Section 14.10.020 of this Title; and
  4. Remedial measures were complied with as required.
- B. Burden of Proof. In any enforcement proceeding, the one seeking to establish the occurrence of an upset has the burden of proof.

## **CHAPTER 14.30**

### **APPEALS**

**14.30.010 APPEALS TO CITY MANAGER.** Any person wishing to appeal any decision, action, administrative order, assessment of administrative fine, or determination made and issued by the City Manager in interpreting, enforcing or implementing the provisions of this Title, or the provision of any administrative order issued under this Title, shall file with the City Manager 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 City Manager, or his designated Hearing Officer, shall hold a hearing within ten (10) working days of such request. All requests for reconsideration shall be heard by the City Manager within ten (10) working days from the date of the hearing. The decision, action, administrative order or determination shall remain in effect during the reconsideration period.

### **14.30.015 APPEALS TO STORMWATER HEARING BOARD OR OFFICER.**

- A. Any person entitled to appeal an order of the City Manager pertaining to a violation of this Title may do so by filing an appeal with the City Manager within ten (10) working days from the date of the City Manager's determination or order. The appeal shall contain the following items:
1. A heading in the words "Before the Stormwater Hearing Board of the City of Fruita, Colorado" or "Before the Stormwater Hearing Officer of the City of Fruita, 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 appellant as to the truth of the matters stated in the appeal.

Upon receipt of a properly filed appeal, the City Manager shall notify the City Council, and the City Manager shall convene a Stormwater 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.

- B. The City Manager 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.
- C. The City Manager may appoint a Hearing Officer or may instead convene a Stormwater Hearing Board to conduct the hearing or appeal. The Board may consist of a City Council member or designee, the City Manager, a 5-2-1 Drainage Authority Board member or designee and an employee of the Public Works Department. The Hearing Officer or Stormwater Hearing Board shall have the power to:
  1. Issue in the name of the City Council notices of hearings or subpoenas requiring the attendance and testimony of witnesses and the production of evidence.
  2. Hold a quasi-judicial hearing, and receive relevant evidence relating to compliance with the requirements set forth in this Title. 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 or digital 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 Hearing 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 City Council.

D. Findings and recommendations of the Hearing Board or Officer shall be final and binding upon the City Manager and parties to the hearing; provided, however, that if the City Council disapproves the recommendations of the Hearing Board or Officer within thirty (30) days thereof, the City Council 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 City Council, as the case may be, shall be issued by the City Manager. The order may provide for imposition of appropriate penalty charges, and for administrative fines designed to reimburse the City for the costs of the permit enforcement action. Further orders and directives, as are necessary and appropriate to enforce the provisions of this Title may be issued by the City Manager.

## **CHAPTER 14.35**

### **ABATEMENT AND PENALTIES**

**14.35.010 ABATEMENT.** Any person who violates a prohibition or fails to meet a requirement of this Title will be subject, without prior notice, to one or more of the enforcement actions identified herein, when attempts to contact the person have failed, or voluntary compliance has not occurred, 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, safety or welfare of persons or to the well being of the storm drainage system.

Any person who fails to comply with a notice of violation shall be subject to any of the following:

- A. The City Manager 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.
- B. The City Manager may order City representatives to terminate an illicit connection to the municipal separate storm sewer system. Any expense related to abatement by City or its contractor(s) or agent(s) shall be fully reimbursed by the property owner. Failure to pay may result in the property being lienied as provided herein.
- C. When a property owner is not available, not able or not willing to correct a violation, the City Manager may order City 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 City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner. Failure to pay may result in the property being lienied as provided herein.
- D. Within Thirty (30) days after abatement by City representatives, the City Manager shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. If the amount due is not paid, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment plus an administrative charge of twenty-five percent (25%). The unpaid liens and charges shall be certified to the County Treasurer pursuant to Section 31-20-105, C.R.S. so that the County Treasurer may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the amount of the assessment on the bill for taxes levied against the parcel of land. 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 apply.
- E. Where necessary for the reasonable implementation of this Title, the City Manager may, by written notice, order any owner of a construction site or

subdivision development to post surety, in a form approved by the City Attorney, not to exceed a value determined by the City Manager to be necessary to achieve consistent compliance with this Title. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such surety has been filed with the City.

**14.35.020 PENALTIES.** Any person who knowingly violates or continues to violate a prohibition or requirement of this Title commits a Class B municipal offense and shall be subject to criminal prosecution to the fullest extent of the law.

The violation of any provision of this Title or with any orders, rules, regulations, permits and permit conditions shall also be deemed a Class B municipal offense. Any person violating this Title shall, upon an adjudication of guilt or a plea of guilty or no contest, be punished pursuant to a Class B municipal offense. Each day or portion thereof that any violation of any provision of this Title exists shall constitute a separate offense.

- A. If any person violates any order of the City Manager, a Hearing Board or Officer or the City Council, or otherwise fails to comply with any provisions of this Title 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 Title, federal or State requirements, or contrary to any order of the City, the City may commence an action in a court of record for appropriate legal and equitable relief. In such action, the City may recover from the defendant reasonable attorney fees, legal assistant fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Title shall become liable to the City for any expense, loss, or damage to the City or to the storm drain system occasioned by such violation. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.
  
- B. 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 Title, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this Title, shall be guilty of a Class B municipal offense and upon conviction thereof shall be punished by pursuant to a Class B municipal offense.

- C. The remedies provided for in this Title, 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.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRUITA,  
COLORADO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015**

ATTEST:

City of Fruita

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Lori Buck, Mayor