

**CANYON HIGHWAY DISTRICT NO. 4**

**RESOLUTION NO. 12-10- 1**

**A RESOLUTION, PROVIDING FOR FINDINGS; PROVIDING FOR THE ADOPTION OF AN ILLICIT DISCHARGE POLICY FOR HIGHWAYS UNDER THE JURISDICTION OF CANYON HIGHWAY DISTRICT NO. 4; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT RESOLVED** by the Board of Commissioners of the Canyon Highway District No. 4 that:

**Section 1. Findings:** The Commissioners of the Canyon Highway District No. 4 find:

- 1.1 The Highway District Board of Commissioners has the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction as provided in Idaho Code Section § 40-1310; and
- 1.2 The Highway District Board of Commissioners has full power to establish use standards as provided in Idaho Code Section § 40-1310(8); and
- 1.3 When any highway or public right-of-way of the Highway District is encroached upon whether by gates, fences, buildings, or otherwise the Highway District may require the encroachment to be removed as provided for at I.C. § 40-2319; and
- 1.4 General procedures for abatement of encroachments, including providing notice, time for removal, forfeiture costs for failure to remove encroachments, and recovery of Highway District cost for abatement and legal action are provided for at I.C. § 40-2319.
- 1.5 A portion of Canyon Highway District No. 4 lies with the Nampa Urbanized Area and is subject to National Pollution Discharge Elimination System Permit No. IDS-028134, which includes in part requirements on the Highway District to prohibit non-stormwater flows identified as a source of pollutants to the Highway Districts municipal [highway system] separate storm sewer system; and
- 1.6 The Highway District desires to comply with the National Pollution Discharge Elimination System Permit No. IDS-028134 and to protect it's highway system, the public health, safety, and welfare and public waters from pollution.

**Section 2. Definitions:** Wherever used herein, the following terms shall have the following meaning, unless the context indicates to the contrary:

- 2.1 "CFR": means the United States Code of Federal Regulations.
- 2.1 "Highway": means any roads, streets, highways, or alleys maintained by and under the jurisdiction of the Highway District, including adjacent right-of-way together therewith.

- 2.2 “Highway District”: means the Canyon Highway District No. 4, a Highway District organized and existing under and by virtue of the Laws of the State of Idaho, located in Canyon County, Idaho.
- 2.3 “IDAPA”: means the Idaho Administrative Procedures Act and rules promulgated there under.
- 2.4 “Illicit Discharge”: means any discharge to the municipal [highway system] separate storm sewer system of non-stormwater, including discharges that is not entirely composed of storm water, except where such discharges satisfy one of the following conditions:
- a) The non-storm water discharges are in compliance with a separate NPDES permit;
  - b) The non-storm water discharges result from a spill and
    - (i) are the result of an unusual and severe weather event where reasonable and prudent measures have been taken to minimize the impact of such discharge; or
    - (ii) consist of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to minimize the impact of such discharges; or
  - c) The non-storm water discharges satisfy each of the following two conditions:
    - (i) The discharges consist of uncontaminated water line flushing; potable water sources; landscape irrigation (provided all pesticides, herbicides and fertilizer have been applied in accordance with manufacturer’s instructions); lawn watering; irrigation water; flows from riparian habitats and wetlands; diverted stream flows; springs; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers; uncontaminated pumped ground water or spring water; foundation and footing drains (where flows are not contaminated with process materials such as solvents); uncontaminated air conditioning or compressor condensate; water from crawlspace pumps; individual residential car washing; dechlorinated swimming pool discharges; routine external building wash down which does not use detergents; street and pavement wash waters, where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); fire hydrant flushing; or flows from emergency firefighting activities; and
    - (ii) The discharges are not sources of pollution to waters of the United States. A discharge is considered a source of pollution to waters of the United States for the purposes of this permit if it:
      - (a) Contains hazardous materials in concentrations found to be of public health significance or to impair designated beneficial uses in receiving waters. (Hazardous materials are those that are harmful to humans and animals from exposure, but not necessarily ingestion);
      - (b) Contains toxic substances in concentrations that impair designated beneficial uses in receiving waters. (Toxic substances are those that can cause disease, malignancy, genetic mutation, death, or similar consequences);
      - (c) Contains deleterious materials in concentrations that impair designated beneficial uses in receiving waters. (Deleterious materials are generally substances that taint edible species of fish, cause taste in drinking waters, or cause harm to fish or other aquatic life);

- (d) Contains radioactive materials or radioactivity at levels exceeding the values listed in 10 CFR Part 20 in receiving waters;
- (e) Contains floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or in concentrations that may impair designated beneficial uses in receiving waters;
- (f) Contains excessive nutrients that can cause visible slime growths or other nuisance aquatic growths that impair designated beneficial uses in receiving waters;
- (g) Contains oxygen-demanding materials in concentrations that would result in anaerobic water conditions in receiving waters; or
- (h) Contains sediment above quantities specified in IDAPA 58.01.02.250.02.e, or in the absence of specific sediment criteria, above quantities that impair beneficial uses in receiving waters, or
- (i) Contains materials in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.200.09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401

- 2.5 “Municipal Separate Storm Sewer System” or “MS4.”: means a conveyance or system of conveyances designed or used for collecting or conveying storm water, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains owned or operated by the Highway District that discharges to waters of the United States.
- 2.6 “National Pollution Discharge Elimination System” or “NPDES”: means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318 and 405 of the Clean Water Act.
- 2.7 “Nampa Urbanized Area” means the greater Nampa, Idaho, area delineated by the Year 2000 Census by the U.S. Bureau of the Census according to the criteria defined by the Bureau on March 15, 2002 (67 FR 11663).
- 2.8 “Permit Area”: means all areas within the Nampa Urbanized Area served by the municipal separate storm sewer systems (MS4s) owned or operated by the Canyon Highway District No. 4, including the permittee’s maintenance and equipment yard.

**Section 3. Illicit Discharge Policy:** The Board of Commissioners does hereby adopt the following policy prohibiting illicit discharges to Canyon Highway District No.4’s highway system and inclusive of the MS4 within the Permit Area:

- 3.1 Illicit discharges to the Highway District’s highway system and inclusive of the MS4 within the Permit Area are hereby prohibited.
- 3.1.1 Liability for any such illicit discharge shall be the responsibility of the person(s) causing or responsible for the illicit discharge, and the Highway District shall seek to have such persons defend, indemnify and hold harmless the Highway

District in any administrative or judicial enforcement action against the Highway District relating to such illicit discharge as provided by applicable rules of law.

- 3.1.2 Individuals responsible for spills on a Highway that cause or have potential to cause an illicit discharge to the Highway District's highway system and inclusive of the MS4 are to comply with applicable state and federal notification requirements and to assure containment, cleanup, and immediate notification to the Highway District.
  - 3.1.3 Any illicit discharge caused or permitted to exist as provided for herein shall be considered a threat to the public health, safety, welfare and the environment and are an encroachment and may be declared and deemed a nuisance by the Highway District, and may be abated and remediated by the Highway District and/or civil action taken to abate and remediate using the procedures set forth herein.
  - 3.1.4 Any administrative or civil proceedings under this policy in which the Highway District prevails, the Highway District may seek the award of all costs of investigation, administration, out of pocket expenses, administrative hearings, suits and reasonable attorney fees as allowed by law.
- 3.2 When a potential illicit discharge is brought to the attention of Canyon Highway District No. 4 (Highway District), either observed by District staff or notified by other parties, District staff shall initial an investigation within fifteen (15) days to verify the following:
- 3.2.1 The potential illicit discharge is occurring to the Highway District's highway system and if it is occurring with the MS4, including:
    - 3.2.1.1 Determination as to whether the location of the potential illicit discharge exists within the Highway District's MS4 is based on:
      - 3.2.1.1.1 The currently adopted "Official Map of the Canyon Highway District No. 4 Highway System", and
      - 3.2.1.1.2 Storm drainage mapping prepared by Canyon Highway District No. 4, and
      - 3.2.1.1.3 A field review of the storm drainage system in the location of the potential illicit discharge.
    - 3.2.1.2 Determination if an illicit discharge is occurring as defined under the provisions of this policy and/or the Highway District's NPDES Permit; and
    - 3.2.1.3 Characterization of the illicit discharge, which may including pollutants, flows, and concentrations; and
    - 3.2.1.4 Potential source(s) of the illicit discharge; and

- 3.2.1.5 The potential for public health concerns related to the illicit discharge;  
and
  - 3.2.1.6 If the illicit discharge is a repeat violation of this policy based on  
previous investigations and abatement actions.
- 3.3 If Highway District staff determine, based on their review, that an illicit discharge exists  
within the Highway District's highway system, Highway District staff shall take the  
following steps:
  - 3.3.1 If the illicit discharge presents an immediate hazard to the public, the Highway  
District shall immediately:
    - 3.3.1.1 Mitigate to the extent possible the illicit discharge by removing,  
protecting, containing, and/or diverting the illicit discharge.
    - 3.3.1.2 Notify the appropriate agencies which may include, but not limited to  
Southwest District Health, the Fire District or Department within  
which the illicit discharge occurred or is occurring, Idaho Department  
of Environmental Quality, and Environmental Protection Agency.
  - 3.3.2 Determine the responsible party owning, causing, or in control of the illicit  
discharge. If the responsible party appears to be the adjoining property owner, or  
if a determination of who the responsible party is cannot otherwise be made,  
notice to the adjoining property owner as shown on the records of the Canyon  
County Assessor shall be made.
  - 3.3.3 Within thirty (30) days of the Highway District determining a illicit discharge is  
occurring, provide written notice to the responsible party to discontinue the illicit  
discharge and remediate any residual of the illicit discharge within the MS4  
within ten (10) days using the "Notice of Illicit Discharge" included herein as  
Exhibit "A", a true and correct copy of which is attached to this resolution and by  
this reference incorporated herein as if set for at length by:
    - 3.3.3.1 Certified Mail – Return Receipt and First Class Mail.
    - 3.3.3.2 In addition to the mailing requirements under 3.3.3.1, notice may be  
left at the responsible party's place of residence or business.
    - 3.3.3.3 If the responsible party cannot be determined, notice shall be posted at  
the location of the illicit discharge and as provided in section 3.3.2 of  
this Policy.
  - 3.3.4 If the responsible party seeks additional time to discontinue and remediate the  
illicit discharge up to an additional thirty (30) days, then:
    - 3.3.4.1 A signed, written request shall be made to the Highway District by the  
responsible party within three (3) business days of the service of the

“Notice of Illicit Discharge”, which shall include acknowledgment of responsibility for the illicit discharge, the reason(s) for the request and a specific date for removal of the illicit discharge and the reasonable efforts made to remove the illicit discharge.

- 3.3.4.2 A request for additional time to remove an illicit discharge is subject to approval or denial by the Director of the Highway District in the exercise of the Highway District’s discretion based upon public health and safety, the present need and convenience of use of the subject highway or public right-of-way, and based upon a showing of reasonable efforts being made to remove the illicit discharge and upon a showing of an ability to timely complete the removal of the illicit discharge as requested.
- 3.3.4.3 If denied by the Highway District, no additional time beyond the initial ten (10) days shall be provided the responsible party to discontinue the illicit discharge and remediate any residual of the illicit discharge.
- 3.3.5 If the illicit discharge is not removed within fifteen (15) days following notice or other date approved by the Highway District as set forth in 3.3.4, District staff shall:
  - 3.3.5.1 Document daily through photographs and/or written statements the status of the unabated illicit discharge.
  - 3.3.5.2 In the event the illicit discharge can be abated from within the limits of the Highway, the Highway District staff shall then abate and remediate the illicit discharge within the limits of the Highway at the expense of the responsible party controlling the illicit discharge including the costs and expenses of the Highway District, seek reimbursement from the responsible party controlling the illicit discharge, and in addition a sum of up to one hundred fifty dollars (\$150) for each day the encroachment remains after the notice was complete. Highway District staff shall document any and all District staff time and expenses related to the abatement and remediation of the illicit discharge.
  - 3.3.5.3 In the event the illicit discharge cannot be abated from within the limits of the Highway, the Highway District staff shall file with the Secretary an *Application for Permission to Pursue Legal Process to Abate the Illicit Discharge as an Encroachment and/or a Nuisance* to the Board of Commissioners which shall then be set for hearing before the Board of Commissioners by the Secretary, allowing sufficient time for notice, and the Secretary shall issue and serve upon the person controlling the illicit discharge by certified mail at least seven (7) days prior to the date set for the hearing, a written *Notice to Show Cause Before the Board of Commissioners Why the Highway District should*

*not pursue Legal Process to Abate the Illicit Discharge as an Encroachment and/or a Nuisance.*

3.3.6 If the responsible party of an illicit discharge cannot be determined, then the Highway District Staff shall:

3.3.6.1 In the event the illicit discharge can be abated from within the limits of the Highway, the Highway District staff shall then abate and remediate the illicit discharge within the limits of the Highway, and complete the documentation set forth in 3.3.5.1 and 3.3.5.2 should the responsible party be determined after removal and the District seek reimbursement.

3.3.6.2 In the event the illicit discharge cannot be abated from within the limits of the Highway, the Highway District staff shall notify the Idaho Department of Environmental Quality and Environmental Protection Agency of the illicit discharge and request abatement, remediation, and/or enforcement.

3.3.7 If Highway District Staff determines, as part of the investigation set forth in Section 3.2.1, that the illicit discharge and corresponding abatement procedures have previously occurred two (2) or more times, then:

3.3.7.1 The Highway District staff shall follow the notification and abatement procedures set forth in Section 3.3.1 through 3.3.3, and

3.3.7.2 The Highway District staff shall follow the notification and abatement procedures set forth in Section 3.3.5.3 to seek abatement of the illicit discharge and legal remedies to prevent further illicit discharges by the responsible party, and

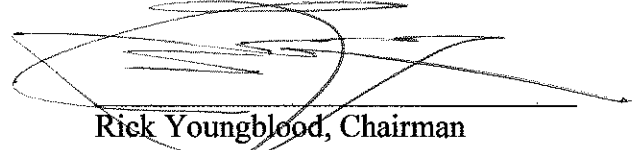
3.3.7.3 The Highway District staff shall notify the Idaho Department of Environmental Quality and Environmental Protection Agency of the recurrent illicit discharge and request abatement, remediation, and/or enforcement.

**Section 4.** All resolutions, orders or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

**Section 5.** The Canyon Highway District No. 4 Commissioners hereby declare that any section, paragraph, sentence or word of this Resolution as adopted and amended herein be declared for any reason to be invalid it is the intent of the Canyon Highway District No. 4 Commissioners that it would have passed all other portions of this Resolution independent of the elimination here from of any portion as may be declared invalid.

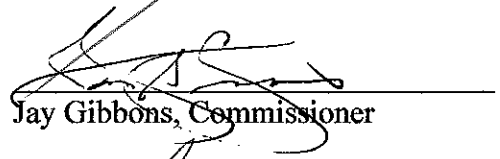
**Section 6.** The District Secretary is directed to file this Resolution forthwith in the official records of this Highway District, and the same shall be in full force and effect commencing the date of passage.

PASSED By the Commissioners of the Canyon Highway District No. 4 Canyon County, State of Idaho this 9<sup>th</sup> day of October, 2012.



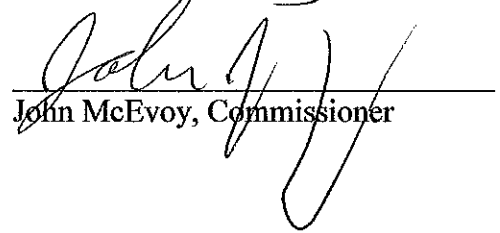
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Rick Youngblood, Chairman



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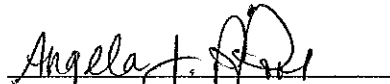
Jay Gibbons, Commissioner



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John McEvoy, Commissioner

Attest:



\_\_\_\_\_

Angela P'Robl, Secretary



**Exhibit "A"**

**NOTICE OF ENCROACHMENT BY ILLICIT DISCHARGE  
WITHIN CANYON HIGHWAY DISTRICT NO. 4 HIGHWAY SYSTEM**

**TO:** \_\_\_\_\_

**RE: Illicit Discharge on \_\_\_\_\_ [Road or Right-of-Way Name], Canyon County, Idaho**

**PLEASE TAKE NOTICE THAT:**

\_\_\_\_\_ [Road or Right-of-Way Name] is within the highway system, jurisdiction, ownership and control of Canyon Highway District No. 4; and

I.C. § 40-1310 (8) provides: *The highway district board of commissioners shall have the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to establish design standards, establish use standards, pass resolutions and establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way;* and

Canyon Highway District Illicit Discharge Policy (Res. 12-10-\_\_\_) provides: *Illicit discharges to the Highway District's highway system are hereby prohibited. An illicit discharge means any discharge to the municipal separate storm sewer system of non-stormwater, including discharges that is not entirely composed of storm water, except as provided for therein.*

You are hereby given notice that you are the responsible party owning, causing, or in control of the illicit discharge upon the highway and municipal separate storm sewer system of the Canyon Highway District No. 4 in the following regard:

*[Describe the location and nature of the illicit discharge]*

*[Describe any remediation required after abatement of the illicit discharge]*

You are hereby given notice, pursuant to Canyon Highway District No. 4 Resolution 12-10-\_\_\_, to abate and remediate the illicit discharge within ten (10) days of the date of this notice which is the date of its posting and service.

You are hereby specifically advised that in the event the illicit discharge is not abated and remediated within said 10 days, the person who caused owns or controls the illicit discharge shall forfeit ONE HUNDRED FIFTY DOLLARS (\$150) for each day the illicit discharge continues unabated and not remediated;

You are hereby specifically advised that in the event you deny the illicit discharge or the person who owns, controls, or caused the illicit discharge does not abate and remediate the illicit discharge within said ten (10) days, Canyon Highway District No. 4 shall commence in 3rd Judicial District for the State of Idaho, County of Canyon, an action to abate the illicit discharge as an encroachment and/or a nuisance, which will include seeking the sum of ONE HUNDRED FIFTY DOLLARS (\$150) per day for each day the nuisance remains after this notice, as well as costs of legal action; and

You are further advised if the illicit discharge is not denied but is not removed within fifteen (15) days of the date of this notice, Canyon Highway District No. 4 may remove it at the expense of the responsible party owning, causing, or in control of the illicit discharge and recover costs and expenses, as well as the sum of ONE HUNDRED FIFTY DOLLARS (\$150) for each day the illicit discharge remains after notice is complete.

You are further advised that if you wish to seek additional time to abate and remediate the illicit discharge, up to a maximum of thirty (30) days, then **a signed, written request shall be made to the Highway District within three (3) business days of the service of this Notice**, which shall include acknowledgment of responsibility for the illicit discharge, the reason(s) for the request and a specific date for abatement and remediation of the illicit discharge and showing of an ability to timely complete the abatement and remediation of the illicit discharge as requested. A request for additional time to abate and remediate of the illicit discharge is subject to approval or denial by the Director of the Highway District in the exercise of the Highway District discretion based upon public health and safety, the present need and convenience of use of the subject highway or public right-of-way, and based upon a showing of reasonable efforts being made to remove the illicit discharge and a showing of an ability to timely complete the abatement and remediation of the illicit discharge as requested. If denied, no additional time beyond the initial ten (10) days shall be provided for abatement and remediation of the illicit discharge.

Posted and served the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Director, Canyon Highway District No. 4