

**AN ORDINANCE TO
ENACT A NEWARTICLE II
TO CHAPTER 9 OF THE
AUGUSTA COUNTY CODE**

WHEREAS, The Board of Supervisors of the County of Augusta finds that the uncontrolled discharge of pollutants to its Municipal Separate Storm Sewer System (MS4) has an adverse impact on the water quality of receiving waters; and

WHEREAS, Amendments to the Federal Water Pollution Control Act, commonly known as the Clean Water Act, established the National Pollutant Discharge Elimination System (NPDES) Program, which requires permits for discharges from regulated municipal separate storm sewer systems into the waters of the United States; and

WHEREAS, The United States Environmental Protection Agency (EPA) has promulgated regulations implementing the NPDES program, and the EPA has authorized the Commonwealth of Virginia to issue NPDES permits under the Virginia Pollutant Discharge and Elimination System (VPDES) permit system; and

WHEREAS, The VPDES regulations for storm water discharges require the County of Augusta to control the contribution of pollutants to its regulated MS4 by prohibiting illicit discharges, and to inspect, monitor, and enforce the prohibitions of illicit discharges to its regulated MS4;

NOW THEREFORE, be it resolved that a new Article II Illicit Discharge Detection and Elimination is hereby adopted to read as follows:

CHAPTER 9. ENVIRONMENT

ARTICLE II. Illicit Discharge Detection and Elimination

§ 9-30. Purpose and Authority

1. The purpose of this article is to promote the general health, safety, and welfare of the citizens of the County by protecting property and state waters through the prohibition of illicit discharges of non-storm water within the County's regulated MS4 area into the County's MS4, subject to certain exceptions.

2. This ordinance is adopted pursuant to Article 2.3 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

§ 9-31. Applicability.

This ordinance is applicable to the MS4 designated areas and contributing watersheds consisting of approximately 20,600 acres and highlighted in red on a map entitled "Illicit Discharge Detection and Elimination Ordinance" which is declared part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

§ 9-32. Definitions.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this Article.

Best Management Practices (BMPs). A schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Director. The Director of the Community Development Department of Augusta County. The term includes any person or persons designated to perform certain specific administrative functions by the Director of the Community Development Department.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge. Any direct or indirect non-storm water discharge to the storm sewer system, except as exempted in Section 9-33 C of this ordinance.

Municipal Separate Storm Sewer System (MS4). The County's municipal separate storm sewer system. The terms "municipal separate storm sewer" and "municipal separate storm sewer system" shall have the meanings set forth within 9VAC25-870-10

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm sewer system that is not composed entirely of storm water.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Storm Sewer System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWPPP). A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of

pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Virginia Stormwater Management Program (VSMP). A program approved by the State after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the Storm Water Management Act (§62.1-44.15:24 et seq.) and associated regulations.

Virginia Pollutant Discharge Elimination System (VPDES) permit. A document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

§ 9-33. Prohibited Discharges.

A. It shall be unlawful and a violation of this article to cause or allow any illicit discharge to enter, or have the potential of entering, the MS4.

B. Illicit discharges include, but are not limited to:

(1) Discharging, or allowing any discharge of sewage, industrial wastes, yard wastes, or other wastes, into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots, the ground, or any other areas draining to the storm sewer system.

(2) Connecting, or allowing any connection of any sanitary sewer to the storm sewer system.

(3) Connecting, or allowing any connection to the storm sewer system, without a valid VSMP, VPDES, or NPDES permit, any structure that conveys any liquid other than storm water or discharges listed in subsection (c), including, but not limited to, pipes, drains, sanitary sewer lines, washing machine drains, or floor drains.

(5) Throwing, placing, or depositing, or causing to be thrown, placed, or deposited in the storm sewer system anything that impedes or interferes with the free flow of storm water therein, or adversely affects water quality.

C. The following non-storm water discharges are allowable under this article:

(1) Discharges or flows covered by a separate individual or general VPDES or VSMP permit for non-storm water discharges;

(2) Individual non-storm water discharges or flows that have been identified in writing by the Virginia Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;

- (3) Non-storm water discharges or flows as listed in the following categories;
- a. Water line flushing;
 - b. Landscape irrigation, irrigation water, lawn and garden watering;
 - c. Diverted stream flows or rising groundwater;
 - d. Uncontaminated ground water infiltration;
 - e. Uncontaminated pumped groundwater;
 - f. Discharges from potable water sources;
 - g. Foundation drains;
 - h. Air conditioning condensate;
 - i. Springs;
 - j. Water from crawl space pumps;
 - k. Footing drains;
 - l. Individual residential car washing;
 - m. Flows from riparian habitats and wetlands;
 - n. Dechlorinated swimming pool discharges;
 - o. Street wash water; and
 - p. Firefighting activities.
 - q. Dye testing, following notification to the County's Community Development Department

D. In the event any of the activities listed in subparagraph C (3) of this section are found to be a significant contributor of pollutants to be discharged into the MS4, the Director shall so notify the person performing such activities, and shall order that such activities be ceased or be conducted in such a manner as to avoid the discharge of pollutants into the MS4. The failure to comply with any such order shall constitute a violation of the provisions of this article.

§ 9-34. Inspections and Monitoring.

A. The Director shall have the authority to carry out all inspections and monitoring procedures necessary to determine compliance and/or noncompliance with this article, and to enforce the requirements of this article.

B. The Director shall have the authority, at his/her sole discretion, to require a SWPPP from any person whose property discharges, or has the potential to discharge, to the MS4.

C. The Director and/or his/her duly authorized employees, agents, or representatives of the county, bearing proper credentials and identification, shall be authorized to enter any public property or to request entry into private property at any reasonable time for the purpose of enforcing this article, including, but not limited to taking samples of discharges, inspecting monitoring equipment, inspecting and copying documents relevant to the enforcement of this article, and such other items as may be deemed necessary for the enforcement of this article.

If the owner or person in charge of the property refuses to allow the Director or his/her designees to enter in accordance with this subsection, then the Director may present sworn testimony to a magistrate or court of competent jurisdiction and request the issuance of an inspection warrant to enter the property for the purpose of making such inspections and investigations. The Director shall make a reasonable effort to obtain consent from the owner or person in charge of the property prior to seeking the issuance of an inspection warrant under this section.

D. The Director shall have the authority to require any person responsible for a discharge to the MS4 to document that such discharge meets and is in compliance with the requirements of this article. This includes, but is not limited to, the ability of the Director to require such person to provide monitoring reports, test results, and such other matters as may be deemed necessary to show that such discharge is in compliance with the requirements of this article. The cost of any required documentation shall be the responsibility of the person responsible for the discharge.

E. The failure of any person to comply with any of the requirements of this section shall constitute a violation of this article.

§ 9-35. Enforcement and Penalties.

A. Any person who violates any of the provisions of this article shall be guilty of a class I misdemeanor and, upon conviction, is subject to punishment by a fine of not more than two thousand five hundred dollars (\$2,500.00) per violation per day and confinement in jail for not more than twelve (12) months, either or both.

B. Each day during which a violation of this article occurs or continues shall be deemed a separate and distinct violation of this article.

C. Any person who commits any of the acts prohibited by this article or violates any of the provisions of this article shall be liable to the county for all costs of testing, containment, cleanup, abatement, removal, disposal, monitoring, and any other related costs or expenses that the County may incur in connection with the enforcement of this article and/or the prohibition and/or correction of a violation of this article.

D. The Director may bring legal action to enjoin a violation of this article and the existence of any other remedy shall be no defense to any such action.

E. In addition to any of the remedies set forth above, the Director may seek to impose, or have imposed by the appropriate authority, any of the remedies provided for by § 62.1-44.15:48, Code of Virginia (1950), as amended, which are incorporated herein by reference.

F. In any court action that may result from enforcement of this article, a judge hearing the case may direct the person responsible for the violation or the property owner to correct the violation and each day that the violation continues shall constitute a separate violation of this article.

G. Any person who knowingly makes any false statements, representations, or certifications in any record, report, or other document, either filed or requested pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Director under this article in monitoring discharges, shall be guilty of a violation of this article.

H. The remedies set forth in this section shall be cumulative, not exclusive, and it shall be no defense to any action that one (1) or more of the remedies set forth in this section has been sought or granted.

§ 9-36. Civil charges.

With the consent of any person who has violated any provision of this article, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$1,000. Civil charges shall be in lieu of any appropriate civil penalty. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damages in the county.