

COUNTY ORDINANCE NO. 22-09

A BILL ENTITLED

AN ACT CONCERNING Illicit Discharge Detection and Elimination of Pollutants in the Municipal Separate Storm Sewer System (MS4) in Queen Anne's County;

FOR THE PURPOSE of regulating non-stormwater discharges to all storm sewer system in Queen Anne's County, establishing methods for controlling the introduction of pollutants unto the MS4; complying with the requirements of National Pollutant Discharge Elimination Systems (NPDES) permit processes; defining certain terms; prohibiting the discharge of pollutants; prohibiting illicit connections; providing exemptions for discharge and connection constraints; providing for compliance monitoring and notification of spills; providing for violations, penalties, enforcement and approvals; providing for enforcement measure after appeal; providing for recovery of costs of abatement; providing that violations of this Chapter are deemed public nuisances; and generally dealing with and regulating illicit discharges in Queen Anne's County.

BY ADDING a new Chapter 14:6 to the Code of Public Local Law as Queen Anne's County.

SECTION I

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND that a new Chapter 14:6 be and is hereby ADDED to the Code of Public Local Laws and Queen Anne's County, Maryland to read as follows:

**Chapter 14:6**

**Illicit Discharge Detection and Elimination**

**ARTICLE 1**

**Definitions and General Provisions**

**§ 14:6-1. Purpose.**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of Queen Anne's County through the regulation of non-stormwater discharges to all storm sewer systems in the County to the maximum extent practicable as required by federal and state law.

This chapter establishes methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- B. To prohibit illicit connections and discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

## **§ 14:6-2. Definitions.**

In general. In this chapter, the following words have the meanings indicated.

**BEST MANAGEMENT PRACTICES (BMPs)** — A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities. The various types of BMPs are comprehensively included in the 2000 Maryland Stormwater Design Manual.

**CLEAN WATER ACT** — The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**CONSTRUCTION ACTIVITY** — Activities subject to NPDES construction permits as defined in 40 CFR 122.26(b)(15).

**COUNTY** – Queen Anne’s County, Maryland.

**DEPARTMENT** — The Queen Anne’s County Department of Public Works.

**FACILITY** – any NPDES “point source” or any other establishment or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

**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-stormwater discharge to the storm sewer system, except as exempted in § 14:7-4 of this chapter.

**ILLICIT CONNECTIONS** — An illicit connection is defined as either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm sewer system and any connections to the storm sewer system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm sewer system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**INDUSTRIAL ACTIVITY** — Activities subject to NPDES industrial stormwater permits as defined in 40 CFR 122.26(b)(14).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)** — The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm sewers) owned and operated by Queen Anne’s County, and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

**STORMWATER DISCHARGE PERMIT** — A permit issued by EPA [or by a state under

authority delegated pursuant to 33 U.S.C. § 1342(b)] that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable on an individual, group, or general areawide basis.

**NON-STORMWATER DISCHARGE** — Any discharge to the storm sewer system that is not composed entirely of stormwater.

**OPERATOR** – The person or persons with the responsibility of managing of any “facility or activity” subject to regulation under the NPDES.

**OPERATION** – The workflow, process, or function of any NPDES regulated activity.

**PERSON** — Includes: (A.) The federal government; (B.) The state; (C.) Any County, municipal corporation, or other political subdivision of the state, or any of their units; (D.) An individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind; (E.) Any partnership, firm, association, public or private corporation, or any of their affiliates; or (F.) Any other entity.

**POLLUTANT** — Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons and other automotive fluids; cooking grease; detergents (biodegradable or otherwise); nonhazardous liquid and solid wastes; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations that may cause or contribute to pollution, floatables, pesticides, herbicides, and fertilizers; hazardous substances 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.

**SITE** — Any tract, lot, or parcel of land, or combination of tracts, lots, parcels of land that are in one ownership, or contiguous and in diverse ownership, where development has taken place, or where development will be performed.

**STATE** – The State of Maryland.

**STORM SEWER SYSTEM** — Publicly or privately-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm sewers, pumping facilities, retention and detention basins, natural and human-made or -altered drainage channels, reservoirs, and other drainage structures.

**STORMWATER** — Water that originates from a precipitation event.

**WASTEWATER** — The spent water of a residence, commercial business, industrial plant, institution, or community.

**WATERCOURSE** —

- A. Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash.
- B. Includes any adjacent area that is subject to inundation by reason of overflow of floodwater.

**WATERS OF THE STATE** — Include:

- A. Both surface and underground waters within the boundaries of the state subject to its jurisdiction;
- B. That portion of the Atlantic Ocean within the boundaries of the state;
- C. All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the state, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- D. The floodplain of free-flowing waters determined by MDE on the basis of the one-hundred-year flood frequency

**§ 14:6-3. Applicability.**

This chapter shall apply to all water entering the storm sewer system generated on any developed and undeveloped lands, except as exempted in § 14:6-4 of this chapter.

**§ 14-6-4. Discharge and Connection Constraints.**

- A. Illegal Discharges.
  - (1) No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the County MS4 or watercourses any pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards, other than stormwater.
- B. Illicit Connections.
  - (1) The construction, use, maintenance, or continued existence of illicit connections to the storm sewer system is prohibited.
  - (2) 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, are prohibited.
  - (3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
  - (4) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved on-site wastewater management system, upon approval of the Health Department, or the sanitary sewer system, upon approval of the County, or Incorporated Town, having jurisdiction.
  - (5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as a storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm drain system, sanitary sewer system or other discharge point be identified. Results of these

investigations are to be documented and provided to the Department.

C. Exemptions.

- (1) The following discharges are exempt from discharge and connection constraints provision of this chapter:
  - (a) Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air-conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, and dechlorinated swimming pool discharges.
  - (b) Discharges or flow from the fire-fighting, and other discharges specified in writing by the Department as being necessary to protect public health and safety.
- (2) This chapter shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm sewer system.
- (3) If any discharge contained within the above exemptions causes an adverse impact, as determined by the Department, then the discharge shall not be considered exempt from this chapter.

**§ 14:6-5. Responsibility for Administration.**

The Department shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Department may be delegated in writing by the Director of the Department, or his or her duly authorized agent to persons or entities acting in the beneficial interest of or in the employ of the Department.

**§ 14:6-6. Compatibility with other Regulations.**

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall govern.

**§ 14:6-7. Limitations on Liability.**

The standards set forth herein are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

#### **§ 14:6-8. Watercourse protection.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

#### **§ 14:6-9. Industrial and Construction Activity Discharges.**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Department prior to the allowing of discharges to the MS4.

#### **§ 14:6-10. Compliance Monitoring.**

##### **A. Right of Entry; Inspection and Sampling.**

- (1) The Department shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter, subject to the following: Prior to entering the property, the Department will obtain written permission from the property owner; or the Department will obtain consent in conformance with Subsection 2.
  - (a) If a discharger has security measures in force which require proper identification and clearance before entry into its facility, the discharger shall make the necessary arrangements to allow access to representatives of the Department.
  - (b) Facility operators shall allow the Department ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
  - (c) The Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Department to conduct monitoring and/or sampling of the facility's stormwater discharge.
  - (d) The Department has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained in a safe and proper operating condition by the discharger at the discharger's expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
  - (e) Any temporary or permanent obstruction that prohibits safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Department and shall not be replaced. The costs of clearing such

access shall be incurred by the operator.

- (f) Unreasonable delays in allowing the Department access to a permitted facility are a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.
- (2) Search Warrants.
- (a) If the Department has been refused access to any part of the facility from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Department may seek issuance of a search warrant from any court of competent jurisdiction.

#### **§ 14:6-11. Notification of Spills.**

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which is resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.
- B. Failure to provide notification of a release as described above is a violation of this chapter.

#### **§ 14:6-12. Violations, Penalties, and Enforcement.**

- A. Violations.
  - (1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated or continues to violate the provisions of this chapter may be subject to the enforcement actions outlined in this section or may be restrained by injunction

or otherwise abated in a manner provided by law.

- (2) In the event the violation constitutes an immediate danger to public health or public safety, the Department is authorized to enter upon the subject private property, without giving prior notice, to take any measures necessary to abate the violation and/or restore the property.

B. Warning Notice.

- (1) When the Department finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, the Department may serve upon that person a written warning notice, specifying the violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease.
- (2) Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the Department to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

C. Notice of Violation.

- (1) Whenever the Department finds that a person has violated a constraint or failed to meet a requirement of this chapter, the Department may order compliance by written notice of violation to the responsible person.
- (2) The notice of violation shall contain:
  - (a) The name and address of the alleged violator;
  - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring, or has occurred;
  - (c) A statement specifying the nature of the violation;
  - (d) A description of the remedial measures necessary to restore compliance with this chapter and a time schedule for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (f) A statement that the determination of violation may be appealed to the Circuit Court of Queen Anne's County by filing a written notice of appeal within five business days of service of the notice of violation; and
  - (g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (3) Such notice may require, without limitation:
  - (a) The performance of monitoring, analyses, and reporting;

- (b) The elimination of illicit connections and/or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

D. Compensatory Action.

- (1) In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Department may impose upon a violator alternative compensatory actions, such as storm sewer stenciling, attendance at compliance workshops, creek cleanup, etc.

E. Suspension of MS4 Access.

- (1) When the Department finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Department may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
  - (a) Immediately comply with all ordinance requirements; and
  - (b) Take appropriate preventive action as needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- (2) Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Department may take steps deemed necessary to prevent or minimize harm to the MS4 or waters of the state, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Department may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Department that the violation has been resolved, unless further termination proceedings are initiated against the discharger under this chapter. A person who is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Department within 30 days of receipt of the emergency order. Issuance of an emergency cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

F. Suspension Due to Illicit Discharges in Emergency Situations.

- (1) The Department may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the Department may take necessary steps to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

G. Suspension Due to the Detection of Illicit Discharge.

- (1) Any person discharging to the MS4 in violation of this chapter may have his/her MS4 access terminated if such termination would abate or reduce an illicit discharge. The Department will notify a violator of the proposed termination of its MS4 access. The violator may petition the Department for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Department.

H. Criminal Prosecution.

- (1) Any person who has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$1,000 per violation per day and/or imprisonment for a period of time not to exceed 60 days, or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

**§ 14:6-13. Appeal of Notice of Violation.**

Any person aggrieved by the action of any official charged with the enforcement of this chapter, as the result of issuance of a written notice of violation, or an alleged failure to properly enforce the chapter in regard to a specific application, shall have the right to appeal the action to the Circuit Court of Queen Anne's County. The appeal must be filed in writing within five business days from the date of the notice of violation or determination to the applicant and shall clearly state the grounds on which the appeal is based.

**§ 14:6-14. Enforcement Measures After Appeal.**

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 10 business days of the decision of the Circuit Court of Queen Anne's County, upholding the decision of the Department, then representatives of the Department shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**§ 14:6-15. Cost of Abatement.**

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this chapter shall become liable to Queen Anne's County by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 18% annum shall be assessed on the balance beginning on the 30th day after an invoice for the cost of abatement, including administrative costs, has been presented to the owner of the affected property.

**§ 14:6-16. Violations Deemed Public Nuisance.**

In addition to the enforcement processes and penalties, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**§ 14:6-17. Remedies not exclusive; recovery of costs.**

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Department to seek cumulative remedies. The Department may recover all attorneys' fees court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

SECTION II

BE IT FURTHER ENACTED that this Ordinance shall take effect on the forty-sixth (46th) day following its adoption.

INTRODUCED BY: Commissioner Corchiarino

DATE: April 12, 2022

PUBLIC HEARING HELD: May 10<sup>th</sup> @5:50

VOTE: Yea 4 Absent 1

DATE OF ADOPTION: May 24, 2022

EFFECTIVE DATE: July 9, 2022