

COMMONWEALTH OF KENTUCKY
SHELBY COUNTY FISCAL COURT
ORDINANCE NUMBER ~~121710~~ SERIES 2019

**AN ORDINANCE ADOPTING A STORM WATER QUALITY MANAGEMENT PROGRAM
UNDER THE REQUIREMENTS OF THE KENTUCKY POLLUTANT DISCHARGE
ELIMINATION SYSTEM (KPDES) MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)**

WHEREAS, Shelby County now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES) Municipal Separate Storm Sewer System (MS4), and

WHEREAS, the Shelby County has a stormwater quality permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems, and

WHEREAS, land development projects and other land use conversions, and their associated changes to land cover, permanently alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, which in turn increase flooding, stream channel erosion, and sediment transport and deposition; and

WHEREAS, land development projects and other land use conversions also contribute to increased non-point source pollution and degradation of receiving waters; and

NOW, THEREFORE BE IT ORDAINED by Shelby County, Kentucky, by and through the Shelby County Fiscal Court, as follows

SECTION 1. PURPOSE AND OBJECTIVES

- 1) Purpose. The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the County through the regulation of non-stormwater discharges to the storm drainage system 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) and the Kentucky Pollutant Discharge Elimination System (KPDES) permit process.
- 2) Applicability
 - a) This Chapter applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.
 - b) This Chapter shall apply to all persons discharging stormwater and/or non-stormwater discharges from any premises into the storm drainage system of Shelby County.
- 3) Objectives. The objectives of this Chapter are:
 - (1) To regulate the contribution of pollutants to the municipal separate storm sewer system by any person.
 - (2) To prohibit illicit connections and illegal discharges to the municipal separate storm sewer system.
 - (3) To prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system.
 - (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Chapter.

SECTION 2. JURISDICTION

- 1) The Stormwater Illicit Discharge Elimination Ordinance shall govern all unincorporated properties within the jurisdictional boundaries of Shelby County, Kentucky and all incorporated area within the boundaries of Shelby County where said incorporated areas have passed a resolution supporting the enforcement of this ordinance by county officials within the incorporated areas.
- 2) Adherence to this ordinance in no way circumvents or eliminates the requirements of other local or state or federal regulations. Permits may be required by the Kentucky Division of Water and/or the United States Army Corps of Engineers.

SECTION 3. DEFINITIONS

For the purposes of this Chapter, the terms listed below are defined as follows:

“BEST MANAGEMENT PRACTICES (BMPS).” Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater 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.

“ENFORCEMENT AUTHORITY.” The person(s) or federal, state or local agencies authorized to administer and enforce this Chapter.

“CONSTRUCTION ACTIVITY.” Activities subject to NPDES or KPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavation and demolition.

“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, or deem by the United States Environmental Protection Agency.

“KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM.” aka KPDES, Stormwater Discharge Permit means a permit issued by Commonwealth of Kentucky under authority delegated pursuant 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.

“ILLEGAL DISCHARGE.” Any direct or indirect non-stormwater discharge to the Municipal Separate Storm Drain System, except as exempted in § 32.013.

“ILLICIT CONNECTIONS.” An illicit connection is defined as either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains

and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the enforcement authority; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an enforcement authority.

“INDUSTRIAL ACTIVITY.” Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

“MUNICIPAL SEPARATE STORM SEWER SYSTEM” or “MS4.” Conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

“NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM.” aka NPDES, Stormwater Discharge Permit means 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-STORMWATER DISCHARGE.” Any discharge to the storm drain system that is not composed entirely of stormwater.

“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 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 as defined by the United States Environmental Protection Agency or the Kentucky Division of Water.

“PREMISES.” Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips located within the Municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

“STORM DRAINAGE SYSTEM.” aka “Stormwater Drainage” aka “Storm System” Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, rights-of way, stormwater or drainage easements, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, ponds, reservoirs, and other drainage structures.

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

“STORMWATER POLLUTION PREVENTION PLAN.” aka 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 stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

“WASTEWATER.” Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

“WATERCOURSE.” A stream of water; river, brook, and the like or a channel for water, like a canal or streambed.

SECTION 4. GENERAL REGULATIONS

- 1) 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 ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance 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 control.
- 2) Responsibility for administration. The County Engineer or designee of the county is the enforcement authority who shall administer, implement, and enforce the provisions of this Chapter.
- 3) Severability. The provisions of this Chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.
- 4) Ultimate responsibility. The standards set forth herein and promulgated pursuant to this Chapter are minimum standards; therefore this Chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 5. DISCHARGE PROHIBITIONS

- 1) Prohibition of illegal discharges.
 - a) No person shall discharge or cause to be discharged into the municipal separate storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
 - b) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
 - c) 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.
- 2) Exempt / Allowable discharges.
 - a) The commencement, conduct or continuance of any illegal discharge to the municipal separate storm sewer system is prohibited except as described as follows:
 - (1) The following Discharges are exempt from discharge prohibitions established by this Chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), and fire fighting activities.

- (2) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a written notification to the Enforcement Authority prior to the time of the test.
- (4) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES or KPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, 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 drain system.

SECTION 6. SUSPENSION OF MS4 ACCESS

- 1) Suspension due to illicit discharges in emergency situations. The Enforcement Authority 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 United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.
- 2) Suspension due to the detection of illicit discharge.
 - a) Any person discharging to the MS4 in violation of this Chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Enforcement Authority will notify a violator of the proposed termination of its MS4 access. The violator may petition the Enforcement Authority for a reconsideration and hearing.
 - b) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

SECTION 7. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES or KPDES 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 Enforcement Authority prior to the allowing of discharges to the MS4. Discharges outside of or in addition to the authorities given by a NPDES or KPDES permit are considered to be illicit discharges.

SECTION 8. NOTIFICATION OF SPILLS

- 1) 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 are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- 2) 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.
 - a) In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the twenty-four (24) hours.
 - b) Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the enforcement authority within three (3) business days of the phone notice.

- c) 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 (3) years.
- d) Said person shall also take immediate steps to ensure no recurrence of the discharge or spill. Failure to provide notification of a release as provided above is a violation of this Chapter.

SECTION 9. RIGHT OF ENTRY

- 1) Shelby County or its designated agent may enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports required by this subchapter.
- 2) Access and Inspection of properties and facilities. The enforcement authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this Chapter.
 - a) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the enforcement authority;
 - b) The owner or operator shall allow the enforcement authority ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of records that must be kept under the conditions of an NPDES or KPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
 - c) The enforcement authority shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the enforcement authority to conduct monitoring and/or sampling of flow discharges.
 - d) The enforcement authority has the right to require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Enforcement Authority. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - e) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the enforcement authority and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
 - f) Unreasonable delay in allowing the enforcement authority access to a facility is a violation of this Chapter.
 - g) If the enforcement authority has been refused access to any part of the premises from which stormwater is discharged, and the enforcement authority is able to demonstrate probable cause to believe that there may be a violation of this ordinance, 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 ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the enforcement authority may seek issuance of a search warrant from a court of competent jurisdiction.

SECITON 10. ENFORCEMENT

1) Violations.

- a) 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.
- b) In the event the violation constitutes an immediate danger to public health or public safety, the enforcement authority is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The enforcement authority is authorized to seek costs of the abatement as outlined in this chapter.
- c) Violation deemed a public nuisance. In addition to the enforcement processes and penalties provided, 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.

2) Notice of Deficiency (NOD).

Whenever the enforcement authority finds that a person(s) may be violating a prohibition or failed to meet a requirement of this Chapter, the enforcement authority may provide a written Notice of Deficiency with the intent of bringing the discharge into compliance through education and outreach regarding the related requirements and ordinances. This process is not required if other enforcement measures are deemed to be appropriate by the County.

3) Notice of Violation (NOV).

- a) Whenever the enforcement authority finds that a person(s) has violated a prohibition or failed to meet a requirement of this Chapter, the enforcement authority may order compliance by a written notice of violation.
- b) The notice of violation shall contain the following:
 - i) The date(s) on which the violation is believed to have been committed;
 - ii) A brief description of the violation;
 - iii) The section of this Chapter alleged to have been violated.
- c) Such notice may require without limitation:
 - i) The performance of monitoring, analyses, and reporting;
 - ii) The elimination of illicit connections or discharges;
 - iii) That violating discharges, practices, or operations shall cease and desist;
 - iv) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
 - v) Payment of a fee to cover administrative and remediation costs; and
 - vi) The implementation of source control or treatment BMPs.
- d) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

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- 4) Stop Work Orders.
 - a) Persons receiving a notice of violation may be required to halt all construction activities. This "stop work order" will be in effect until the county confirms that the development activity is in compliance and the violation has been satisfactorily addressed.
 - b) Failure to address a notice of violation in a timely manner can result in other penalties in accordance with the enforcement measures authorized in this Chapter.
- 5) Civil Penalties
 - a) In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Chapter may be issued a fine of up to five hundred dollars (\$500.00) per occurrence per day. Such fines may be issued as a separate offense for each day during which the violation occurs or continues.
 - b) In the event the alleged violator fails to make the remedial measures set forth in the notice of violation or otherwise fails to satisfactorily address the violations described therein within fourteen (14) days, or such greater period as deemed appropriate and communicated in writing, the County may impose a penalty not to exceed one thousand dollars (\$1,000) (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the enforcement action. In addition, the enforcement authority may recover all attorney's fees, court costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses.
- 6) Restoration of Lands.

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the county may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- 7) Holds On Other Permits.

Certificate of occupancy, driveway permits or other construction related permits may be withheld until corrections to all of the stormwater management practices have been made and accepted by the Shelby County.
- 8) Cost of Abatement of Violation.

Within thirty (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 appeal objecting to the amount of the assessment within fourteen (14) days of such notice. If the amount due is not paid within thirty (30) days after receipt of notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the costs shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.
- 9) Injunctive Relief

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. If a person has violated or continues to violate the provisions of this Chapter, the enforcement authority may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- 10) Appeal of Enforcement
 - a) Any person receiving an enforcement action may appeal the determination of the Enforcement authority. The notice of appeal must be received within fourteen (14) days from the date of the enforcement action. Hearing on the appeal before the appropriate authority or his/her designee shall take place within forty-five (45) days from the date of receipt of the notice of appeal.

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- b) The hearing provided for in this section shall be presided over by the Judge Executive or his/her designee. Each party at the hearing shall have the right to present evidence and cross examine any testimonial evidence presented by an opposing party.
 - c) The decision of the appropriate authority may be further appealed to a court of competent jurisdiction, whose decision will be final.
- 11) Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the enforcement action, or, in the event of an appeal, within fourteen (14) days of the decision of the appropriate authority or his/her designee upholding the decision of the Enforcement Authority, then representatives of the enforcement authority may enter upon the subject private property and are authorized to take measures necessary to abate the violation and/or restore the property.

This Ordinance shall become effective upon publication and may be published in summary.

INTRODUCED, SECONDED AND GIVEN A FIRST READING AND APPROVAL at a duly convened meeting of the Shelby County Fiscal Court held on December 3, 2019.

INTRODUCED, SECONDED AND GIVE A SECOND READING AND APPROVAL at a duly convened meeting of the Shelby County Fiscal Court held on December 17, 2019



Dan Ison, Shelby County Judge/Executive

ATTEST:



Sue Carole Perry, Shelby County Clerk

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COUNTY CLERK: SUE CAROLE PERRY
DEPUTY CLERK: ABBY DIETRICH
COUNTY: SHELBY COUNTY
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