

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON TUESDAY, APRIL 8, 2014

ORDINANCE 042214-13 ADOPTING A NEW CHAPTER OF THE ROANOKE COUNTY CODE – CHAPTER 24. ILLICIT DISCHARGE ORDINANCE

WHEREAS, The Board of Supervisors of Roanoke County 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 stormwater discharges require Roanoke County 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; and

WHEREAS, the Board finds that this ordinance satisfies these regulatory requirements effective July 1, 2014; and

WHEREAS, the illicit discharge provisions were previously found in the Stormwater Ordinance that was recently repealed, and that said provisions must be included in the Roanoke County Code; and

WHEREAS, the first reading of this ordinance was held on April 8, 2014, and the second reading and public hearing was held on April 22, 2014.

NOW THEREFORE BE IT ORDAINED by the Board of Supervisors of Roanoke County, Virginia, as follows:

1. That a new Chapter 24. "Illicit Discharge" be and hereby is adopted to read as set out below.
2. That the effective date of this ordinance is July 1, 2014.

SECTION 24-1

GENERAL PROVISIONS

Section 24-1.1 TITLE AND AUTHORITY

- A. This ordinance shall be known as the "Illicit Discharge Ordinance of the County of Roanoke, Virginia."
- B. This ordinance establishes the County's illicit discharge program that regulates non-stormwater discharges to its regulated MS4, consistent with state regulations promulgated pursuant to the law.
- C. The County of Roanoke hereby designates the Director of Community Development as the Administrator of the illicit discharge program.

Section 24-1.2 PURPOSE

The purpose of this ordinance 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-stormwater within the County's regulated MS4 area into the County's MS4, subject to certain exceptions.

Section 24-1.3 APPLICABILITY

- A. This ordinance is applicable to any non-stormwater discharge that enters, or has the potential of entering, the County's MS4, located within the County's regulated MS4 area.

Section 24-1.4 COMPATABILITY WITH OTHER REQUIREMENTS

This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance shall be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall apply.

Section 24-1.5 SEVERABILITY

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

SECTION 24-2

DEFINITIONS

The following words and terms as used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise:

“Administrator” means the position responsible for administering the illicit discharge program on behalf of the County of Roanoke. The Administrator shall be the Director of Community Development or his/her designee.

“Best Management Practice or BMP” means schedules of activities, prohibitions of practices, including both structural or non-structural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

“Clean Water Act or CWA” means the federal Clean Water Act (33 United States Code 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

“Control measure” means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

“County” means the County of Roanoke, Virginia.

“Department” means the Virginia Department of Environmental Quality (DEQ).

“Discharge” means to dispose, deposit, spill, pour, inject, dump, pump, leak, or place by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, pumped, leaked, or placed by any means.

“Illicit discharge” means any discharge to the County’s MS4 that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the MS4), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

“Municipal separate storm sewer” means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or “MS4,” including roads with drainage systems, municipal streets, catch basins, drop inlets, curbs, gutters, ditches, man-made channels, storm drainage pipes, or other drainage structures:

1. Owned or operated by Roanoke County;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works (POTW).

“Municipal separate storm sewer system” or **“MS4”** means all municipal separate storm sewers that are located within the portion of the County that is identified as “urbanized” by the U.S. Bureau of the Census in the latest Decennial Census.

“National Pollutant Discharge Elimination System” (NPDES) means the federal program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pre-treatment requirements under the Clean Water Act (CWA).

“Person” means any individual, firm, organization, partnership, association, organization or other entity, including governmental entities, or any combination thereof, or any agent or employee of any such entity.

“State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

“Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways, which may include rainfall runoff, snow melt runoff, and surface runoff and drainage.

“Virginia Pollutant Discharge Elimination System” (VPDES) means the program issued by the Commonwealth of Virginia for imposing and enforcing pre-treatment requirements pursuant to the Clean Water Act (CWA).

“Virginia Stormwater Management Program” (VSMP) means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities, which 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 this article, and evaluation consistent with the requirements of this article and associated regulations.

SECTION 24-3

PROHIBITED DISCHARGES

- A. It shall be unlawful and a violation of this ordinance to allow any discharge that is not composed entirely of stormwater, except as described in subsection C below, that enters, or has the potential of entering, the MS4.
- B. Illicit discharges include, but are not limited to:
 - 1. Discharging, or causing or allowing to be discharged, 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 causing or allowing connection of any sanitary sewer to the storm sewer system, including any sanitary sewer connected to the storm sewer as of the date of the adoption of this ordinance.
 - 3. Connecting, or causing 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 stormwater or discharges listed in subsection C, including, but not limited to, pipes, drains, sanitary sewer lines, washing machine drains, or floor drains.
 - 4. Prohibitions 2 and 3 listed in this subsection expressly include, without limitations, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.
 - 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 stormwater therein, or adversely affects water quality.

C. The following non-stormwater discharges are allowable under this ordinance:

1. Discharges or flows covered by a separate individual or general VPDES or VSMP permit for non-stormwater discharges;
2. Individual non-stormwater 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-stormwater discharges or flows as listed in the following categories, unless they are identified by the Administrator or Virginia Water Control Board, as significant contributors of pollutants.
 - a. Water line flushing;
 - a. Landscape irrigation;
 - b. Diverted stream flows or rising groundwater;
 - c. Uncontaminated ground water infiltration;
 - d. Uncontaminated pumped groundwater;
 - e. Discharges from potable water sources;
 - f. Foundation drains;
 - g. Air conditioning condensate;
 - h. Irrigation water;
 - i. Springs;
 - j. Water from crawl space pumps;
 - k. Footing drains;
 - l. Lawn watering;
 - m. Individual residential car washing;
 - n. Flows from riparian habitats and wetlands;
 - o. Dechlorinated swimming pool discharges;
 - p. Street wash water; and
 - q. Firefighting activities
4. The discharge of material resulting from a spill that is necessary to prevent loss of life, personal injury, or severe property damage. The responsible party shall take all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This provision does not transfer liability for the spill itself from the party(ies) responsible for the spill, nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

D. In the event any of the activities listed in sub-paragraph C.3 of this section are found to be a significant contributor of pollutants to be discharged into the MS4, the Administrator 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 ordinance.

SECTION 24-4

INSPECTIONS AND MONITORING

- A. The Administrator shall have the authority to carry out all inspections and monitoring procedures necessary to determine compliance and/or noncompliance with this ordinance, and to enforce the requirements of this ordinance.
- B. The Administrator shall have the authority, at his sole discretion, to require a Stormwater Pollution Prevention Plan (SWPPP) from any person whose property discharges, or has the potential to discharge, to the MS4.
- C. The Administrator 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 ordinance, including, but not limited to taking samples of discharges, inspecting monitoring equipment, inspecting and copying documents relevant to the enforcement of this ordinance, and such other items as may be deemed necessary for the enforcement of this ordinance.

If the person in charge of the property refuses to allow the Administrator to enter in accordance with subsection C, then the Administrator 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 Administrator 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 Administrator 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 ordinance. This includes, but is not limited to, the ability of the Administrator 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 ordinance. 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 chapter.

SECTION 24-5

ENFORCEMENT AND PENALTIES

- A. Any person who violates any of the provisions of this ordinance 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 ordinance occurs or continues shall be deemed a separate and distinct violation of this chapter.
- C. Any person who commits any of the acts prohibited by this chapter or violates any of the provisions of this ordinance shall be liable to the County for all costs of testing, containment, cleanup, abatement, removal, disposal, and any other related costs or expenses that the County may incur in connection with the enforcement of this ordinance and/or the prohibition and/or correction of a violation of this ordinance.
- D. The Administrator may bring legal action to enjoin a violation of this ordinance 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 Administrator 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 ordinance, 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 chapter.
- 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 chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the director under this chapter in monitoring discharges, shall be guilty of a violation of this ordinance.

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.

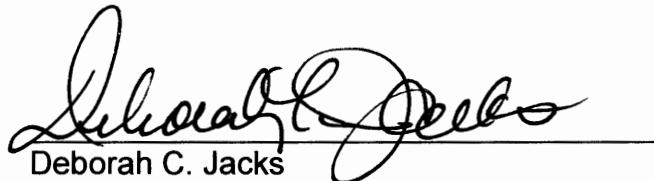
~END~

On motion of Supervisor Church to adopt the ordinance, and carried by the following roll call and recorded vote:

AYES: Supervisors Moore, Bedrosian, Church, Peters, McNamara

NAYS: None

A COPY TESTE:



Deborah C. Jacks
Deputy Clerk to the Board of Supervisors

cc: Arnold Covey, Director of Community Development
Tarek Moneir, Deputy Director of Development
Paul Mahoney, County Attorney