

Bill No. 19-14

Illicit Discharges and Connections to the  
Municipal Separate Storm Sewer System (MS4)

Introduced: October 1, 2019

Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_

Enacted: November 5, 2019

Effective: January 4, 2020

Expires: December 30, 2019

Frederick County Code, Chapter 1-15.2

Section(s) 2.0, 12.1 - 12.4

## COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: President M.C. Keegan-Ayer on behalf of County Executive Jan Gardner

**AN ACT** to: Establish an inspection and enforcement program to require the elimination of and mitigate the impacts of illicit discharges, prohibited materials, and illicit connections to a Municipal Separate Storm Sewer System (MS4).

Executive: Jan H Gardner

Date Received: 11-6-19

Approved: ✓

Date: 11-12-19

Vetoed: \_\_\_\_\_

Date: \_\_\_\_\_

By amending and adding:

Frederick County Code, Chapter, 1-15.2 Section(s) 2.0, 12.1 - 12.4

Other: \_\_\_\_\_

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Underlining  
[Single boldface brackets]  
\* \* \*

*Heading or defined term.*  
*Added to existing law.*  
*Deleted from existing law.*  
*Existing law unaffected by bill.*

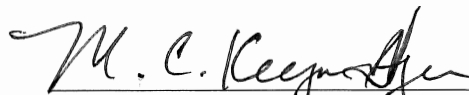

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In accordance with National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit number 11-DP-3321 MD0068357 and subsequent reissuances of the County's NPDES MS4 permit, Frederick County is required to have a program in place to order the elimination of illicit discharges and the removal of illicit connections to the County's MS4. Section 2-13-33 of the Frederick County Public Local Laws provides that the County may "adopt an ordinance or regulations to control illicit discharges into the [MS4]," including provisions for inspection, enforcement and the imposition of penalties for violations.

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter 1-15.2 of the Frederick County Code to establish a program to allow for investigation and enforcement of situations that may impact the County's responsibilities under its MS4 permit.

This Bill is not intended to prohibit common residential behaviors involving the use of potable water, such as home car washing, landscape irrigation, cleaning exterior portions of an individual's dwelling, trash can and recycling container cleaning, and children's outside water use (e.g., sprinklers). However, "gray water" discharges from a residential laundry system or wastewater discharges from a point of entry water treatment system, including regeneration wastewater flows from sodium zeolite water softeners, may be classified as an illicit discharge if such discharges are determined to have a negative water quality impact on the MS4 system.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

  
M.C. Keegan-Ayer, President   
County Council of Frederick County,  
Maryland

ARTICLE I: GENERAL

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§1-15.2-2.0 - Definitions.

***BEST MANAGEMENT PRACTICE (BMP).*** A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution directly or indirectly to stormwater, receiving waters, and stormwater conveyance systems, and provide other amenities.

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***ILLICIT CONNECTION.*** Has the following meanings:

- (1) A drain or conveyance, either on the surface or subsurface, and whether located on public or private property, which allows a discharge that is prohibited under § 1-15.2-12.1 of this Article, to enter or to be capable of imminent discharge to a municipal separate storm sewer system, regardless of whether the drain or conveyance had been previously allowed by the County; or
- (2) A drain or conveyance, whether located on public or private property, which is connected to a municipal separate storm sewer system and which has not been documented in a plan, map, or equivalent record and approved by the County.

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***ILLICIT DISCHARGE.*** Any discharge to an MS4 that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer system) and discharges resulting from firefighting activities. Discharges identified in §1-15.2-12.1(B)(1) are generally not illicit discharges unless the Manager (defined below) determines that these discharges are not properly managed.

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***MANAGER.*** The Manager of Frederick County Office of Sustainability and Environmental Resources or their authorized designee.

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***MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4).*** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by, among other public entities, a county that has jurisdiction over sewage, industrial wastes, stormwater, or other wastes, that discharge to surface waters and that are designed or used for collecting or conveying stormwater. See 40 CFR 122.26(b) (8). Combined sewers and systems associated with a Publicly Owned Treatment Works (POTW), as defined at 40 CFR 122.2, are not included as a part of the municipal separate storm sewer system.

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***NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT.*** A permit issued by the Environmental Protection

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Agency or by a State acting under authority delegated pursuant to 33 U.S.C. § 1342(b) that authorizes the discharge of pollutants to waters of the United States from a point source, whether the permit is applicable to an individual or group.

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**PERSON.** The federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, an individual, or any other entity.

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**POLLUTANT.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

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**PREMISES OR PROPERTY.** A lot, plot or parcel of land, including the structures on it.

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**PROHIBITED MATERIAL.** Material or objects which are imminently capable of creating interference with an MS4 or becoming an illicit discharge, such as, but not limited to, trash, litter, floatables, stockpiles used for construction, pet waste, containers of pesticides, herbicides or fertilizers, cut grass clippings from landscaping activities, or hazardous substances as defined in 40 CFR 122.

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**STORMWATER.** Water that originates from a precipitation event, including but not limited to stormwater runoff, snow melt runoff, and surface runoff and drainage. See 40 CFR 122.26(b) (13).

## **ARTICLE XII: DISCHARGES TO STORM SEWERS**

### **§1-15.2-12.1. - Prohibited Activities.**

(A) Illicit Discharges. Except as provided in subsection (B) of this section, a person shall not discharge an illicit discharge into an MS4, nor cause or allow an illicit discharge to be introduced or discharged into an MS4.

(B) Exceptions. The following discharges are exempt from the prohibitions set forth in subsection (A) of this section:

- (1) Waterline flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration to separate storm sewers; uncontaminated pumped ground water; discharges from potable water sources;

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foundation drains; air conditioning condensation; irrigation waters; springs; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; de-chlorinated swimming pool discharges (not including filter backwash); street wash water; and firefighting activities; or

- (2) Discharges permitted under an NPDES stormwater discharge permit or a non-stormwater discharge permitted under an NPDES discharge permit.

In the event of any questions or complaints concerning the exceptions listed in subsection (B)(1) above, the Manager may take steps to determine if they are properly managed, and if not, may require mitigation measures necessary for proper management of these discharges.

- (C) Illicit Connections. A person shall not construct, use, maintain, or allow the continued existence of an illicit connection.
- (D) Interference. A person shall not take or permit any action that interferes with, or is likely to interfere with, the proper operation of an MS4, including having or maintaining a prohibited material.
- (E) Reporting to Maryland Department of the Environment (MDE). The County may report illicit connections and illicit discharges to MDE for enforcement and/or permitting in accordance with applicable law.

#### **§1-15.2-12.2. - Right of Entry, Investigation, and Inspection.**

- (A) Generally. Except as provided in subsection (B) of this section, if the County becomes aware of a discharge that enters, or is capable of imminent discharge to, or to be discharged from, an MS4 or a waterbody within the County, that may be or include prohibited material, or is the result of an illicit discharge or an illicit connection, the Manager may seek access to any premises at any reasonable time for the purpose of inspecting for a violation of this Article.
- (B) Consent. The Manager may enter private property to inspect for a violation of this Article with the consent of the occupant or owner. If entry is refused, the Manager may request that the County Attorney seek a court order to permit entry to the property.
- (C) Investigations. The Manager may inspect, sample, examine, and investigate the source, location, and extent of any spill, discharge, the existence of any illicit connection, the existence of any prohibited material, or the condition of any BMPs. In support of any investigation under this Article, the Manager may review and copy any records that will assist in determining whether there is a violation of this Article, including but not limited to, records maintained pursuant to the conditions of any discharge permit or approvals given under this chapter.
- (D) Follow Up Inspections. To determine compliance with required abatement and mitigation measures, the Manager may conduct follow-up inspections of any premises from which the discharge or other violation may have occurred, as needed to assess the existence and extent of a violation of this Article.
- (E) Threat to Public Health and Safety. The Manager shall have the right to enter any premises where there is evidence that a violation of this Article exists which poses an immediate threat

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to the public health and safety for the purpose of performing duties pursuant to the provisions of this Article. The Manager shall produce proof of identity prior to entry, and must also provide evidence of the imminent threat to public health and safety.

(F) Emergency Repairs. If the Manager has evidence that an illicit discharge, illicit connection, or prohibited material presents an immediate threat to public health or safety, the Manager may enter the premises and make repairs in order to abate the public health or public safety hazard without prior written notice to the owner or occupant of the premises. The Manager may request that the County Attorney seek a court order assessing the costs of the abatement against the owner, tenant, licensee, or any other person causing or permitting an illicit discharge or illicit connection, or that has or is maintaining a prohibited material.

**§1-15.2-12.3. – Prevention and Control of Illicit Discharges, Prohibited Materials, and Illicit Connections.**

(A) Prevention. The owner, tenant, licensee, or any other person who occupies any premises shall prevent entry into an MS4 of any spills, materials from an illicit connection, any prohibited material, or illicit discharges through the use of BMPs or other appropriate measures as directed by the Manager. In the case of an illicit connection, the owner of the premises shall disconnect the illicit connection in a manner as directed by the Manager.

(B) Control Measures. If the Manager determines, after an initial inspection, that the spill, prohibited material, material from an illicit connection, or illicit discharge has entered an MS4, the Manager may require the owner or other responsible person to take steps to abate and mitigate the material or discharge, including but not limited to: (1) disconnection and redirection, if necessary, to an approved onsite wastewater management system or to the public sanitary sewer upon approval of the Frederick County Division of Utilities and Solid Waste Management or, if applicable, the municipality that owns and operates the public sewer system; (2) delineation and containment of the discharge; (3) recovery and proper disposal of the pollutant or prohibited materials and any impacted media; and (4) restoration of the area of the discharge to pre-discharge conditions to the County's satisfaction. The owner or responsible person shall take the steps listed above in order to mitigate the full extent of the prohibited materials, illicit discharge, or illicit connection.

(C) BMPs. Any owner or other person responsible for a spill, illicit discharge, illicit connection, or prohibited material shall be required to implement, at the owner's or responsible person's expense, additional BMPs to prevent the further discharge or introduction of any prohibited material, illicit discharge, or spilled material from entering into an MS4. Compliance with the terms and conditions of a valid NPDES permit authorizing the discharge constitutes compliance with this subsection.

(D) Monitoring. The Manager may require a person responsible for a spill, illicit connection, or illicit discharge to install monitoring equipment if the nature of the discharge warrants such installation. The sampling and monitoring equipment shall be calibrated to ensure accuracy and maintained in safe and proper operating condition at the responsible person's expense.

(E) Abatement. If the owner or any person responsible for the spill, illicit connection, or illicit discharge refuses to follow the required cleanup and mitigation measures, the County may

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enter the property and make the required repairs. The Manager may request that the County Attorney seek a court order assessing the costs of the abatement against the owner or any other person that causes or permits a spill, an illicit discharge, illicit connection, or that has or maintains a prohibited material.

(F) Costs. All mitigation and remediation measures under this Article shall be completed at the owner's or responsible person's sole cost and expense.

**§1-15.2-12.4. – Enforcement and penalties.**

(A) A violation of this Article shall be subject to enforcement by the Manager or the Manager's designee ("Enforcement Official"), pursuant to § 1-1-9 of the Code.

(B) The Enforcement Official is not required to issue a warning notice.

(C) A first offense shall be deemed a Class C civil offense. Each subsequent offense by the same individual or property owner(s) shall be cited at the next highest Class of offense.

(D) The Enforcement Official may, in consultation with the County Attorney, seek additional legal remedies as appropriate under the circumstances.

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