

ORDINANCE NO. 2004-19
ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION
OF POLLUTANTS INTO THE MUNICIPAL STORM SEWER SYSTEM BY
PROHIBITING ILLICIT CONNECTIONS AND DISCHARGES; TO ENSURE USE OF BEST
MANAGEMENT PRACTICES ON CONSTRUCTION SITES; AND ESTABLISH LEGAL
AUTHORITY AND PROCEDURES TO ENSURE COMPLIANCE

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
EASLEY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED AND BY THE
AUTHORITY THEREOF, THAT:

Description:

An illicit discharge is defined as any discharge to a municipal or county separate storm sewer system (stormwater drainage system) that is not composed entirely of stormwater runoff, except for discharges allowed under a National Pollution Discharge Elimination System (NPDES) permit or non-polluting flows. These non-stormwater discharges occur due to illegal dumping or illegal connections to the stormwater drainage system. This ordinance provides communities with the authority to deal with illicit discharges and establishes enforcement actions for those persons or entities found to be in noncompliance or that refuse to allow access to their facilities.

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Introduction

It is hereby determined that:

Discharges to the municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to an increase in nonpoint source pollution and result in degradation of receiving bodies of water waters;

These non-stormwater discharges occur due to spills, dumping, and improper connections to the municipal separate storm sewer system from residential, industrial, commercial or institutional establishments.

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving bodies of water waters.

The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, aquatic life, property values, and other uses of lands and waters.

These impacts can be minimized through the regulation of spills, dumping and discharges into the municipal separate storm sewer system.

Localities in the State of South Carolina are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the municipal separate storm sewer system.

Therefore, the City of Easley adopts this ordinance to prohibit such non-stormwater discharges to the municipal separate storm sewer system. It is determined that the regulation of spills, improper dumping and discharges to the municipal separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

Section 1. General Provisions

1.1. Purpose and Intent

The purpose of this ordinance is to protect the public health, safety, environment and general welfare of the citizens of Easley through the regulation of non-stormwater discharges to the City of Easley's separate storm sewer system to the maximum extent practicable as required by Federal law. This ordinance 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 ordinance are to:

- (1) Regulate the contribution of pollutants to the (municipal/county) separate storm sewer system by any person;
- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) 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, monitoring and enforcement procedures necessary to ensure compliance with this ordinance; and,
- (5) To ensure the proper installation, operation, and maintenance of construction site Best Management Practices (BMP's) for silt, water quantity, and water quality control.

1.2. Applicability

The provisions of this ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Stormwater Management Department (SWMD) or the NPDES permitting authority.

1.3. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, 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.

1.4. Severability

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

1.5. Responsibility for Administration

The City of Easley's Stormwater Department shall administer, implement, and enforce the provisions of this ordinance. Officers and supervisors appointed and approved by the Mayor may also enforce provisions of this ordinance.

Section 2. Definitions

“Accidental Discharge” means a discharge prohibited by this ordinance which occurs by chance and without planning or thought prior to occurrence.

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

“Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Construction Activity” means activities subject to the South Carolina Stormwater Management and Sediment Reduction Act (Regulation 72-300) or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, 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.

“Illicit Discharge” means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in Section 3 of this ordinance.

“Illegal Connection” means either of the following:

- a) Any pipe, open channel, drain or conveyance, man-made or natural whether on the surface or subsurface, which allows an illicit 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, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- b) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

“Industrial Activity” means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

“Municipal Separate Storm Sewer System (MS4)” means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- a) Owned or maintained by the City of Easley;
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.
- d) shown as an easement on any recorded subdivision/development plat.

“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by South Carolina Department of Health and Environmental Control (SCDHEC) 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” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Person” means, except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind that may cause or contribute to pollution.

“Pollution” means the contamination or other alteration of any water’s physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

“Premises” mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“State Waters” means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of South Carolina which are not entirely confined and retained completely upon the property of a single person.

“Stormwater Management Department (SWMD)” means the City of Easley Department responsible for implementing the provisions of this Ordinance.

“Storm Drainage System” means Publicly-owned facilities or those facilities shown as stormwater drainage easements on plats for subdivisions or developments by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater Runoff” or **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

“Structural Stormwater Control” means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

“Wastewater” means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 3. Prohibitions

3.1 Prohibition of Illicit Discharges

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited. The following discharges are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, 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 (only if dechlorinated – typically less than 1 part per million chlorine), fire fighting activities, and any other water source not containing pollutants;
- (2) Discharges or flows specified in writing by South Carolina Department of Health and Environmental Control (SCDHEC) or the United States Environmental Protection Agency (EPA) as being necessary to protect public health and safety;

- (3) Dye-testing is an allowable discharge, but requires a verbal notification to the SWMD prior to the event, except as administered by Easley Combined Utilities (ECU);
- (4) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and 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.

3.2 Prohibition of Illegal Connections

The construction, connection, use, maintenance or continued existence of any illegal connection to the storm drain system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal 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) A person violates this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of ECU.
- (4) 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 City of Easley's SWMD 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 completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Easley's SWMD.

Section 4. Industrial or Construction or Land Disturbing Activity Discharges

- (1) Any person subject to an industrial or construction activity NPDES (or State) stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form

acceptable to the City of Easley's SWMD prior to allowing discharges to the MS4.

- (2) Projects subject to a city building permit, including single-family residential building permits, must develop and adhere to a sediment and erosion control plan. Submittal to and approval of this plan by the Stormwater Manager is required prior to granting a building permit. Failure to properly implement the approved plan constitutes a violation of this Ordinance.
- (3) As a minimum, the city will require Best Management Practice (BMP) implementation for any land disturbing activity, including land or individual lot clearing, grubbing, landscaping, etc., that may cause or contribute to pollution or contamination of storm water, the MS4, or Waters of the United States,

Section 5. Access and Inspection/Monitoring of Properties and Facilities

The SWMD shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

- (1) City personnel shall be permitted to enter and inspect properties and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. 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 city.
- (2) The owner or operator shall allow the City of Easley personnel ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The City of Easley personnel shall have the right to set up on any property or facility such devices as are necessary in the opinion of the city personnel to conduct monitoring and/or sampling of the facility's stormwater discharges.
- (4) The City of Easley personnel may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City of Easley personnel. 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 flow and quality shall be calibrated to ensure their accuracy.

- (5) Any temporary or permanent obstruction to the property or facility to be inspected and/or sampled shall be allowed by the owner or operator at the written or oral request of city personnel. Failure to provide safe and easy access to the property or facility to be inspected and/or sampled is a violation of this ordinance.
- (6) Unreasonable delays in allowing the City personnel access to a facility is a violation of this ordinance.
- (7) If the City personnel has been refused access to any part of the premises from which stormwater is discharged, and he/she 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, environment and welfare of the community, then the City personnel may seek issuance of a search warrant from any court of competent jurisdiction or refer the case to the NPDES permitting authority.

Section 6. Notification of Accidental Discharges and Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. In the event of such release, and in addition to other notification requirements, the facility shall notify the SWMD in person or by phone, facsimile or in person no later than the day following such discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the SWMD within three business days of the 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 and made available for inspection for at least three years.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

For facilities that operate under existing NPDES permits for storm water discharge, spill reporting shall be made to the permitting authority in accordance with the permit. The SWMD shall be provided with copies of any written notification required by the NPDES permit.

Failure to provide notification of a release as provided above is a violation of this ordinance.

Section 7. Violations, Enforcement and Penalties

7.1. Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who has violated or continues to violate the provisions of this ordinance, 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.

7.2 Enforcement

- A. In the event the violation constitutes an immediate danger to public health or public safety, city personnel are 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 City shall be entitled to compensation for any expenses involved in abating the violation and/or restoring the property. The City shall have to option of performing the work and leining the property for recovery of such documented expenses.

- B. Whenever City personnel finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the SWMD may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of illicit discharges and illegal connections;
 - (3) That violating discharges, practices, or operations shall cease and desist;
 - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (5) Payment of costs to cover administrative and abatement costs, attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses;
 - (6) Payment of penalty determined in section 7.3; and
 - (7) The implementation of pollution prevention practices, i.e. source control or treatment BMPs.

7.3 Penalties

Any person found to be in violation of this ordinance that fails to comply with a compliance directive issued by the SWMD and referenced in Section 7.2 shall be punishable as provided in the City Code of Easley. Each day in violation of the provisions of this section shall constitute a separate and distinct offense.

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within receipt of an oral or written notice, as the city shall deem appropriate, after the city has taken one or more of the actions described above, the city may impose a penalty not to exceed \$500 (depending on the severity of the violation) for each day the violation remains unremedied.

7.4 Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Section 8. Appeals

(a) Any person aggrieved by the violation imposed with respect to property in which he has an interest may appeal the violation by filing a written notice of appeal with the Stormwater Management Department within two (2) days of mailing or delivery of the notification of the violation. The notice of appeal shall state the specific reasons why the violation is alleged to be in error. A representative of the Stormwater Management Department shall hear the appeal within two (2) days after receipt of the written appeal, or within such time as may be practicable. The representative of the Stormwater Management Department shall render a decision of the written appeal, or within such time as may be practicable. The representative of the Stormwater Management Department shall render a decision on the appeal in writing within ten (10) working days after the appeal has been heard. This decision shall be final with respect to the Illicit Discharge and Illegal Connection Ordinance.

(b) Any person aggrieved by the decision of the Stormwater Management Department with respect to a penalty imposed may appeal in writing within ten (10) days of the mailing or delivery of the notification of the imposition of such penalty to the Stormwater

Management Department according to the procedure set forth in subsection (a) above. The penalty shall be stayed during the tendency of such appeal. The decision of the Stormwater Management Department shall be final with respect to penalties.

(c) The Stormwater Management Department shall conduct a de novo review of the violation, provide the appellant with notice of the review, and allow the appellant an opportunity to be heard orally or in writing upon request.

The foregoing Ordinance was duly passed at a regular meeting of the Easley City Council of the first reading on **October 11, 2004**, and on second reading and final reading on **November 8, 2004**.

MAYOR

ATTEST:

CITY CLERK-TREASURER