ORD-FY-15-XX
AN ORDINANCE AMENDING CHAPTER 8 ENTITLED PLANNING AND DEVELOPMENT OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA ARTICLE III, BY ESTABLISHING DIVISION 3 ENTITLED ILLICIT DISCHARGE BY ADDING SECTIONS 8-90 THROUGH 8-94 MAKING IT UNLAWFUL TO DISCHARGE POLLUTANTS INTO THE COUNTY'S MS4 REGULATED STORMWATER COLLECTION SYSTEM

WHEREAS, The Board of Supervisors of Montgomery 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 Montgomery 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 of Supervisors hereby find that this ordinance satisfies these regulatory requirements.

NOW THEREFORE BE IT ORDAINED by the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 8, entitled Planning and Development, Article III, Division 3, entitled Illicit Discharge, Sections 8-90 through 8-94 respectively of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

DIVISION 3 – ILLICIT DISCHARGE

Section 8-90. – Purpose and Authority

(a) Pollutants discharged from the County's municipal separate storm sewer system (MS4) have an adverse impact upon the quality of receiving waters. Stormwater, and any other materials which enter the County's MS4, travel through the system and are discharged into receiving waters with minimal or no treatment. Since pollutants entering this system come from many sources and are to date largely uncontrolled, reduction of pollutant discharges can only be

achieved by a broad restriction on a variety of activities occurring throughout the County. The purpose of this division is to prevent pollutants from being discharged by the County's stormwater collection system by requiring all citizens to prevent such pollutants from initially entering the system.

(b) This division is adopted to comply with the requirements of the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems issued by the Commonwealth of Virginia and as an integral part of the County's stormwater management program.

Section 8-91. - Definitions

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

"Administrator" means as that term is defined under Section 8-71 of the Code of the County of Montgomery, Virginia.

"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 connection" means any connection, in any manner whatsoever, to the County's MS4 which is not authorized by applicable state law or County ordinance, and has not been approved by the County in accordance with applicable County ordinances.

"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, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, County, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

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.

"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).

"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).

Section 8-92. – Discharges to the Storm Sewer System

(a) It shall be unlawful and a violation of this division to allow any discharge that is not composed entirely of stormwater, except as described in subsection (d) below, that enters, or has the potential of entering, the MS4.

(b) It shall be unlawful and a violation of this division to cause or allow any illicit connection to the MS4.

(c) Illicit discharges in any amount to the County's storm sewer system, to any private stormwater conveyance system, or to any stormwater management system whether intended for water quality or water quantity control, unless the system conveys the fluids to an appropriate water treatment facility or the discharge is permitted by a VPDES permit or by a NPDES permit include, but are not limited to:

(1) Sewage;
(2) Automotive, motor or equipment fluids;
(3) Paints and/or organic solvents;
(4) PCBs;
(5) Toxic materials;
(6) Waste disposal site leachate;
(7) Radioactive materials;
(8) Any fluid at a temperature greater than 65° celsius;
(9) Any fluid having a pH less than 5.0 or greater than 9.0;
(10) Any fluid containing more than thirty (30) milligrams per liter of total suspended solids;
(11) Any fluid containing dyes or coloring material which discolor the water more than fifty (50) American dye manufacturers institute [ADMI] units;
(12) Any fluid containing material which causes a visible film, sheen or discoloration on the water surface;
(13) Any substance which may cause or do any injury to, interfere with the proper operation of, obstruct the flow into or through, or pollute a stormwater management facility;
(14) Any commercial, industrial, or manufacturing process water, wash water, or unpermitted discharge;

(15) Any substance of non-stormwater origin unless specifically exempted from this division;

(16) Matter of any type which may:

(i) Result in a hazard to any person, animal, property, or vegetation; or,

(ii) Impair the quality of the water in any well, lake, river, pond, spring, stream, reservoir or other water or watercourse.

(d) The following non-stormwater discharges are allowable under this division:

(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.

(i) Water line flushing.

(ii) Landscape irrigation and/or lawn watering.

(iii) Diverted stream flows or uncontaminated ground water flows.

(iv) Water from public safety activities, including, but not limited to, law enforcement and fire suppression.

(v) Pumping or drainage of uncontaminated groundwater from potable water sources, foundation drains, basements, springs, or water from crawl spaces, or footing drains.

(vi) Non-commercial car washing.

(vii) Residential yard maintenance, including seasonal leaf pick-up and brush removal.

(viii) Street washing.

(ix) Swimming pool discharges with less than one (1) parts per million [PPM] chlorine.

(x) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or water treatment or distribution systems.

(xi) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards, for the maintenance of any component of its stormwater management system.

(xii) Discharges specified in writing by the program administrator and/or his or her designee as being necessary to protect public health and safety.

(xiii) Dye testing, following notification to the program administrator.

(4) If any of the activities listed in subsection (3), above, of this section are found to be sources of pollutants to public waters, the administrator shall so notify the person performing such activities and shall order that such activities be stopped or performed in such a manner as to avoid discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this division.

Section 8-93. – 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 division, and to enforce the requirements of the provisions of this division, including the prohibition of illicit discharges to the storm sewer system. The administrator and/or his or her designee(s) may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this division.

(b) The Administrator shall have the authority, at his sole discretion, to require pollution prevention plans from any person whose property discharges, or has the potential to discharge, to the MS4.

(c) The Administrator and/or his designee(s) shall have the authority to, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this division. This authority shall apply only to those properties from which a discharge enters the County's municipal separate storm sewer systems.

(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 division. 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 division. 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 division.

Section 8-94. – Enforcement and Penalties

(a) Any person who violates any of the provisions of this division 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 division 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 division 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 division and/or the prohibition and/or correction of a violation of this division.

(d) The Administrator may bring legal action to enjoin a violation of this division 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 division, 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 division.

(h) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

THIS ORDINANCE SHALL BE DEEMED EFFECTIVE AS OF JULY 1, 2015.