

**AN ORDINANCE TO REGULATE
ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS WITHIN THE
COUNTY; TO REPEAL CONFLICTING PROVISIONS; TO PROVIDE FOR AN
EFFECTIVE DATE; AND FOR OTHER PURPOSES**

BE IT ORDAINED by the Board of Commissioners, Newton County, Georgia, and by the authority of the same, that the Illicit Discharge and Illegal Connection Ordinance is adopted as follows:

ILLICIT DISCHARGE AND ILLEGAL CONNECTION ORDINANCE

Sec. 1 APPLICABILITY

The provisions of this Ordinance shall apply throughout the unincorporated areas of Newton County.

Sec. 2 PURPOSE

The purpose of this Ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the County municipal separate storm sewer system (MS4) to the maximum extent practicable as required by State and Federal law. This Ordinance establishes methods for controlling the introduction of pollutants into the County MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater General Permit. The objectives of this Ordinance are to:

1. Regulate the contribution of pollutants to the County MS4 by any person, property owner, site operator, etc;
2. Prohibit illicit discharges and illegal connections to the County MS4 ;
3. Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the County MS4; and,
4. To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Ordinance.

Sec. 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.

Sec. 4 SEVERABILITY

If the provisions of any section, subsection, paragraph 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, Ordinance or clause of this Ordinance.

Sec. 5 RESPONSIBILITY FOR ADMINISTRATION

The County Engineer, or his designee, shall administer, implement, and enforce the provisions of this Ordinance.

Sec. 6 DEFINITIONS

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

“County Separate Storm Sewer System” means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, County 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 Newton County;
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.

“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 Georgia Erosion and Sedimentation Control Act 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.

“Illicit Discharge” means any direct or indirect non-stormwater discharge to the County separate storm sewer system, except as exempted in Section 7 of this ordinance.

“Illegal Connection” means either of the following:

- a) Any pipe, open channel, drain or conveyance, 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 County 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).

“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by the Georgia EPD 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” 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.

“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 Georgia which are not entirely confined and retained completely upon the property of a single person.

“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.

Sec. 7 PROHIBITIONS

A. Prohibition of Illicit Discharges

No person shall dispose, discard, drain, or otherwise discharge, cause, or allow others under its control to dispose, discard, drain, or otherwise discharge into the County MS4 any contaminated or polluted water, liquids, materials, waste products, etc, other than stormwater.

The following discharges to the MS4 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, non-commercial car wash water, 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, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
2. Discharges or flows from fire fighting, and other discharges specified in writing by the County as being necessary to protect public health and safety;
3. The prohibition provision above shall not apply to any non-stormwater discharge permitted under an approved NPDES permit or order issued to the discharger and administered under the authority of the Georgia Environmental Protection Division (EPD) and the United States Environmental Protection Agency (USEPA), 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 County MS4.

B. Prohibition of Illegal Connections

The construction, connection, use, maintenance or continued existence of any illegal connection to the County MS4 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 County MS4, or allows such a connection to continue.
3. Improper connections in violation of this Ordinance must be abated, disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system with approval of Newton County Water and Sewerage Authority.
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 County 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 County.

Sec. 8 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an NPDES Industrial Stormwater Permit or NPDES Construction Activity Permit administered by the Georgia EPD shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to allowing discharges to the County MS4.

Sec. 9 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES

Duly authorized representatives of the County 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. Prior to entering private property, a County representative shall obtain the consent of the property owner or, if such consent is withheld, a duly issued search warrant.

1. 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 County.

2. The property owner or operator shall allow the County 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.
3. The County shall have the right to set up on any property or facility such devices as are necessary in the opinion of the County to conduct monitoring and/or sampling of flow discharges.
4. The County may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the County. 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 water quality shall be calibrated to ensure their accuracy.
5. 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 County and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
6. Unreasonable delays in allowing the County access to a facility is a violation of this Ordinance.
7. If the County has been refused access to any part of the premises from which stormwater is discharged, and the County 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 County may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 10 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 County MS4, State Waters, or Waters of the United States, 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.

Said person shall notify the County and other appropriate agencies (State, Federal, etc.) in person or by phone, facsimile no later than 24 hours after the discharge, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the County Engineer's Office within three business days of the initial notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the property 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 years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

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

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

Sec. 11 VIOLATIONS, ENFORCEMENT AND PENALTIES

A. 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.

In the event the violation constitutes an immediate danger to public health or public safety, the County 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 County is authorized to seek costs of the abatement as outlined in subsection E of this Ordinance.

B. Notice of Violation (NOV)

Whenever the County finds that a violation of this Ordinance has occurred, the County may order compliance by a written NOV.

1. The NOV shall contain:
 - a. The name and address of the alleged violator;
 - b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;

- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to restore compliance with this Ordinance and a time schedule for the completion of such remedial action;
- e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
- f. A statement that the determination of violation may be appealed to the County by filing a written notice of appeal within ten (10) days of service of notice of violation.

2. Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit discharges and illegal connections;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- e. Payment of costs to cover administrative and abatement costs; and,
- f. The implementation of pollution prevention practices.

C. Appeal of Notice of Violation (NOV)

Any person receiving a NOV may appeal the determination of the County. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the County Engineer, or his/her designee, shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the County Engineer, or their designee, shall be final.

D. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the NOV , or in the event of an appeal, within 30 days of the decision of the County Engineer upholding the decision of the County, then representatives of the County may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government

agency or designated contractor to enter upon the premises for the purposes set forth above.

E. Costs of Abatement of the Violation

Within thirty (30) days after abatement of the violation, the owner of the property will be notified by the County of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within ten (10) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the County by reason of such violation.

F. Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the NOV or otherwise fails to cure the violations described therein within ten days, or such greater period as the County shall deem appropriate, after the County has taken one or more of the actions described above, the County may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

G. Criminal Penalties

For intentional and flagrant violations of this Ordinance, the County may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

H. Violations 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 Ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by applicable law.

I. 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 the County may seek cumulative remedies.

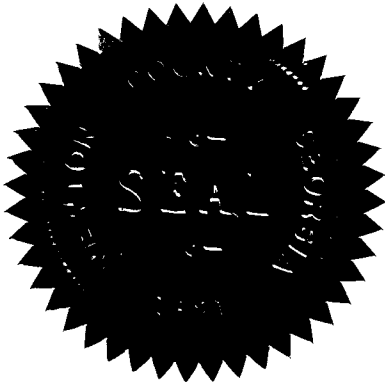
The County may recover attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Sec. 12 EFFECTIVE DATE

This Ordinance shall be in force and take effect on June 21st, 2006.

SO ORDAINED, this 20th day of June, 2006.

NEWTON COUNTY BOARD OF COMMISSIONERS



By: Aaron Varner
Aaron Varner, Chairman

Attest: Jarvis Smith
Clerk