

SCOTT COUNTY FISCAL COURT ORDINANCE NO. 21- 057

AN ORDINANCE RELATED TO STORMWATER ILLICIT DISCHARGE DETECTION
AND ELIMINATION WITHIN SCOTT COUNTY

SECTION 1. PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Scott County through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state 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 Kentucky Pollutant Discharge Elimination System (KPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (2) To prohibit illicit Connections and Discharges to the municipal separate storm sewer system; and
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other applicable 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 be considered to take precedence.

Within Scott County, the Georgetown Scott County Planning Commission is the jurisdictional stormwater authority and the issuing authority of permits and approvals for Stormwater Management Plans.

SECTION 2. DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs): 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 stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operational procedures, and practices to control site runoff; spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BMP Manual: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Scott County: Employees or designees of Scott County designated to enforce this ordinance. Agencies with enforcement authority include the Georgetown Stormwater Quality Division (GSQUAD).

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activities: Activities subject to KPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. 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.

Illegal Discharge: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process waste water, and wash water to enter the storm drain system and any connection to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by Scott County or other authorized enforcement agency.

Industrial Activity: Activities subject to KPDES Industrial Permits as defined in 40 CFR Section 122.25 (b)(14).

Municipal Separate Storm Sewer System (MS4): An MS4 is a conveyance or system of conveyances that is owned by a state, city, town, village, or other public entity that discharges to

waters of the U.S., is designed or used to collect or convey stormwater (e.g., storm drains, pipes, ditches), is not a combined sewer, and is not part of a sewage treatment plant, or publicly owned treatment works (POTW).

Kentucky Pollutant, Discharge Elimination System (KPDES) Stormwater Discharge Permit: A permit issued by EPA or by the Commonwealth of Kentucky water 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.

Non-Stormwater Discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including sidewalks and parking strips.

Storm Drainage System: Publicly owned facilities by which stormwater 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: Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Wastewater: Any water or other liquid, other than uncontaminated stormwater discharged from a facility.

SECTION 3. APPLICABILITY

This ordinance shall apply to all water entering the Scott County storm drainage system generated on any developed and undeveloped land unless explicitly exempted by the authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION

The Georgetown Stormwater Quality Division (GSQUAD) shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon Scott County may be delegated in writing by the Scott County Judge Executive to GSQUAD.

SECTION 5. SEVERABILITY

The provisions of this ordinance are hereby declared to be severable, if any provision, clause, sentence, paragraph, or portion of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any person, firm, or other entity will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants and do not relieve this person, firm, or other entity from complying with any local, state, or federal regulation that address illicit discharges or any other pollutant discharges. If these minimum standards prove inadequate, it is the ultimate responsibility of the person, firm, or other entity to provide additional measures to prevent illicit discharge or other pollutant discharges.

SECTION 7. DISCHARGE PROHIBITIONS

Prohibition of Illegal Discharges

No person shall discharge or cause to be discharged into the stormwater system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

The commencement, conduct, or continuance of any illegal discharge to the stormwater system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Ordinance unless it is demonstrated that these discharges are significant contributors of pollutants to the stormwater system and watercourses: water line flushing or 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), sump pumps, air conditioning condensation, springs, individual residential washing of vehicles, natural riparian habitat or wet land flows, swimming pools (NOTE: Swimming pool water maybe discharged only if dechlorinated—below 0.1 milligrams per liter (mg/L), which can typically be achieved by discontinuing chlorination for a minimum of 48 hours), firefighting activities, and any other water source not containing pollutants.
- (2) Discharges specified in writing by the GSQUAD as being necessary to protect public health and safety.

- (3) Dye testing is an allowable discharge, but requires a verbal notification to Scott County prior to the time of the test.
- (4) The prohibition shall not apply to any non-stormwater discharge permitted under a KPDES permit, waiver, or waste discharge order issued to the discharger administered under the authority of the Federal Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provide that written approval has been granted for any discharge to the stormwater system.

Prohibition of Illicit Connections:

- (1) The construction, use, maintenance or continued existence of illicit connections to the stormwater system is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

SECTION 8. SUSPENSION OF MS4 ACCESS

Suspension due to Illicit Discharges in Emergency Situations

The GSQUAD may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. Scott County will notify a violator of the proposed termination of its MS4 access. The violator may petition GSQUAD for a reconsideration or hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of Scott County.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity KPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to GSQUAD prior to the allowing of discharges to the MS4.

SECTION 10.

MONITORING OF DISCHARGES

I. Applicability.

This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

2. Access to Facilities.

- (1) The GSQUAD shall be permitted to enter and inspect facilities subject to regulations under this Ordinance as often as maybe necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the GSQUAD.
- (2) Facility operators shall allow the GSQUAD ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a KPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) Upon notifying the owner or owner's representative, the GSQUAD shall have the right to immediate access to the property to set up on any permitted facility such devices as are necessary in the opinion of the GSQUAD to conduct monitoring and/or sampling of the facility's stormwater discharge and/or suspected illicit discharge.
- (4) The GSQUAD has the right to require the discharger to install monitoring equipment as necessary. The facilities sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the GSQUAD and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the GSQUAD access to a permitted facility, as described in Item 3 of this Section, is a violation of any applicable stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a KPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the GSQUAD reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
- (7) If the GSQUAD 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, and welfare of the community or environment, then the GSQUAD may seek issuance-of a search warrant from any court of competent jurisdiction.

SECTION 11.

REQUIREMENT TO PREVENT, CONTROL, AND REDUCE

STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The GSQUAD identified Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the stormwater system, or Waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal stormwater system or watercourses through the use of these structural and non structural BMPs. Further, any person responsible for a property or premise, which is, or maybe, the source of an illicit discharge, may be required to implement at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid KPDES permit authorizing the discharge of stormwater associated with industrial activity to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs are part of the City of Georgetown Post-Construction Stormwater Manual that is hereby incorporated by reference as a part of this Ordinance. A copy of the Manual is located at the Scott County Courthouse, 101 E. Main Street, Georgetown, KY 40234. This document may be viewed or copied at the Scott County Judge Executive's Office during normal operating hours.

SECTION 12. WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the stormwater system, or Water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Emergency Management Agency (EMA) in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to Georgetown-Scott County Planning Commission (230 E. Main St., Georgetown, KY 40324) within three business days of the phone 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 contain the spill, clear the pollutants from the MS4, and prevent its recurrence. Such records shall be retained on site for at least three (3) years and be made available upon request.

SECTION 14.

ENFORCEMENT.

1. The GSQUAD shall be responsible for the enforcement of this Ordinance. Duly authorized representatives have the authority to issue notices of violation, citations and levy fines as described below.
2. Whenever the GSQUAD finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the GSQUAD may order compliance by written Notice of Violation (NOV) to the responsible person. Such notice may require without limitation:
 - (a) The performance of monitoring, analysis and reporting;
 - (b) the elimination of illicit connections or discharges;
 - (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 a fine to cover administrative and remediation costs; and
 - (f) the implementation of source control or treatment BMPs.
3. For the purposes of this section, a notice of violation is official by posting a copy of the notice of violation on the site of the source in reasonable proximity to a location where the activity generating the discharge is taking place.
4. Notices of Violations are the first level of enforcement and do not include a penalty, or fine. Only one NOV will be issued for an offense before citations are utilized. An offense of the same nature and the same, adjacent, or approximate location as a previous offense, even if previously corrected under a NOV, will constitute a second offense to be enforced through a citation. Offenses enforced through a NOV must be corrected within five (5) calendar days of the date of issuance or a citation will be issued. The GSQUAD has the right to modify the timeframe for corrections based on the authorized representative's judgment due to project conditions.
5. Citations require that ALL project work is halted until the discharge is corrected. Citations shall include a penalty, or fine, for each occurrence and payable to the Issuing Authority prior to release.
 - a. First citation = \$50.00 fine.
 - b. Second citation = \$100.00 fine and Notice of Intent.
6. Six (6) calendar days after posting a citation, the GSQUAD may issue a notice of intent to the Responsible Party, landowner, or land user stating the GSQUAD intent to perform work

necessary to comply with Ordinance. The GSQUAD may go on the land and commence work after fourteen (14) days from issuing the notice of intent. The costs incurred by the Issuing Authority to perform this work shall be paid by the landowner or Responsible Party. The cost, plus interest at the rate authorized by the Issuing Authority, plus a reasonable administrative and attorneys fee shall be billed to the landowner. Failure to reimburse Scott County within thirty (30) days will result in a lien being placed on the property.

7. Compliance with the provisions of this Ordinance may also be enforced by injunction.
8. The Issuing Authority is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the Issuing Authority is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Issuing Authority shall be fully reimbursed by the property owner and/or responsible party. The cost, plus interest at the rate authorized by the Issuing Authority, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse Scott County within thirty (30) days will result in a lien being placed on the property.
9. Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or by imprisonment for not more than ninety (90) days, or both, for each separate offense. Each day there is a violation of any part of this Ordinance shall constitute a separate offense.
10. For the purpose of this ordinance, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.
11. 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, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 15. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation (NOV) may appeal the determination of the authorized enforcement agency. The Notice of Appeal must be received within ten (10) business days from the date of the service of the NOV. The Scott County Appeals Board shall hear the appeal at the next regularly scheduled Appeals Board meeting but not less than 10 days from the date that the appeal is filed. The decision of the Board shall be final, except to the extent that State law provides the further right to appeal.

SECTION 16. COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at Compliance workshops, creek cleanup, etc.

SECTION 17.

If any portion of this Ordinance is for any reason held invalid or unlawful such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 18.

All prior ordinances and parts of ordinances in conflict with this Ordinance are repealed.

SECTION 19.

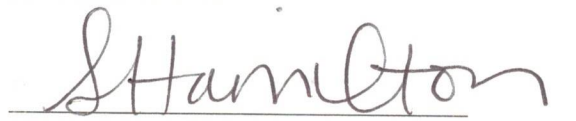
This Ordinance shall be in full force and effect upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: July 22, 2021
PUBLICLY READ SECOND TIME AND PASSED: August 13, 2021

APPROVED BY:


JOE PAT COVINGTON
SCOTT COUNTY JUDGE/EXECUTIVE

ATTESTED BY:


STACY HAMILTON
SCOTT COUNTY FISCAL COURT CLERK