

ORDINANCE NO. 3 - 2018 SERIES

**AN ORDINANCE AMENDING ORDINANCE NO. 8-2005 SERIES RELATING TO  
ILLICIT DISCHARGE CONTROL  
IN FRANKLIN COUNTY, KENTUCKY**

**WHEREAS**, The Franklin County Fiscal Court, has been identified by the Commonwealth of Kentucky and the Federal Environmental Protection Agency as a Phase 2, Stormwater community; and

**WHEREAS**, the aforesaid designation requires that Franklin County Fiscal Court apply for a 5-year permit from the Commonwealth of Kentucky; and

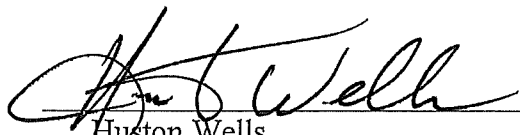
**WHEREAS**, one of the requirements in the 5-year permit is to prepare and adopt an Illicit Discharge Control ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF FRANKLIN, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

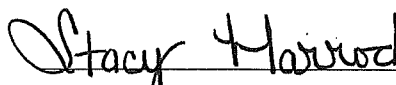
The Illicit Discharge Control Ordinance, as provided for in the attached document is hereby adopted.

**INTRODUCED AND GIVEN FIRST READING IN SUMMARY** at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 14 day of December 2017.

**GIVEN SECOND READING AND APPROVED** at a duly: convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 9 day of January 2018 and of record in Fiscal Court Order Book 28, Page 234. This Ordinance shall take effect and be in full force when passed, published and recorded according to law.

  
\_\_\_\_\_  
Huston Wells  
Franklin County Judge/Executive

ATTESTED TO:

  
\_\_\_\_\_  
Stacy Harrod  
Fiscal Court Clerk

December 14, 2017

# **ILLICIT DISCHARGE CONTROL ORDINANCE**

Franklin County

## **SECTION 1 - AUTHORITY**

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapter 67 and 100.

This Ordinance is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

## **SECTION 2 - PURPOSE AND SCOPE**

The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of Franklin County, and more specifically;

1. To protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act by prohibiting non-storm water discharges to the municipal separate storm sewer system (MS4), community waters and waters of the Commonwealth, collectively called storm water conveyance system;
2. To prohibit illicit discharges and connections to the MS4;
3. To regulate the contribution of pollutants to storm water discharges to the MS4 by any user;
4. To Comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth by the Kentucky Pollutant Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge Elimination Systems storm water general permit for Phase II communities;
5. To establish legal authority to carry out all inspection, surveillance and monitoring, and enforcement procedures necessary to ensure compliance with this Ordinance;

## **SECTION 3 - DEFINITIONS**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

1. *Community Waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetland, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Franklin County.

2. *County Planning and Zoning Director* is the Franklin County Planning and Zoning Director and his/her authorized designees.
3. *Developer* is any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.
4. *EPSC (Erosion Protection and Sediment Control)* is the prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.
5. *Enforcement Agency* is Franklin County Planning and Zoning Director and their duly authorized designees designated to enforce this ordinance.
6. *Hazardous Materials* is any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, biological 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.
7. *Illegal Discharge* is any direct or indirect non-storm water substance or hazardous material disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means, intentionally or unintentionally, into the MS4, community waters, waters of the Commonwealth, or any area draining directly or indirectly into the MS4, except as exempted in Section 5 of this Ordinance.
8. *Illicit Connection* is defined as any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4. Included are conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved.
9. *Inspector* is a person designated by the Enforcement Agency who has attended an approved Franklin County training course in detection of illicit discharges.
10. *Municipal separate storm sewer system (MS4)* of Franklin County means a conveyance, or system of conveyances (including roads with drainage systems, municipal and county streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains designed or used for collecting or conveying stormwater. Sanitary and combined sewers are not included in the definition of the municipal separate storm sewer system.
11. *Non-Storm Water Discharge* is any discharge to the MS4, community waters or waters of the Commonwealth that is not composed solely of storm water except as permitted by Section 5 of this Ordinance.
12. *Planning and Building Codes Director* is the Franklin County Planning and Building Codes Director.
13. *Pollutant*. is 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.

14. .

15. *Premises* is the area of land, site, grounds, property on which the illegal discharge emanates.
16. *Utility* is the owner/operator of any underground or overhead line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.
17. *Waters of the Commonwealth* is defined as any surface or subsurface watercourses and water bodies including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.
18. *Watercourse* is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.
19. *Watershed* is a region draining to a specific river, river system, or body of water.
20. *Wetlands* are a lowland area such as a marsh that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.

#### **SECTION 4 - GENERAL PROVISIONS**

1. Except as herein provided or exempted by the Enforcement Agency, this Ordinance shall apply to all non-storm water discharges and connections to the MS4, community waters and waters of the Commonwealth forming a part of the boundaries of Franklin County.
2. The Enforcement Agency shall administer, implement, and enforce the provisions of this Ordinance.
3. The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance.
4. This Ordinance shall be construed to insure consistency with requirements of the Clean Water Act, the KPDES, and acts amendatory thereof or any other applicable regulations.
5. The standards and requirements set forth herein and promulgated pursuant to this Ordinance are minimum standards. This Ordinance does not intend nor imply that compliance by any person, company, developer, or any other entity will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into the MS4, community waters or waters of the Commonwealth.

## **SECTION 5 - PROHIBITION OF DISCHARGES**

1. No person, company, developer or any other entity shall discharge or cause to be discharged into the MS4, community waters or waters of the Commonwealth any pollutants or hazardous 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 storm water. The commencement, conduct or continuance of any illegal discharge is prohibited.
2. Unless the Enforcement Agency has identified them as a source of contaminants, the following categories of discharges are permitted:
  - (a) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code requires to be contained and treated prior to discharge;
  - (b) A discharge or flow from lawn watering, or landscape irrigation;
  - (c) A discharge or flow from a diverted stream flow or natural spring;
  - (d) Uncontaminated discharge or flow from a foundation drain, crawl space pump or footing drain;
  - (e) A discharge or flow from air conditioning condensation;
  - (f) A discharge or flow from individual residential car washing;
  - (g) A discharge or flow from a riparian habitat or wetland;
  - (h) A discharge or flow water used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
  - (i) Drainage from a private residential swimming pool containing no aimful quantities of chlorine or other chemicals;
  - (j) A discharge or flow from any other water source not containing pollutants;
  - (k) Upon verbal notification to the Enforcement Agency and prior to time of the test, dye testing is an allowable discharge.
3. No discharge or flow available under Section 5.2 is allowed if the discharge or flow in question has been determined by the Enforcement Agency to be a source of a pollutant or pollutants to the MS4, community waters or waters of the Commonwealth. Written notice of such determination shall be provided by the Enforcement Agency to the discharger.
4. The prohibition of discharges or flows shall not apply to any non-stormwater discharges permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the Kentucky Division of Water under the authority of 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.

5. Any person, company, developer or any other entity subject to a construction activity NPDES storm water discharge permit and Erosion Protection and Sediment Control Permit shall comply with all provisions of such permits. Proof of compliance with such permits may be required in a form acceptable to the Enforcement Agency.
6. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition includes without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practice applicable at the time of connection.
7. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon an public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, community waters or waters of the Commonwealth, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition,

## **SECTION 6 - RULES AND REGULATIONS**

### **1. Eliminate Illegal Discharges.**

Notwithstanding the requirements of Section 7 herein, the Enforcement Agency may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges

### **2. Remediate.**

Whenever the Enforcement Agency finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water entering the MS4, community waters, or waters of the Commonwealth, the Enforcement Agency may require by written notice to the owner of the premises and/or the responsible person that the pollution be remediated and the affected property restored within a specified time.

### **3. Monitor and Analyze.**

The Enforcement Agency may require by written notice of requirement that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges, and/or non-storm water discharges to the MS4, community waters, or waters of the Commonwealth system, to undertake at said person's expense such monitoring and analyses and furnish such reports to the Enforcement Agency as deemed necessary to determine compliance with this Ordinance.

4. Notification of Spills

Notwithstanding other requirements of local, state and federal 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 pollutants or hazardous materials which are resulting or may result in illegal discharges to the MS4, community waters or waters of the Commonwealth from said facility, 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 a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the Enforcement Agency in person or by phone or email no later than 5:00 p.m. of the next business day. Notifications shall be confirmed by written notice addressed and mailed to the Enforcement Agency within three business days of the notice.

**SECTION 7 - INSPECTION AND MONITORING**

1. Inspection.

Whenever the Enforcement Agency has cause to believe that there exists, or potentially exists, any condition which constitutes a violation of this Ordinance, the Enforcement Agency may enter the MS4, community waters and waters of the Commonwealth at all reasonable times to inspect the same. If it is determined an illegal discharge emanates from private premises, the owner or operator of the premises will be notified in accordance with Section 6 of this Ordinance. Copies of records of storm water compliance shall be provided to the Enforcement Agency.

2. Sampling Devices and Testing.

During any inspection as provided herein, the Enforcement Agency may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities. The cost of all testing may be passed on to the owner or operator of the premises where the illegal discharge emanates.

**SECTION 8 - ENFORCEMENT**

1. Notice of Violation.

Whenever the Enforcement Agency finds that a person, company, developer or any other entity has violated a prohibition or failed to meet a requirement of this Ordinance, the Director may order compliance by written Notice of Violation to the responsible entity. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, 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 storm water pollution or contamination hazards and the restoration of any affected property;
- (e) The implementation of source control or treatment best management practices.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Enforcement Agency or a contractor designated by the Director and the expense thereof shall be charged to the violator.

## 2. Appeal.

Notwithstanding the provisions of this Ordinance, any person receiving a Notice of Violation may appeal the determination of the Enforcement Agency. The Enforcement Agency must receive the Notice of Appeal within 5 days from the date of the Notice of Violation. Hearing on the appeal before the Franklin County Fiscal Court shall take place within 10 days from the date of receipt of the notice of appeal.

## 3. Abatement by Franklin County.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an Appeal, within 10 days of the decision of the City/County upholding the decision of the Director, then the Enforcement Agency or designated contractor shall enter upon the subject private premises and is 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 Enforcement Agency or designated contractor to enter upon the premises for the purposes set forth above.

## 4. Charging Cost of Abatement/Liens.

Within 30 days after abatement of the nuisance by the Enforcement Agency, the Director shall notify the property owner of the premises of the cost of abatement, including administrative costs, court costs and attorneys fees. The property owner may file a written protest objecting to the amount of the assessment with the County Clerk within 15 days. The Clerk shall set the matter for public hearing by the Franklin County Fiscal Court. The decision of the Commissioners and/or Fiscal Court shall be set forth by resolution and shall be final.

If the amount due is not paid within thirty (30) days of receipt of the notice or upon ten days of the appeal decision of the Franklin County Fiscal Court or the expiration of the time in which to file an appeal under this Section, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

5. Urgency Abatement.

The Enforcement Agency is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or wellbeing of the public. If any such violation is not abated immediately as directed by the Enforcement Agency, Franklin County is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the County, including, but not limited to administrative costs, court costs and attorney fees shall be fully reimbursed by the property owner and/or responsible party.

6. *Injunctive relief.* The enforcement agency is authorized to request the County Attorney to seek injunctive relief and is entitled to recover its costs incurred in seeking injunctive relief, including court costs and attorney's fees

7. Acts Potentially Resulting in a Violation of the Federal Clean Water Act

Any person who violates any provision of this Ordinance or any provision of any permit issued by Franklin County may also be in violation of the Clean Water Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Ordinance shall also include written notice to the violator of such potential liability.

**SECTION 9 - PENALTY**

It shall be-unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. A violation of or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than \$100 and not more than \$500 or by imprisonment for not more than 90 days, or both, for each separate offense. Each day there is a violation of any part of this chapter shall constitute a separate offense.