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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA
ORDINANCE NUMBER ____**

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING CHAPTER 67, ARTICLE 13, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM, GENERAL ORDINANCES, MARTIN COUNTY CODE; PROVIDING FOR APPLICABILITY, CONFLICTING PROVISIONS, SEVERABILITY, FILING WITH THE DEPARTMENT OF STATE, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, Martin County is required by its National Pollutant Discharge Elimination System (NPDES) permit to prevent and abate pollution through the regulation and control of connections and discharges to the municipal separate storm sewer system; and

WHEREAS, in 2019, the Florida Department of Environmental Protection (FDEP) performed an audit of the County's NPDES and indicated that Chapter 67, Article 13, National Pollutant Discharge Elimination System did not include adequate waste control requirements for construction sites; and

WHEREAS, the Board of County Commissioners has determined that it is appropriate to amend Chapter 67, Article 13, National Pollutant Discharge Elimination System to address FDEP's comments as well as to add additional enforcement provisions and generally update the ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY, FLORIDA, THAT:

PART 1. CHAPTER 67, ARTICLE 13, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM, GENERAL ORDINANCES, MARTIN COUNTY CODE is hereby amended as follows:

ARTICLE 13. - NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Sec. 67.400. - Purpose and intent.

This article 13 is intended to prevent and abate pollution through the regulation and control of connections and discharges to the municipal separate storm sewer system (MS4) of the County and to limit the use of the County's (MS4) to the collection, conveyance, treatment, and disposal of stormwater through appropriate regulation and enforcement. The prohibitive discharge standards contained in this article 13 were developed under the authority of ~~Section 5 of the Clean Water Act, and 40 Code of Federal Regulations (CFR) 122, Section 403.0885, Florida Statutes (F.S.), and F.A.C. ch Chapter 62-624,~~ Florida Administrative Code (F.A.C.).

Sec. 67.401. - Applicability.

67.401.A. *In general.* Except as otherwise provided in subsection B, below, provisions of this article 13 shall apply to all unincorporated areas of Martin County, as well as to any portion of the County's MS4 that may exist within the corporate limits of another municipality.

67.401.B. *Exceptions.* The provisions of this article 13 shall not apply to "non-point sources" of pollution as defined in section 502(14) of the Clean Water Act. For example, agricultural stormwater discharges and return flows from irrigated agriculture, are recognized as "non-point sources" and are thus not subject to the provisions of this article 13.

67.401.C. NPDES permits required. Under the State of Florida's authority to administer the NPDES stormwater program pursuant to F.S. § 403.0885, operators that have stormwater discharge associated with ~~large or small~~ construction activities to surface waters of the state, including through an MS4, must obtain coverage either under a generic permit issued pursuant to ~~F.A.C. ch. Chapter 62-621, F.A.C.~~ F.A.C. ch. Chapter 62-621, F.A.C. or an individual permit issued pursuant to ~~F.A.C. ch. Chapter 62-620, F.A.C.~~ F.A.C. ch. Chapter 62-620, F.A.C. The County may require evidence of the issuance of such permits prior to the issuance of any County development order.

Sec. 67.402. - Rules of construction.

67.402.A. Where any provision of this article 13 refers to another provision, ordinance, statute, policy, reference, manual, rule, regulation, or other authority, it shall be deemed to refer to the most current version, incorporating any amendments thereto or redesignation thereof.

67.402.B. The standards set forth herein and promulgated pursuant to this ordinance are minimum standards intended to minimize the offsite discharge of pollutants to the maximum extent practicable, therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S., waters of the state, or the County's MS4 caused by said person. This ordinance shall not create liability on the part of Martin County or any agent or employee thereof for any damages that result from any person's reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec. 67.403. - Definitions.

The following words, terms and phrases, when used in this article 13, shall have the meanings ascribed to them in this section 67.403, except where the context clearly indicates a different meaning:

Authorized official means any employee or agent of the County authorized by the County Administrator to administer or enforce the provisions of this article 13.

Best management practices (BMPs) shall mean a schedule of activities, a prohibition of practices, maintenance procedures and other management practices to prevent or reduce pollutants in the environment. Best management practices include but are not limited to: stormwater treatment facilities; operating and maintenance procedures; facility management practices to control runoff, spillage, leaks, waste disposal, or drainage from raw materials storage; erosion and sediment control practices; the prohibition of specific activities, practices, and procedures; and, any such provisions as the County determines appropriate and necessary for the control of pollutants.

Clean Water Act (CWA) means the Federal Clean Water Act Amendments to the Federal Water Pollution Control Act, enacted by Congress in 1972, and commonly known as the Clean Water Act, and subsequent amendments thereto.

Commercial activities shall mean facilities and/or activities, which include but may not be limited to, any office, manufacturing, distribution, or warehousing operation, including all ancillary activities, as an entity that accommodates the direct or indirect exchange of goods or services.

Construction activities shall mean any activity which results in the modification of surface features of the land, including but not limited to grading, land clearing, or the placement or alteration of buildings, structures or utilities.

County means the County of Martin in the State of Florida.

County Administrator means the County Administrator of Martin County, Florida, or his/her authorized designee.

Discharge means any direct or indirect introduction of any solid, liquid or gaseous matter into the County's MS4. It includes, but is not limited to, any release, spilling, leaking, seeping, pouring, emitting, emptying, pumping, placing or dumping of any substance or material.

FDEP means the Florida Department of Environmental Protection.

Illicit connection means the connection of any structure, including but not limited to pipes, inlets, channels, ditches and swales, that ~~is intended for the conveyance of~~ conveys or can convey wastes or materials other than stormwater to the County's MS4, whether or not such nonstormwater material is actually being conveyed. It shall also include any connection made for the purpose of conveying and discharging stormwater to the County's MS4 without first having obtained authorization for the connection and discharge.

Illicit discharge means any discharge to the County's MS4 that is not composed entirely of stormwater except discharges pursuant to an NPDES permit, or authorized by a County permit, or other discharges specifically identified as authorized exceptions pursuant to section 67.404 of this article 13. Any discharge in violation of a NPDES or County permit shall constitute an illicit discharge.

Industrial activities shall mean facilities and/or activities, which include but may not be limited to, any manufacturing, distribution, or warehousing operation, including all ancillary activities, as an entity that accommodates the direct or indirect exchange of goods or services.

Municipal separate storm sewer system (MS4) shall mean a conveyance or system of conveyances, including but not limited to roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains, owned or operated by a local government, that discharges to waters of the United States, waters of the state, or connects to other MS4s, that is designed solely for connecting or conveying stormwater, and that is not part of a publicly owned treatment works as defined by 40 CFR 122.2.

NPDES means the National Pollutant Discharge Elimination System authorized by the Clean Water Act, and by the provisions of F.S. § 403.0885, and applicable rules of the Florida Administrative Code (F.A.C.) pursuant to the State of Florida's federally-approved NPDES program.

NPDES permit means general, group and individual discharge permits issued by the U.S. Environmental Protection Agency pursuant to Sections 307, 402, 318, or 405 of the Clean Water Act, and pursuant to provisions of F.S. § 403.087, or by the State of Florida pursuant to the state's federally-approved NPDES regulatory program and applicable rules of the Florida Administrative Code (F.A.C.).

Owner shall mean any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such building or land, as appears by deed of record, agreement for deed, or properly executed contract for purchase.

Person means associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as individuals.

Pollutant means anything that causes or contributes to pollution as defined in F.S. § 403.031(7).

Regulated waters shall mean waters of the United States as defined in 40 CFR §122, as amended, and waters of the state as defined in ~~F.S. ch. Chapter~~ 403, F.S. as amended, that lie within Martin County.

Responsible Party or Person means any person or entity engaged in activities or operations or owning facilities, which has, will or may result in an illicit discharge entering into the County's MS4, waters of the state, or waters of the United States; and the owners of real property on which such activities, operations or facilities are located; provided, however, that a local government or public authority is not a Responsible Party or Person as to activities conducted by others in public rights-of-way.

SFWMD means the South Florida Water Management District.

Shall, may: The word "shall" is mandatory; "may" is permissive.

State means the State of Florida.

Stormwater means any surface runoff and drainage from land surfaces, including the surfaces of buildings and other hardened surfaces on the land, consisting entirely of water from rainfall events and devoid of pollutants.

Surface water means all bodies of water existing or flowing upon the land surface, whether natural or manmade, including, but not limited to ponds, lakes, streams, canals, ditches, swales, rivers, wetlands, bays, the Atlantic Ocean and the Gulf of Mexico.

Waters of the state means waters within the State of Florida that are defined as such in F.S. § 403.031.

Waters of the United States means surface waters and water bodies as defined at 40 CFR § 122.2., or any amendment thereto, 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 stormwater at and during all times and seasons.

Sec. 67.404. - Prohibited discharges.

67.404.A. *General prohibitions.* Except as set forth in subsection 67.404.C, or in accordance with a valid NPDES or County permit, any discharge to the County's MS4 that is not composed entirely of stormwater is an illicit discharge and is prohibited.

67.404.B. *Specific prohibitions.* Any discharge to the County's MS4 containing any sewage, industrial waste or other waste materials, or containing any materials that cause or contribute to violation of federal, state, County, municipal, or other laws, rules, regulations, orders or permits, or which causes or contributes to a violation of state water quality standards contained in ~~F.A.C. ch. Chapter~~ 62, F.A.C. in the County's MS4 or the waters of the United States, is prohibited.

67.404.C. *Authorized exceptions.* The following discharges are exempt from the general prohibition set forth in subsections 67.404.A and 67.404.B unless they are shown to be causing violations of water quality standards in the Waters of the United States: flows from firefighting, water line flushing and other contributions from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising groundwaters, direct infiltration of groundwater to the County's MS4, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, uncontaminated air conditioning condensation, springs, individual residential car washing, and flows from riparian habitats and wetlands.

67.404.D. *Illicit connections.* No person may maintain, use or establish any direct or indirect connection to the County's MS4 that results in any discharge in violation of this article 13. Such connections are prohibited regardless of whether a discharge is occurring. This prohibition applies to connections made in the past, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

For example, a connection made from a laundromat, or from a sewage treatment plant should be considered illicit and should be prohibited, whether or not a discharge was actually observed.

Sec. 67.405. - Discharges from commercial, industrial or construction activities to the MS4 or regulated waters.

67.405.A. Stormwater from areas of any commercial activity, industrial activity or construction activities shall be controlled, treated and managed on-site using BMPs so as not to cause an illicit discharge to the County's MS4 or regulated waters.

67.405.B. All erosion, pollutant, and sediment controls required by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under a NPDES permit and the County's land development regulations, shall be properly implemented, installed, operated, and maintained.

67.405.C Prior to completion or abandonment of a construction project, the contractor and/or owner of the construction project shall remove all construction debris or any other discarded materials.

67.405 D. Construction projects must implement appropriate BMPs, not limited to containment and removal, in order to manage waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. All debris shall be kept in such a manner as to prevent it from being spread by any means.

~~67.405C.~~E. Authorized discharges to the County's MS4 shall be controlled so that they do not impair the operation of the County's MS4 or contribute to the failure of the County's MS4 to meet any applicable local, state, or federal law or regulation.

~~67.405D.~~F. Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

Sec. 67.406. - Interconnected MS4s.

Interconnected MS4s, including MS4s not owned by the County, shall be controlled so that they do not impair the operation of or contribute to the ~~impairment of the County's MS4 in meeting failure of the receiving MS4 to meet~~ any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

Sec. 67.407. - Accidental discharges.

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 storm drain system or waters of the United States, 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 (911). Any person who is responsible for any accidental discharge to the County's MS4 in violation of this article 13 shall immediately notify the County of such discharge. Where such notification is provided verbally, written notification shall be provided within three days. ~~The person responsible for the accidental discharge shall also take immediate action to ensure the containment and cleanup of such discharge.~~

Sec. 67.408.—~~Administrative orders, and reporting and correction~~ Correction of illicit connections and illicit discharges.

67.408.A.—~~The County Administrator may issue an order to any person to immediately cease any discharge or eliminate any connection to the County's MS4 determined by the County Administrator to be in violation of any provision of this article 13.~~

67.408.B.A. Persons responsible for and/or currently operating ~~known~~ illicit connections or illicit discharges shall immediately ~~initiate procedures to~~ cease discharging and provide suitable containment facilities. Such procedures shall include a requirement to obtain approval from the County Administrator of a schedule for implementing proposed corrective measures.

67.408.B.C. The construction, use, operation, maintenance or continued existence of illicit connections to the County's MS4 is prohibited. This prohibition includes illicit connections made prior to the effective date of this article, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. Immediately upon discovery, persons currently operating an illicit connection shall ~~initiate procedures to~~ cease discharging and remove said illicit connection. If the County Administrator agrees that removal of the illicit connection requires additional work for conveyance of the discharge to authorized containment systems, the responsible party must obtain approval from the County Administrator for such work or procedures prior to implementation. The work or procedures must include a schedule for implementing proposed corrective measures including authorized containment, and cleanup of any discharge. Such procedures shall include a requirement to obtain approval from the County Administrator of a schedule for implementing proposed corrective measures including authorized containment, and cleanup of any discharge.

67.408.C.D.—~~As soon as a person responsible for and/or currently~~ owning and/or operating a commercial, industrial or construction activity obtains information of a suspected illicit discharge ~~or illicit connection~~ to the County's MS4 or regulated waters from said activity, then all necessary actions shall be taken to locate the illicit discharge ~~or illicit connection~~ and, upon discovery, immediately ~~initiate procedures to~~ cease the illicit discharge ~~and/or remove the illicit connection~~. If the County Administrator agrees that elimination of the discharge requires additional work or procedures for conveyance of the discharge to authorized containment systems, the responsible party must obtain approval from the County Administrator for such work or procedures prior to implementation. The work or procedures must include a schedule for implementing proposed corrective measures including authorized containment, and cleanup of any discharge. Further, a schedule for implementing additional proposed corrective measures including authorized containment and cleanup of any discharge shall be submitted in writing to the County Administrator for approval prior to implementation. In the event of a discharge of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911).

67.408.D.E.—The County may require, by written notice, that any owner and/or person engaged in any activity or owning or operating any facility that may cause or contribute to illicit connections or illicit discharges to the County's MS4 or regulated waters to undertake at said owner's and/or person's expense such monitoring and analysis and furnish such reports to the County as deemed necessary to determine compliance with this article and the County's NPDES requirements.

67.408.E.F. All owners and/or persons in violation of this article shall address such violations immediately. Violations shall be addressed as set forth in this section by providing a written response to the County Administrator, outlining the temporary and permanent measures that have or will be taken to correct the violation and a proposed schedule for completion of each of the corrective measures. Corrective actions are subject to the approval of the County Administrator.

67.408.F.G.—Persons responsible for a discharge which adversely impacts a regulated water shall be liable for all sampling and analytical costs incurred in monitoring the discharge, any county, state or federal fines imposed as a result of the discharge and the cost of removing or properly treating the discharge for complete restoration of the quality the regulated waters.

67.408.G.H. If the owner and/or person responsible for a violation fail to take corrective action approved by the County Administrator, the County has the right to take remedial action or initiate enforcement as set forth in Section 67.410. The owner and/or person responsible for the illicit discharge or illicit connection shall reimburse all costs incurred by the County in taking such actions.

Sec. 67.409. - Inspections and monitoring.

67.409.A. *Authority for inspections.* Authorized officials shall be allowed access for inspection of facilities discharging or suspected of discharging to the County's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations. All structures and processes which allow discharges to the County's MS4, as well as records concerning them, shall be made accessible to the authorized officials for this purpose. ~~Whenever necessary to make an inspection to enforce any provision of this article 13, or any regulation or permit issued under this article 13, or whenever an authorized official has reasonable cause to believe there exists any condition constituting a violation of any of the provisions of this article 13 or any regulation or permit issued under this article 13, any authorized official may enter any property, building or facility at any reasonable time to inspect the same or to perform any duty related to enforcement of the provisions of this article 13; provided, that:~~

- ~~1. If such property, building or facility is occupied, such authorized official shall first present proper credentials and request permission to enter; and~~
- ~~2. If such property, building or facility is unoccupied, such authorized official shall make a reasonable effort to locate the owner or other person having charge or control of the property, building or facility, and shall request permission to enter.~~

~~Any request for permission to enter made under this section 67.409 shall state that the owner or person in control has the right to refuse entry, and that in such event that entry is refused, the authorized official may enter to make inspection only upon issuance of a search warrant by a duly authorized magistrate. If the owner or person in control refuses permission to enter after such request has been made, the authorized official is hereby authorized to seek assistance from any court of competent jurisdiction in obtaining entry. Routine or area wide inspections shall be based upon such reasonable selection processes as may be necessary to carry out the purposes of this article 13, including but not limited to random sampling and sampling in areas with evidence of stormwater contamination, nonstormwater discharges, or similar factors.~~

67. 409.B. *Authority for monitoring and sampling.* Any authorized official may install and maintain such devices as are necessary to conduct sampling or monitoring of discharges to the County's MS4. During any inspections made to enforce the provisions of this article 13, any authorized official may take any samples deemed necessary.

67. 409.C. *Requirements for self-monitoring.* The County Administrator may require any person engaging in any activity or owning any property, building or facility, including but not limited to a site of industrial activity, to undertake reasonable monitoring of any discharge to the County's MS4 and to furnish periodic reports.

Sec. 67.410. – Enforcement

If a violation of this article is found, the County Administrator is authorized to take any or all of the following enforcement actions:

67.410.A. Issue a written Notice of Violation pursuant to Chapter 1, Article 4. Such notice may include:

- (1) A requirement for the performance of monitoring, analyses, and reporting.
- (2) A requirement for the immediate elimination of illicit connections.
- (3) A requirement that the violating discharges, practices, or operations cease and desist immediately.

(4) A requirement for the abatement and/or remediation of stormwater pollution or contamination hazards and the restoration of any affected property.

(5) A requirement for the implementation of source control or treatment BMP.

(6) A deadline within which such remediation or restoration must be completed and may further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(7) A requirement for a written response to the County Administrator, outlining the temporary and permanent measures that have or will be taken to correct the violation and a proposed schedule for completion of each of the corrective measures. Corrective actions are subject to the approval of the County Administrator.

67.410.B. Issue a stop work order directing that any violations of this article cease immediately. The stop work order shall remain in effect until a final determination is made on the alleged violation.

67.410.C. Request that the Martin County Sheriff or any other law enforcement agency having jurisdiction enforce this ordinance.

67.410.D. Seeking any and all remedies at law or in equity, including but not limited to injunctive relief, in connection with the provisions of this article or the County's obligations under the NPDES program.

Sec. ~~67.410.411~~. - NPDES permits.

Any person who holds a National Pollutant Discharge Elimination System (NPDES) permit, either a multi-sector generic permit, a construction generic permit, or a municipal separate storm sewer permit, which authorizes discharge to the County's MS4 shall provide a copy of such permit to the County Administrator no later than the later of 60 calendar days after the effective date of this article 13 or 60 calendar days after issuance of the permit. All erosion, pollutant and sediment controls required by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under a NPDES permit and the County's Land Development Regulations, shall be properly implemented, installed, operated and maintained.

Secs. 67. ~~412 411~~—67.429. - Reserved.

PART 2. APPLICABILITY OF ORDINANCE.

This ordinance shall be applicable in the unincorporated area of Martin County.

PART 3. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict, except for ordinances concerning the adoption or amendment of the Comprehensive Plan.

PART 4. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, by a court of competent jurisdiction, such holding shall not affect the

remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART 6. CODIFICATION.

Provisions of this ordinance shall be incorporated in the County Code, except parts 2 through 8 shall not be codified. The word "ordinance" may be changed to "section," "article" or other word, and the sections of this ordinance may be renumbered or re-lettered.

PART 8. EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Department of State.

DULY PASSED AND ADOPTED THIS ____ DAY OF _____, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT
AND COMPTROLLER

STACEY HETHERINGTON, CHAIR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

RUTH A. HOLMES, SENIOR
ASSISTANT COUNTY ATTORNEY