

Sec. 14-471. - Purpose and intent.

The purpose of this article is to provide clear guidance and regulation with respect to discharges into the Lee County Municipal Separate Storm Sewer System (MS4). In order to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Permit, the county must establish regulations that will prohibit illicit discharges into the MS4 and provide sufficient means to monitor and enforce local discharge regulations.

It is the intent of this article to prohibit any illicit, inappropriate or harmful discharges into the MS4 or waters of Lee County.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03)

Sec. 14-472. - Applicability.

This article applies to the unincorporated areas of Lee County.

(Ord. No. 98-11, § 3, 6-23-98)

Sec. 14-473. - Prohibition.

Illicit stormwater and non-stormwater discharges into the MS4 are prohibited. Unless otherwise permitted, there are no discharges allowed to Lee County MS4 except uncontaminated stormwater runoff or one of the exemptions as listed in section 14-474.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03)

Sec. 14-474. - Exemptions.

The following discharges into the Lee County MS4 are specifically exempt from compliance with this article:

- (a) Waterline flushing.
- (b) Landscape irrigation.
- (c) Diverted stream flows.
- (d) Rising groundwaters and discharges associated with county declared emergencies.
- (e) Uncontaminated groundwater infiltration (as defined in 40 CFR § 35.2005(20)) to separate storm sewers.
- (f) Uncontaminated pumped groundwater.

- (g) Discharges from potable water sources.
- (h) Fountain drains.
- (i) Air conditioning condensate.
- (j) Irrigation water.
- (k) Springs.
- (l) Water from crawl space pumps.
- (m) Footing drains.
- (n) Lawn watering.
- (o) Individual residential car washing.
- (p) Flows from riparian habitats and wetlands.
- (q) Dechlorinated swimming pool discharge.
- (r) Street wash waters.
- (s) Discharges or flows from emergency fire fighting activities.

(Ord. No. 98-11, § 3, 6-23-98)

Sec. 14-475. - Definitions.

Administrator means the administrative director of the Division of Natural Resources, or designee, who is responsible for administering the provisions of this article.

Best management practices (BMPs) means methods and practices used to control and manage stormwater runoff that have been determined most appropriate by state and federal agencies such as Florida Department of Environmental Protection and United States Environmental Protection Agency.

Construction site means a site where the land surface has been disturbed to accommodate development or redevelopment, as defined in this section. The act of soil disturbance is considered industrial activity for purposes of this article.

Development means an improvement to land, as that phrase is defined in section 10-1.

Discharge means any material, solid or liquid, that is conveyed, placed or otherwise enters the municipal separate storm sewer system. It includes, without qualification, the discharge of a pollutant.

Illicit discharge or *illicit stormwater discharge* means any discharge not composed entirely of stormwater into the Lee County MS4, including, but not limited to, discharge from a construction site or an industrial site that has the potential to impact the Lee County MS4. Non-stormwater discharges made in accordance with an approved county development order issued consistent with the Lee County MS4 permit, an independent NPDES permit, as a result of fire fighting activities, or otherwise

specifically exempted under this article will not be deemed an illicit discharge.

Industrial activity development means those functions associated with an industrial site as defined herein.

Industrial site means a site directly related to manufacturing, processing or raw materials storage. This term includes, but is not limited to, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling (including the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product) sites; refuse sites; sites used for the application or disposal of processed wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw materials (including tank farms), and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

In accordance with NPDES standards found in 40 CFR § 122.26, "industrial site" also includes those facilities engaging in the following categories of "industrial" activity:

- (a) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N;
- (b) Facilities classified as Standard Industrial Classifications (SIC) 20, 21, 22, 23, 24, 25, 26, 27, 28, 285, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 4221, 4222, 4223, 4224 and 4225;
- (c) Facilities classified as SIC 10 through 14 (mineral industry) including active or inactive mining operations (inactive mining operations are mining sites not being actively mined that have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation or possessing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim) and ore and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operation;
- (d) Hazardous waste treatment storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
- (e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under subtitle D of RCRA;
- (f) Steam electric power generating facilities;
- (g) Transportation facilities classified as SIC 40, 41, 42, 43, 44, 45, and 5171 that have vehicle maintenance shops or equipment cleaning operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment clearing operations, or which are otherwise identified under § 122.26(b)(14)(i)-(vii) or (ix)-(xi), F.A.C., are associated with industrial activity;
- (h) Treatment works treating domestic sewage or any other sewage, sludge or wastewater treatment device or system, used in storage treatment, recycling, and reclamation of municipal or

domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pre-treatment program under 40 CFR part 403. Not included are farm lands, domestic gardens, lands used for sludge management where sludge is beneficially reused (and not physically located in the confines of the facility) or areas that are in compliance with § 405 of the Federal Clean Water Act;

(i) Any construction activity including clearing, grading and excavation activities except, operations resulting in the disturbance of less than one acre of total land area that is not part of a larger common plan of development or sale;

(j) Any construction activity including clearing, grading and excavation activities resulting in disturbance of less than one acre where the property is part of a larger development that obtained approval after October 1, 1992, and was required to obtain an NPDES permit;

(k) Facilities involved in the recycling of materials including metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards, including but not limited to those classified as SIC 5015 and 5093.

MS4 means Lee County Municipal Separate Storm Sewer System.

NPDES means National Pollution Discharge Elimination System. Lee County's NPDES MS4 permit number is FLS000035.

Site means the physical real property, with or without structures, where development or other types of activity involving the real property may result in stormwater runoff.

Standard Industrial Code (SIC) means a class of industrial activity as specified in the Standard Industrial Classification Manual, 1987 edition.

Street wash water means any runoff from the washing of streets, culverts or other MS4 facilities operated and maintained by Lee County.

Stormwater discharge means the discharge from any conveyance used for collecting and conveying stormwater.

Stormwater Pollution Prevention Plan (SWP3) means a document as defined in 40 CFR 122.26 prepared by a professional engineer registered in the State of Florida (construction site SWP3s must also be prepared in accordance with DEP Document No. 62-621) outlining the means and methods of managing stormwater onsite using BMPs.

Water quality criteria means minimum water quality standards as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03; Ord. No. 09-23, § 5, 6-23-09)

Sec. 14-476. - Industrial activity.

(a) *Industrial activity classification.* For purposes of this article all industrial activity falls into one of two major categories:

(1) *Construction related activity.* This includes sites of new development or significant redevelopment falling within the industrial activity categories (i) and (j), as set forth in section 14-475

(2) *On-going industrial activity.* This includes sites that encompass uses or activities that are identified in industrial activity categories (a—h) and (k), as set forth in section 14-475

(b) *Construction site runoff.* Compliance with this subsection applies to all construction associated with an industrial activity category, identified in section 14-475, that is not complete prior to July 1, 2003. Projects under construction on July 1, 2003 or beginning construction thereafter must comply with the requirements set forth in this section.

All development approvals, including development orders and building permits, must address stormwater quality issues, including construction runoff, as follows:

For development of more than one acre.

(1) Submit an SWP3 for construction meeting the criteria set forth in section 14-477, prior to development order approval. If a development order is not required, then the SWP3 must be submitted prior to building (or vegetation removal) permit issuance. At the discretion of the director of development services, an affidavit or certification from a Florida licensed professional engineer may be submitted, prior to start of construction activity, attesting that the SWP3 for construction has been prepared in accordance with section 14-477 and will be on site and available for review during all phases of construction;

(2) Maintain a copy of the SWP3 on site at all times for review by the county; and

(3) File a notice of intent (NOI) with FDEP, Tallahassee, in accordance with the direction of DEP Document No. 62-621 and with development services at least 48 hours prior to start of construction.

(c) *Industrial site runoff.*

(1) *Applicability.* This subsection applies to existing or ongoing industrial activity, which encompasses industrial activity occurring on a site subsequent to completion of the initial site construction.

(2) *Industrial activity beginning prior to July 1, 1998.*

a. All industrial activity sites, operating or functioning prior to July 1, 1998 with respect to the proposed and approved end use, that are required to hold a NPDES permit, individual or group, in order to meet federal regulations, must provide the county with a copy of the permit, the permit application or the NOI no later than October 1, 2002. If the property owner complies with this subsection by providing the county with a copy of the permit application or NOI, then the property owner must provide the county with a copy of the permit upon receipt from the EPA.

b. No industrial activity that is in compliance with the NPDES requirements as of October 1, 1997 (County MS4 permit issuance date) will be required by Lee County to retrofit its stormwater system, unless changes identified in this article are made to the site or the MS4 is deemed in violation of state water quality standards. If a water quality violation is discovered, the MS4 will be evaluated to determine the most effective method to bring the

system into compliance. The compliance effort may require improvements to an existing site.

(3) *Industrial activity beginning after July 1, 1998.* All sites proposing to engage in industrial activity categories, as set forth in section 14-475, that are required to hold a valid NPDES permit for either the discharge of stormwater or regulated industrial activity, other than stormwater discharge, must provide copies of the permit and SWP3 for site operation to the Natural Resources Division for review upon receipt from the EPA or FDEP, as appropriate. If a permit is required for both stormwater discharge and site activity, one permit encompassing both activities is sufficient.

(4) *Site expansion.*

a. Industrial development activity sites proposing to increase the impervious area by more than 2,500 square feet must provide water quality calculations, meeting SFWMD criteria, and a SWP3 for site operation to the county as part of the development permit application.

b. Any industrial activity development proposing to change or expand its existing operation in a manner that will increase the runoff rate or volume from the site must submit a complete copy of the NOI, along with a SWP3 for site operation, to the county as part of the development permit application.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03)

Sec. 14-477. - Stormwater pollution prevention plan (SWP3) criteria.

For purposes of this article, all SWP3s must:

- a. Comply with the requirements of 40 CFR 122.26;
- b. Use best management practices for sediment and erosion control as outlined in the Florida Stormwater Sedimentation Control Inspector's Manual or a similar quality guidance manual;
- c. Be prepared by a Florida licensed professional engineer in accordance with DEP Document No. 62-621; and
- d. Remain on site and be available for review during all phases of construction and, if required, during on-going operations activity.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03; Ord. No. 09-23, § 5, 6-23-09)

Sec. 14-478. - Monitoring.

Lee County Department of Community Development may, at the request of Natural Resources Division, require high risk runoff facilities to provide annual monitoring reports as a condition of development order approval or continued operation. Data collected by the facility to satisfy monitoring requirements for a NPDES or state discharge permit may be used to satisfy this requirement. At minimum the monitoring report must include quantitative data on the following constituents:

- (a) Any pollutants limited in an existing NPDES permit for the facility;
- (b) Oil and grease;
- (c) Chemical oxygen demand (COD);
- (d) pH;
- (e) Biochemical oxygen demand, five-day (BOD⁵);
- (f) Total suspended solids (TSS);
- (g) Total phosphorus;
- (h) Total Kjeldahl nitrogen (TKN);
- (i) Nitrate plus nitrite nitrogen; and
- (j) Dry information on discharges required under 40 CFR Sections 122.21(g)(7)(iii) and (iv).

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03)

Sec. 14-479. - Enforcement.

(a) *Responsibility.* Lee County Natural Resources Division and Lee County Code Enforcement are responsible to coordinate the enforcement of this article with the South Florida Water Management District (SFWMD), Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP). In order to facilitate enforcement, Natural Resources' staff has full authority to act as a code enforcement officer or inspector, as those terms are defined in LDC sections 2-423 and 2-430

(b) *Procedure.* Any violation of this article may result in prosecution by any of the methods or procedures set forth below, or by any combination of these procedures. The choice of procedure rests within the reasonable discretion of the administrator, based upon the nature of the violation, the number of previous violations, and the magnitude of the violation and its threat to the public health, safety and welfare.

(1) *Hearing examiner.* Any violation of this article may be prosecuted in accordance with the provisions found in chapter 2, article VII.

(2) *Stop work order.* The administrator has the authority to issue a stop work order to ameliorate, minimize or prevent irreparable harm under any of the following circumstances if:

- a. The work being done is not in compliance with the provisions of this article;
- b. Discharges from the site do not meet the minimum surface water quality standards set forth in FAC Rule 62-302; or
- c. The site specific permit discharge criteria are not being followed.

The notice to stop work must be in writing, state the reasons for the stop work order, and set

forth the specific conditions under which work may resume. The notice is effective upon delivery. Notice is deemed received/delivered if hand delivered to the owner of the property, the owner's designated agent or person/entity doing work on the property. In the event hand delivery is not possible, the notice will be deemed delivered if posted on the property in a visible and conspicuous place for no less than 24 hours.

(3) *Citation.* Any violation of this article may be prosecuted in accordance with the citation provisions found in chapter 2, article VII.

(4) *Referral to appropriate state or federal agency.* The county may coordinate enforcement of this article with SFWMD, EPA and FDEP in accordance with applicable county, state and federal regulations. Pursuit of a remedy allowed under county regulations does not prevent the state or federal agency from pursuing additional action against a violator.

(5) *Other remedies.* The county may exercise its discretion to pursue alternative courses of action, such as injunctions or other civil remedies, when deemed appropriate by the director of public works.

(c) *Appeal.*

(1) Actions taken in accordance with chapter 2, article IV may be appealed in accordance with the procedure set forth in that article.

(2) Appeal of an administrative shut down decision may be obtained by filing a Petition for Writ of Certiorari with the circuit court.

(Ord. No. 98-11, § 3, 6-23-98; Ord. No. 03-16, § 4, 6-24-03; Ord. No. 09-23, § 5, 6-23-09)