

Emergency Bill No.: 25-94  
Concerning: Water Quality - Discharges  
Draft No. & Date: 4 11/1/94  
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Enacted: November 1, 1994  
Executive: November 7, 1994  
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Sunset Date: None  
Ch. 31, Laws of Mont, Co. 1994

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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AN EMERGENCY ACT to:

- (1) establish the County's authority to regulate discharges of pollutants to county waters; and
- (2) establish inspection and enforcement procedures and penalties for noncompliance.

By adding

Montgomery County Code  
Chapter 19, Erosion and Sediment Control, Stormwater Management,  
Floodplain Management  
Article IV, Water Quality Control

The County Council for Montgomery County, Maryland approves the following act:

Sec.1. Chapter 19 is amended by adding a new Article IV:

**ARTICLE IV. WATER QUALITY CONTROL**

**19-47. Purposes; Authority.**

- (a) The water quality goals of the County are to:
  - (1) protect, maintain, and restore high quality chemical, physical, and biological conditions in the waters of the state in the County;

- (2) reverse past trends of stream deterioration through improved water management practices;
  - (3) maintain physical, chemical, biological, and stream habitat conditions in County streams that support aquatic life along with appropriate recreational, water supply, and other water uses;
  - (4) restore County streams, damaged by inadequate water management practices of the past, by reestablishing the flow regime, chemistry, physical conditions, and biological diversity of natural stream systems as closely as possible;
  - (5) help fulfill interjurisdictional commitments to restore and maintain the integrity of the Anacostia River, the Potomac River, the Patuxent River, and the Chesapeake Bay; and
  - (6) promote and support educational and volunteer initiatives that enhance public awareness and increase direct participation in stream stewardship and the reduction of water pollution.
- (b) The federal National Pollutant Discharge Elimination System (NPDES) and state water quality standards require that the County establish regulations governing discharges into protected waters of the state.
  - (c) To accomplish the purposes of this Chapter, the County Council has established this Article. In administering and enforcing the Article, the County should consider the economic impact of any action it takes or requires.
  - (d) The County must work in conjunction with municipalities, counties, agencies of the state, and the federal government to establish interagency agreements and to take other steps necessary to accomplish the purposes of this Chapter.

**19-48. Definitions.**

In this Article, the following words and phrases have the following meanings:

- (a) **Agriculture** means the business, science and art of cultivating and managing the soil, growing, harvesting, and selling sod, crops and livestock, and the products of forestry, horticulture and hydroponics; breeding or raising livestock, poultry, fish, game, and fur-bearing animals; dairying, beekeeping and similar activities.
- (b) **Aquatic life** means a diverse macroinvertebrate amphibian and fish population consistent with the State-designated water use classification or the support potential of the existing stream flow, water quality, and habitat quality.
- (c) **Balanced indigenous community** means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollutant-tolerant species. This community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, this community does not include species whose presence or abundance is attributable to:

- (1) the introduction of pollutants that will be eliminated by compliance by all sources with effluent limitations; and
- (2) alternate effluents limitations imposed under state regulations.
- (d) **Best management practice** means sediment and erosion control and stormwater management practices approved by the Department or agricultural runoff control practices approved by the Soil Conservation District to mitigate adverse effects of land use activities, runoff, sedimentation, and nonpoint source pollution on stream bank erosion, stream hydrology, surface and groundwater replenishment.
- (e) **County** means Montgomery County.
- (f) **Department** means the Department of Environmental Protection.
- (g) **Director** means the Director of the Department of Environmental Protection or an authorized designee or agent.
- (h) **Discharge** means adding, introducing, releasing, leaking, spilling, casting, throwing, or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state in the County.
- (i) **Erosion** means the process by which ground surface is worn away by action of wind, water, ice, or gravity.
- (j) **Groundwater** means underground water in a zone of saturation or water contained or moving among soils and sands or held within geologic formations under the ground surface.
- (k) **Industrial waste** means any liquid, gaseous, solid, slurry, or other waste substance, or any combinations of these resulting from any process or industry, manufacturing, trade or business.
- (l) **Nonpoint source** means a diffuse source of pollution that does not result from a pollutant discharge at a specific single location (such as a single pipe) but generally results from human or human-induced activities which introduce pollutants into waters of the state in the County through land runoff, precipitation, atmospheric deposition, or percolation.
- (m) **Person** means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipality, County, state or federal agency, or any combination of them.
- (n) **Plan for compliance** means a plan submitted to the Director by a person who causes or permits a violation of this Article which established specific corrective actions to be taken and dates by which each action must be completed to date or mitigate the impacts of the violation.
- (o) **Point source** means any discernable confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which any pollutant is or may be discharged.
- (p) **Pollutant** means any liquid, gaseous, solid, radioactive, hazardous, or other substance which, when discharged in the County as a point source or nonpoint source, or when applied to or stored on natural or man-made land surfaces, subsurface, or other surfaces connected to these surfaces in a manner other than as authorized by applicable

permits, regulations, or manufacturer's instructions, has potential to or does:

- (1) interfere with state or County designated water uses;
- (2) obstruct or cause damage to waters of the state in the County;
- (3) change water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater
- (4) add an unnatural surface film on the water;
- (5) adversely change other chemical, biological, thermal, or physical conditions, in any surface water or stream channel;
- (6) degrade the quality of ground water; or
- (7) harm human life, aquatic life, or terrestrial plant and wildlife.

Pollutant includes dredged soil, solid waste, incinerator residue, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, and oxygen-demanding material.

- (q) **Pollute** means to discharge pollutants into waters of the state in the County.
- (r) **Pollution** means the direct or indirect distribution of pollutants into waters of this state in the County.
- (s) **Restore** means to recreate, where feasible, stable and well-shaded riffle, run, stream meander, and pool structures and aquatic habitat conditions with the goal of supporting more balanced indigenous communities in surface waters that have been damaged by excessive or inadequately controlled stormwater flows and nonpoint source pollution discharges from upland watershed development.
- (t) **Sediment** means soils or other particulate materials eroded or otherwise separated by parent materials and transported or deposited by the action of wind, water, ice, or gravity or by illegal dumping.
- (u) **Sedimentation** means the action or process of forming or depositing sediment in a manner which adversely impacts the physical and biological diversity of wetlands and waters of the state in the County.
- (v) **Soil Conservation and Water Quality Plan** means a land use plan for a farm approved by the Soils Conservation District in accordance with Department of Agriculture (USDA) Soil Conservation Service standards and specifications to make the best possible use of soils and water resources in carrying out agriculture while minimizing the movement of sediment, animal wastes, nutrients, or agricultural chemicals into waters of the state in the County.
- (w) **Soil Conservation District** means the Montgomery Soil Conservation District, which prepares and approves soil conservation and water quality plans.
- (x) **Stream channel** means a part of a water course either naturally or artificially created which contains an intermittent or perennial base flow of groundwater origin.
- (y) **State designated water uses** means uses specified in state water quality standards.
- (z) **Surface Waters** means all waters of the state other than ground waters, which

include ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems except those designed and used to collect, convey, or dispose of sanitary sewage.

(aa) **Toxic substance** means any liquid, gaseous, or solid substance in a concentration which, when applied to, discharged to, or deposited in waters of the state in the County, may, in the judgment of the Department exert a detrimental effect on humans or on the propagation, cultivation, or conservation of terrestrial or aquatic life.

(bb) **Waters of the state** means both surface waters and ground waters within the boundaries of the State of Maryland and subject to its jurisdiction.

#### **19-49. Administration.**

The Director must administer and enforce this Article.

- (a) The Director must coordinate programs relating to water pollution abatement and seek the cooperation and assistance of all County agencies, municipalities when their programs affect the County.
- (b) The County Executive, subject to confirmation by the Council, must appoint a Water Quality Advisory group, composed of up to three non-voting representatives of government agencies and three representatives each of the public at large, academic and scientific experts, environmental groups, the agricultural community, and the business community. The Water Quality Advisory Group must recommend to the Executive and the Council by March 1 each year water quality goals, objectives, policies, and programs. Each member must be appointed for a 3-year term unless appointed to fill the balance of an unexpired term, but the initial terms may be staggered. The Group each year must select a chair and any other officer it finds necessary.
- (c) The Director may recommend regulations to establish water quality use classes and water quality standards or criteria which exceed minimum state water use classes, standards, or criteria as set forth in state regulations, or for other purposes necessary to administer this Article. The Executive may adopt regulations for these purposes under method (1).
- (d) This Article and any regulations adopted under it must not waive any requirement imposed by the federal Clean Water Act, the state Department of the Environment, or the state Department of Natural Resources.

#### **19-50. Prohibition of Water Pollution**

- (a) A person must not discharge, cause to flow from a storage system or other container, any pollutant into waters of the state in the County except in concentrations or quantities explicitly authorized by an approved National Discharge Elimination System discharge permit or by a plan for that are consistent with the utilization of approved best management practices. Pollutant compliance, or

- (b) A person must not connect any apparatus discharging any pollutant, in any quantity, to any part of the waters of the state in the County except as explicitly authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.
- (c) A person must not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff and discharge as point pollution or nonpoint source pollution into waters of the state in the County except in concentrations and quantities authorized by and approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.

**19-51.Control of Water Quality.**

- (a) The Director must regulate waters of the state in the County according to state water quality standards and designated water uses set forth in state regulations. If the Director finds that more stringent standards than those adopted by the state are necessary, such standards may be established by regulation adopted under Section 19-49(c).
- (b) The Director may order:
  - (1) the abatement of any discharge and correction of any pollution of waters of the state in the County; and
  - (2) the abatement and correction of any degradation of riparian habitat and aquatic life, caused by a failure to design, install, operate, or maintain sediment control, stormwater management, or agricultural best management practices in accordance with an approved sediment control plan, stormwater plan, sediment control permit, Soil Conservation and Water Quality Plan, or plan for compliance.
- (c) If illegal pollutant discharges form properties engaged in agriculture impair aquatic life or public health, cause stream habitat degradation, or result in water quality standards or criteria violations, the Department must pursue correction of these violations in conjunction with the Soil Conservation District and, if necessary, the state Department of the Environment. Abatement of any violations must be handled in accordance with a memorandum of understanding between the Department and the Soil Conservation District regarding specific notification and enforcement procedures to be followed in cases of water pollution caused by agriculture.
- (d) Best management practices used to comply with this Article must be designed, installed, operated, and maintained in accordance with sediment control plans, stormwater management plans, or sediment control permits approved by the Department. Agricultural best management practices must be designed, installed, operated, and maintained in accordance with Soil Conservation and Water Quality Plans approved by the Soil Conservation District.

### **19-52. Records, Reports, Sampling, and Analysis.**

- (c) If the Director requires the owner or operator of any industrial site to prepare and implement a site control plan to mitigate and eliminate pollution caused by activities at the site, the Director may require the owner or operator, in compliance with the plan to:
  - (1) maintain records to demonstrate compliance;
  - (2) prepare and file reports necessary to demonstrate compliance; and
  - (3) sample and provide physical, biological, or chemical analysis of discharges by using:
    - (A) a state certified laboratory ; and
    - (B) sampling methods where, when and how the Department requires.
- (b) Upon request of the Department, the owner or operator must provide any records, manifests, and invoices for review. If the documents are not available at the time of the request, the owner or operator must produce the records within the time designated by the Director.

### **19-53. Enforcement, Penalties and Compliance.**

- (a) The Department may enter a site at any time during normal business hours, and at other reasonable times, to inspect, investigate, or monitor activities subject to this Article. If the person in charge of the site does not consent to any entry by the Department, the Director must obtain an administrative search warrant from a court with jurisdiction by showing that reasonable administrative standards for inspecting the site have been met.
- (b) If a discharge is observed which represents an immediate hazard to public health or safety, or aquatic life, the Director of employees of the Department of Police, the Department of Fire and Rescue Services, and any other agent of the County designated by the County Executive, may enter any property or structure, except a dwelling, as necessary to prevent or stop the hazard.
- (c) A person must not hinder, prevent, or unreasonably refuse to permit any inspection, investigation, or monitoring under this Article.
- (d) Upon finding a violation of this Article, the Director may issue a notice of violation, stop order, or corrective order to any person causing or permitting the violation.
- (e) A person who has submitted a plan for compliance and any amendment to it must be approved by the Director. If the violation involves a person engaged in agriculture, a plan for compliance must be developed under Section 19-51(c).
- (f) A person who has submitted a plan for compliance that has been approved by the Director is not in violation of this Chapter as long as the person acts in accordance with the plan for compliance.
- (g) Any violation of this Article is a Class A violation. Each day a violation continues is a separate offense.
- (h) The Director may issue a stop work order to any person who violates this Article

when performing activities authorized by a building permit or sediment control permit issued under Chapter 8 or Chapter 19.

(i) In addition to any other remedy allowed by law, the Department may seek injunction or other appropriate judicial relief to prevent or stop any violation of this Article.

#### **19-54. Liability for Expenses Caused by Violation.**

- (a) In an immediate danger to the public safety, the Director must notify the responsible party by the most expeditious means, and the party who was notified must remove the illegal discharge or pollutant by the time stated in the notice. If it is not so removed, the Department may remove, mitigate, and clean up the person who did not remove, mitigate, and clean up any illegal discharge or pollutant. The cost of that removal, mitigation, and clean-up must be paid to the County by the person who did not remove, mitigate, and clean up the illegal discharge and pollutant, and is a debt due to the County. The cost of removal, mitigation, and clean-up is a lien upon all real property. The cost of removal, mitigation, and clean-up may be listed on the tax bill and may be collected in the manner of ordinary taxes. This Section does not restrict the Department from proceeding directly with alternative enforcement procedures under Section 19-53.
- (b) If, after an inspection by the Department, the Director finds that a pollutant discharge poses an immediate hazard to the public health or safety to the waters of the state in the County, the Director must take action necessary to abate the pollutant discharge, protect the public, and mitigate any damage that the pollutant discharge has caused to the affected waters. Any cost incurred in carrying out actions under this subsection must be paid by the owner under subsection (a).
- (c) The Director may establish fees and charges necessary to administer and enforce this Article as provided in regulations adopted under method (3).

#### **Sec. 2. Emergency Effective Date.**

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.