

Bill No. 7822

Introduced in Council:

June 17, 2019

Adopted by Council:

July 1, 2019

Introduced by:

John Kennedy Bailey

Referred to:

Environment & Recycling

1 **Bill No. 7822** - A BILL to repeal Sections 102-300 and 102-303; to amend and reenact
2 Sections 102-301, 102-302, and 102-304 of Division I of Article VIII, Chapter 102 of the
3 Municipal Code of the City of Charleston, known as the "City of Charleston Illicit
4 Discharge Detection and Elimination Ordinance"; and to amend and reenact Sections
5 102-314, 102-315, 102-316, 102-317, 102-318, and 102-319 of Division II of Article VIII,
6 Chapter 102 of the Municipal Code of the City of Charleston, known as the "City of
7 Charleston Construction Site Erosion and Sediment Control Ordinance."
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9 WHEREAS, the 1972 amendments to the Federal Water Pollution Control Act (referred
10 to as the Clean Water Act or "CWA"), 33 U.S.C. §§ 1251-1387, prohibit the discharge of
11 any Pollutant to navigable waters of the United States from a point source unless the
12 discharge is authorized by a permit issued pursuant to the National Pollutant Discharge
13 Elimination System ("NPDES") required by CWA § 402, 33 U.S.C. §§ 1342; and
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15 WHEREAS, Municipal Separate Storm Sewer Systems ("MS4s") which convey urban
16 runoff, including, but not limited to Stormwater runoff, are point sources under the CWA;
17 and
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19 WHEREAS, the US EPA reports that in some municipalities illicit connections of
20 sanitary, commercial and industrial discharges to storm sewer systems have had a
21 significant adverse impact on the water quality of receiving waters; and
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23 WHEREAS, pursuant to the CWA, the US EPA has defined "illicit discharges" as any
24 discharge to a MS4 that is not composed entirely of Stormwater or not covered by a
25 NPDES permit; and
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27 WHEREAS, Section 402(p)(3)(B) of the CWA requires that NPDES permits for
28 discharges from MS4s are to include a requirement to "effectively prohibit" non-
29 stormwater discharges into MS4s; and
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31 WHEREAS, US EPA regulations implementing the CWA require a municipality to
32 demonstrate that it has the authority to control, through ordinance or other authority,
33 discharge to the MS4 of spills, dumping or disposal of materials other than stormwater;
34 and

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36 WHEREAS, soil is highly vulnerable to erosion by wind and water during the
37 construction process. Eroded soil endangers water resources by reducing water quality
38 and causing the siltation of aquatic habitat for fish and other desirable species. Eroded
39 soil also necessitates repair of sewers and ditches and the dredging of waterways. In
40 addition, clearing and grading during construction cause the loss of native vegetation
41 necessary for terrestrial and aquatic habitat; and

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43 WHEREAS, US EPA regulations require a municipality to implement a stormwater
44 management plan that adopts measures for the protection of water quality by
45 addressing erosion and sediment control during land disturbing activities; and

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47 WHEREAS, the City of Charleston, as the owner and operator of its MS4, has the right
48 and the duty to protect the integrity of its MS4 against Pollutants entering the MS4; and

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50 WHEREAS, under the Constitution of West Virginia, West Virginia Code, and the City of
51 Charleston Municipal Code, the City of Charleston has the authority to define public
52 nuisances and to protect the environment and the public health and safety of the
53 residents of and visitors to the City, by abating public nuisances.

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55 **Now, therefore, be it ordained by the Council of the City of Charleston:**

56 That Sections 102-300 and 102-303 of Division I of Article VIII of Chapter 102 are
57 hereby repealed, and Sections 102-301, 102-302, and 102-304 of Division I of Article
58 VIII, Chapter 102 are hereby amended and reenacted; and Sections 102-314, 102-315,
59 102-316, 102-317, 102-318, and 102-319 of Division II, Article VIII, Chapter 102 of the
60 Municipal Code of the City of Charleston are hereby amended and reenacted, all to
61 read as follows:

62
63 **CHAPTER 102 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**
64 **ARTICLE VIII – STORMWATER POLLUTION PREVENTION**
65 **DIVISION 1 – ILLICIT DISCHARGE DETECTION AND ELIMINATION**

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68 **Sec. 102-301. – Notice of violation.**

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70 (a) When a Compliance Officer determines after reasonable observation or investigation that
71 a Person has violated a prohibition or failed to meet a requirement of this Division, he/she may
72 order compliance by written notice of violation to that Person. Such notice may require, without
73 limitation:

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75 (1) the performance of monitoring, analyses and reporting;
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77 (2) the elimination of Illicit connections or discharges;
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79 (3) that discharges, practices or operations that are in violation shall cease and desist;

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81 (4) the abatement or remediation of Stormwater Pollution or contamination hazards and the
82 restoration of any affected property; and/or

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84 (5) the implementation of source control or treatment BMPs.
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86 (b) Notice(s) of violation shall be served in accordance with the law of the State of West
87 Virginia concerning the service of process in civil actions, except that a method of service
88 effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of
89 Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a Compliance
90 Officer. If service is made by certified mail consistent with West Virginia Rule of Civil
91 Procedure 4(d)(1)(D) and delivery of the notice of the violation is refused, the Compliance
92 Officer, promptly upon the receipt of the notice of such refusal, shall mail to the Person being
93 noticed, by first class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a
94 notice that despite such refusal, the notice of the violation(s) is valid, and (3) advising that the
95 City will proceed to enforce the notice of violation(s). So long as such first class mailing is not
96 returned as undeliverable by the U.S. Postal Service, service of the notice of violation(s) will be
97 conclusively presumed to have been effectuated. Proof of service shall be made at the time of
98 service by a written declaration, under oath, executed by the enforcement official effecting
99 service and shall declare the time, date and manner by which service was made.

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101 (c) Any notice of violation(s) under this section shall be in writing and shall contain the
102 following:

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104 (1) the date the notice of violation is given;
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106 (2) the name and address of the Person(s) charged with the violation;
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108 (3) the nature of the violation;
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110 (4) a statement of the action required to be taken in order to correct the violation and
111 further prevent it;
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113 (5) the time period allowed for the violation to be corrected. When determining the time
114 period allowed for correction, a Compliance Officer shall take into consideration the threat
115 posed by the violation to the health, safety and welfare of the public and the nature of the work
116 required to correct the violation;
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118 (6) the maximum fines that may be assessed if the violation is not corrected and a citation
119 is issued; and
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121 (7) the name, business address and telephone number of the Compliance Officer issuing
122 the notice of violation.

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124 (d) Nothing in this section shall limit the authority of Compliance Officers to take any other
125 lawfully prescribed enforcement action, including emergency actions or any other enforcement
126 action, without first issuing a notice of violation.

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Sec. 102-302. – Request for reconsideration.

Any Person receiving a notice of violation from a Compliance Officer may submit a written request for reconsideration to the City Engineer by mailing said request to The Office of the City Engineer, City of Charleston, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the Office of the City Engineer, 114 Dickenson Street, Charleston, West Virginia. The request for reconsideration must be received within 10 days from the date of the notice of violation and shall include a written explanation of the basis for the request. Upon receipt of a timely request for reconsideration, the City Engineer shall review the request and shall (1) uphold the notice of violation (2) reverse the notice of violation or (3) modify the notice of violation and shall provide written notice by certified mail of his or her decision to the Person within 15 days of receipt thereof. .

Sec. 102-303. – Reserved.

Sec. 102-304. – Enforcement measures.

(a) If the violation has not been corrected within 10 days or any other period specified by the City Engineer in his or her decision in the case of a request for reconsideration, then the Compliance Officer shall request the owner’s permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or bring the property into compliance.

(b) If refused access to the subject property, the Compliance Officer may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property.

CHAPTER 102 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES ARTICLE VIII - STORMWATER POLLUTION PREVENTION DIVISION 2 - CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 102-314. - Approval of Land Disturbing Activity.

(a) Any Person applying for a City of Charleston building permit that proposes a Construction project involving LDA exceeding 5000 square feet, or an increase in Impervious Area by 1000 square feet or greater, is required to obtain approval for such LDA from the City Building Department and/or City Engineer's Office. Requests for approval shall be made at the time of application for a building permit; provided, however, that a building permit shall not be issued in the absence of prior approval of LDA.

(b) Notwithstanding Sec. 102-314(a) herein, approval for LDA shall not be required for the following activities:

- 173 (1) Interior renovations;
174 (2) Roof repair;
175 (3) Building facade maintenance;
176 (4) Milling and repaving of existing asphalt or concrete streets, parking lots, or
177 sidewalks;
178 (5) Maintenance of existing landscaping or gardens;
179 (6) Cutting of trees and brush (provided the area remains vegetated and no grubbing of
180 root system occurs); and
181 (7) Maintenance of pervious sports fields such as replacement of the clay surface to
182 baseball infields, turf plugging of golf fairways and greens.

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184 **Sec. 102-315. - Submission of Erosion and Sediment Control Plan;**
185 **modifications.**

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187 (a) Any Person requesting approval of LDA is required to submit an Erosion and
188 Sediment Control Plan ("ESCP") to the City Building Department as part of the building
189 permit application for review and approval. The ESCP shall comply with the provisions set
190 forth in the City of Charleston Stormwater Management Guidance Manual regarding
191 Erosion and Sediment Control measures. The Stormwater Management Guidance Manual
192 will be available to the public on the City's Stormwater website, as well as on file at the City
193 Engineer's Office.

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195 (b) All control measures set forth in an approved ESCP shall be followed and maintained
196 at all times during the Construction project unless modified with the approval of the City
197 Building Department and/or City Engineer's Office. Any significant modifications to an
198 ESCP must be approved by the City Building Department and/or City Engineer's Office via
199 written authorization to the permittee. Minor modifications to the ESCP may be approved
200 by the City Building Department and/or City Engineer's Office at the Construction Site.

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202 (c) A copy of the approved ESCP shall be kept on the Construction Site during all stages of a
203 Construction project and shall be made available for review upon request by a Compliance
204 Officer.

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206 **Sec. 102- 316. - Erosion and Sediment Control Design Requirements.**

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208 (a) Grading, Erosion Control practices, Sediment Control practices, and Waterway crossings
209 shall meet the design criteria set forth in the most recent version of the City's Stormwater
210 Management Guidance Manual and shall be adequate to prevent transportation of Sediment from
211 the Construction Site.

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213 (b) Clearing and Grading of natural resources, such as protected habitats and wetlands, shall
214 not be permitted, except when in compliance with the Stormwater Management Guidance
215 Manual.

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217 (c) Clearing, except to the extent necessary to establish Sediment Control devices, shall not

218 begin until all Sediment Control devices have been installed and have been stabilized.

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220 (d) Minimum Erosion Control requirements shall include:

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222 (1) Temporary seeding must be applied if the Construction Site is idle for more than 21 days.

223 (2) Special techniques that meet the design criteria outlined in the Stormwater Management
224 Guidance Manual on steep slopes or in Drainage Ways shall be used to ensure Stabilization.

225 (3) Soil stockpiles must be stabilized or covered at all times.

226 (4) The entire Construction Site must be stabilized at the close of the Construction season,
227 which may include but is not limited to, temporary seeding, mulching, and the use of Erosion
228 Controls.

229 (5) Techniques shall be employed to prevent the transportation of dust or Sediment from the
230 Construction Site.

231 (6) Techniques shall be employed to divert upstream runoff away from LDA without causing
232 any additional Erosion.

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234 (e) Minimum Sediment Control requirements shall include: Sediment basins, Stormwater
235 inlet protection, Sediment traps, and/or Perimeter controls.

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237 (f) Minimum Waterway and Watercourse protection requirements shall include:

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239 (1) Approval of a Waterway or Watercourse crossing by all applicable federal and state agencies
240 having jurisdiction, which may include, but is not limited to, West Virginia Department of Natural
241 Resources, United States Army Corps of Engineers, and the United States Environmental Protection
242 Agency.

243 (2) Stabilization of a Watercourse before, during, and after any in-channel work.

244 (3) All on-site stormwater conveyance channels designed according to the criteria outlined in
245 the Stormwater Management Guidance Manual.

246 (4) Stabilization adequate to prevent Erosion located at the outlets of all pipes and paved
247 channels.

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249 (g) Construction Site access requirements shall include: establishment and maintenance of a
250 stabilized Construction Site entrance as outlined in the Stormwater Management Guidance
251 Manual.

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253 **Sec. 102-317. - Review and approval of Land Disturbing Activity and Erosion and**
254 **Sediment Control Plan.**

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256 The City Engineer's Office and/or City Building Department shall review each
257 request for approval of LDA and the corresponding ESCP to determine conformance
258 with the requirements of this Division. Within 10 days after receiving a building permit
259 application and corresponding ESCP, the City Engineer's Office and/or City Building
260 Department shall, in writing:

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262 (1) approve the requested LDA and corresponding ESCP;

263 (2) approve the requested LDA and corresponding ESCP subject to conditions as may be
264 necessary to satisfy the objectives of this Division; or

265 (3) deny the requested LDA and corresponding ESCP, indicating the reason(s) for denial and
266 the procedure for submitting a revised ESCP, if appropriate.

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268 **Sec.102-318.- Inspection of Construction Site.**

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270 (a) All Construction Sites involving LDA and requiring an approved ESCP shall be
271 inspected and approved by a Compliance Officer. Compliance Officers shall inspect
272 Construction Sites as authorized by this Section and shall either approve that portion of the work
273 completed or shall notify the Person receiving approval for the LDA that the work is not in
274 compliance with the approved ESCP. To obtain the required permits and inspections, the Person
275 receiving approval for the LDA shall notify the City Engineer's Office and/or City Building
276 Department of the Construction start date. If there is to be a change in said start date, the City
277 Engineer's Office and/or City Building Department is to be notified at least two working days
278 before start of Construction. Compliance Officer inspections may consist of, but not be limited
279 to, the following stages:

- 280
281 (1) Installation of Erosion and Sediment Control measures;
282 (2) Completion of Demolition;
283 (3) Completion of Site Clearing and rough Grading;
284 (4) Installation of any stormwater conveyance structures; and
285 (5) Completion of project.

286
287 (b) The Person receiving approval for LDA and corresponding ESCP shall make regular
288 inspections of all control measures in accordance with the inspection schedule outlined in
289 the approved ESCP. The purpose of such inspections will be to determine the overall
290 effectiveness of the ESCP and the potential need for additional control measures. All
291 inspections shall be documented in writing and shall be kept on site.

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293 **Sec. 102-319. - Notice of Noncompliance and Order to Correct.**

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295 (a) When a Compliance Officer determines after reasonable observation or investigation
296 that a Person has not complied with any provision of this Division or has failed to comply
297 with an approved ESCP, the Compliance Officer may order compliance by written Notice of
298 Noncompliance and Order to Correct.

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300 (b) Notice(s) of Noncompliance and Order(s) to Correct shall be served in accordance
301 with the law of the State of West Virginia concerning the service of process in civil actions,
302 except that a method of service effectuated by a mailing by the clerk of a court (e.g., service
303 pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be
304 effectuated by a mailing by a Compliance Officer. If service is made by certified mail
305 consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the Notice
306 of Noncompliance and Order to Correct is refused, the Compliance Officer, promptly upon
307 the receipt of the notice of such refusal, shall mail to the Person being noticed, by first class
308 mail, postage prepaid, (1) a copy of the Notice of Noncompliance and Order to Correct (2) a
309 notice that despite such refusal, the Notice of Noncompliance and Order to Correct is valid,
310 and (3) advising that the City will proceed to enforce the Notice of Noncompliance and

311 Order to Correct. So long as such first class mailing is not returned as undeliverable by the
312 U.S. Postal Service, service of the Notice of Noncompliance and Order to Correct will be
313 conclusively presumed to have been effectuated. Proof of service shall be made at the time of
314 service by a written declaration, under oath, executed by the enforcement official effecting
315 service and shall declare the time, date and manner by which service was made.

316
317 (c) Any Notice of Noncompliance and Order to Correct under this section shall be in
318 writing and shall contain the following:

- 319
320 (1) the date the Notice of Noncompliance and Order to Correct is given;
321 (2) the name and address of the Person(s) charged with the noncompliance;
322 (3) the nature of the noncompliance;
323 (4) a statement of the action required to be taken in order to correct the noncompliance
324 and further prevent it;
325 (5) the time period allowed for correction. When determining the time period allowed for
326 correction, a Compliance Officer shall take into consideration the threat posed by the
327 noncompliance to the health, safety and welfare of the public and the nature of the work
328 required to correct the noncompliance;
329 (6) the maximum fines that may be assessed if the noncompliance is not corrected and a
330 citation is issued; and
331 (7) the name, business address and telephone number of the Compliance Officer issuing the
332 Notice of Noncompliance and Order to Correct.

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334 (d) Nothing in this section shall limit the authority of Compliance Officers to take any other
335 lawfully prescribed enforcement action, including emergency actions or any other enforcement
336 action, without first issuing a Notice of Noncompliance and Order to Correct.

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338 (e) Failure to correct the noncompliance by the date set forth in the Notice of Noncompliance
339 and Order to Correct shall be reported to the Building Department. Any subsequent work
340 performed shall constitute work being performed in a dangerous or unsafe manner or in a manner
341 contrary to the W.Va. State Building Code, as adopted by Charleston Municipal Code Section
342 14-33(a), and the Person charged with the noncompliance may be issued a stop work order or the
343 building permit may be revoked.

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