

Chapter 52A. Surface Water Pollution Control

Section

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§52A.01 TITLE, AND AUTHORITY TO ADOPT AND ENFORCE

This Ordinance shall be cited as the “Town of Matthews’ Surface Water Pollution Control Ordinance.” It is adopted and will be enforced pursuant to authority granted by NCGS 160A- 459, and NCGS 160A-175.

§52A.01 PURPOSE

The purpose of this Ordinance is to prevent Pollutants from entering the Storm Water System; to maintain and enhance surface water quality; and to meet the requirements associated with the NPDES Storm Water permit.

§52A.02 DEFINITIONS

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

Business Day means any day that the Town of Matthews is open to the public to conduct business.

Charity Vehicle Washing means vehicle or equipment washing performed by a nonprofit entity to raise money to be used for purposes other than making a profit.

Commercial means devoted in whole or part to commerce, that is, to the exchange and buying and selling of commodities or services.

Day(s) means calendar days, including Saturdays, Sundays and holidays, unless otherwise specified.

Dechlorinated means the removal of chlorine from a substance such as swimming pool water.

Discharge means the addition of any Pollutant either directly or indirectly to the Storm Water System or Waters of the State.

EPA means the U.S. Environmental Protection Agency or other duly authorized official of the agency.

Illicit Connection means any physical connection, actual or potential flowing discharge, or other condition that could allow Non-Storm Water to enter the Storm Water System.

Illicit Discharge and/or Illicit Disposal means any discharge not composed entirely of Storm Water that may directly or indirectly enter the Storm Water System or Waters of the State, except as allowed by Section 5(f) of this Ordinance.

Improper Disposal means the releasing of matter or fluids other than atmospheric precipitation at a location where the matter or fluid can enter the Storm Water System or Waters of the State.

Incidental means occurring by chance or without intention or calculation; also minor, casual or subordinate in significance or nature.

Industrial means related to a business engaged in industrial production or service, that is, a business characterized by manufacturing or productive enterprise or a related service business.

Matthews' Environmental Advisory Committee means the Committee established by the Town of Matthews for the purpose of advising the Town Board regarding environmental matters.

LUESA means the Mecklenburg County Land Use & Environmental Services Agency that is responsible for Storm Water and water quality matters for Mecklenburg County.

NC DEQ means the North Carolina Department of Environmental Quality that is responsible for Storm Water and water quality matters for North Carolina.

NCGS means North Carolina General Statute.

Non-Storm Water means any flow that is not from a form of natural precipitation.

NPDES permit means the National Pollutant Discharge Elimination System permit issued pursuant to the federal Clean Water Act, 33 USC 1251 et seq.

Person means any individual, partnership, firm, association, company, trust, estate, corporation, commission, institution, utility, governmental entity or other legal entity or their legal representatives, agents or assigns.

Pollutant means a substance that alters the chemical, physical, biological, thermal and/or radiological integrity of Storm Water, groundwater or surface water.

Pollution and Polluted mean containing Pollutants.

Receiving Stream means the body of water, stream or watercourse receiving the discharge waters from the Storm Water System, or formed by the water discharged from the Storm Water System.

Riparian means relating to or living or located on the bank of a natural watercourse or waterbody.

State, when referring to regulatory authority, means the NC Department of Environmental Quality or any duly authorized representative thereof; otherwise, it means the State of North Carolina.

Storm Water means any flow occurring during or following any form of natural precipitation and resulting there from.

Storm Water System means the network of curbs, gutters, inlets, pipes, ditches, swales, ponds, detention and retention basins, streams, and other natural or manmade facilities and appurtenances that serve to collect and convey Storm Water through and from a given drainage area.

Uncontaminated means not containing any Pollutants.

Unmodified Potable Water means tap water that has not had detergents, acids, degreasers, surfactants or other agents added to or mixed with it, regardless of whether the added agent is labeled as or generally considered to be, biodegradable.

Wash Water is a subset of Wastewater, and means any water or liquid discharged after and as a result of conducting washing or cleaning activity.

Wastewater means any water or other liquid, other than Uncontaminated Storm Water or Uncontaminated Potable Water, discharged from a facility after use. Examples include water used for washing, flushing, cleaning, or in a manufacturing process.

Waters of the State, as defined in NCGS §143-212(6), means any intermittent or perennial stream, river, brook, swamp, lake, cove, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State.

§52A.04 TERRITORIAL JURISDICTION

This Ordinance is applicable within the corporate limits of the Town of Matthews.

§52A.05 PROHIBITIONS

A. Illicit Discharge(s) and Improper Disposal(s).

No Person shall cause or allow the discharge or disposal of Non-Storm Water, either directly or indirectly, to the Storm Water System, Waters of the State, or upon the land in a manner or amount that is likely to reach the Storm Water System or Waters of the State except as described below in Section 5(f). Examples of Illicit Discharges and Improper Disposals include, but are not limited to the following: oil; grease; household and Industrial chemical waste; paint; paint Wash Water; garbage; yard waste; animal waste; food waste; chlorinated swimming pool water; concrete; concrete equipment Wash Water; Commercial vehicle Wash Water; heated water; soaps/detergents; sediment/silt; or any other discarded or abandoned substances or waste materials.

B. Illicit Connection(s).

No Person shall install, maintain or use any connection to the municipal Storm Water System or Waters of the State for the discharge of Non-Storm Water or shall cause Non-Storm Water to be discharged or conveyed through a connection to the Storm Water System or Waters of the State unless the discharge is a permitted discharge listed in Section 5(f).

This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection, if classified as an Illicit Connection by this Ordinance.

Examples of Illicit Connections include, but are not limited to:

- (1) Wastewater lines such as those from washing machines or sanitary sewers; and
- (2) Pipes or drains carrying Wastewater or Wash Water from a building, operation or property.

C. Accidental Discharge(s).

If an accidental discharge to the municipal Storm Water System occurs, the responsible Person shall immediately begin to collect and remove the discharge and restore all affected areas to their pre-discharge condition. The responsible Person shall immediately notify LUESA, and other authorities as appropriate, of the accidental discharge by telephone or other mode of instantaneous communication. The notification shall include the location of the discharge, type of Pollutant, volume, time of discharge, and corrective action taken. Such notification shall not relieve the responsible Person of any of the expenses related to restoration, loss, damages or any other liability that may be incurred as a result; nor shall such notification relieve the responsible party from other liability that may be imposed by this Ordinance or other applicable law.

D. Obstruction a Violation.

Obstruction, as outlined in Section 7(d) of this Ordinance, shall be a violation. Said violation may be enforced against the violator as a discrete violation of this Ordinance or as a factor in conjunction with other enforcement remedies and penalties.

E. Coal Tar Sealant and High PAH Sealant Limitations.

- (1) For the purposes of this section, the term “coal tar sealant” means a material that contains coal tar and is for use on an asphalt or concrete surface, including a driveway, parking lot or roadway. The term “high PAH sealant” means a material that contains greater than 0.1% PAH, by weight and is for use on an asphalt or concrete surface, including a driveway, parking lot or roadway.
- (2) No Person shall use, permit to be used, or sell for use in the Town of Matthews a coal tar sealant product or a high PAH sealant product.
- (3) Any Person who violates this section shall be liable for the penalties stated in Section 8(c).

F. Allowable Storm Water Discharges.

Storm Water is the only discharge permitted in the Storm Water System with the exception of Incidental Non-Storm Water flows that do not negatively impact the quality of the Receiving Stream. Incidental Non-Storm Water flows include the following:

- (1) Water line flushing, except super-chlorinated water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Uncontaminated groundwater infiltration (as defined at 40 CFR §35.2005(20));
- (5) Uncontaminated, pumped groundwater;
- (6) Rising groundwaters;
- (7) Discharges from Uncontaminated potable water sources;
- (8) Uncontaminated, collected and infiltrated Storm Water from foundation drains or footing drains;
- (9) Uncontaminated storm water runoff from roof drains and rain barrels;
- (10) Uncontaminated, untreated air conditioning condensate from residential or Commercial units;
- (11) Irrigation water (does not include reclaimed water as described in 15A NCAC 2H .0200);
- (12) Uncontaminated springs;
- (13) Uncontaminated, collected groundwater and infiltrated Storm Water from basement or crawl space pumps;
- (14) Lawn watering;
- (15) Dechlorinated swimming pool discharge;
- (16) Street Wash Water only when Unmodified Potable Water is used;
- (17) Flows from emergency fire and rescue operations other than those resulting from negligence on the part of the Person who owned or controlled the Pollutant;
- (18) Individual non-Commercial vehicle washing operations (*see note below);
- (19) Residential and Charity Vehicle Washing (*see note below);
- (20) Flows from Riparian habitats and wetlands;
- (21) NPDES permitted discharges authorized by the EPA or NC DEQ;
- (22) Dye testing, using suitable dyes, for verifying cross-connections, tracing plumbing lines, determining flow direction or rate and for similar purposes, provided that verbal notification by non-governmental entities is provided to LUESA prior to testing; and
- (23) Removal of Storm Water System blockages with Unmodified Potable Water.

* Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Storm Water System or surface waters. Charity Vehicle Washing performed by the same organization or at the same location more than one (1) time in a thirty (30) Day period is not allowed under this Ordinance.

(Subsection E revised via ordinance 2446, passed 10-14-2019)

§52A.06 AUTHORITY OF LUESA

LUESA is a duly authorized representative of the Town of Matthews in the prevention and enforcement of this ordinance and is entitled to all the rights granted to the Town.

§52A.07 POWERS AND AUTHORITY FOR INSPECTION

A. Authority to Inspect and Monitor.

LUESA personnel, bearing proper identification, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this Ordinance. Persons occupying premises to be inspected shall allow LUESA personnel ready access at all times to all parts of the premises to perform inspection, monitoring, records examination, copying, photography, video recording, or other duties. LUESA personnel shall have the right to set up on the Person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, LUESA personnel will be permitted to enter and perform their specific responsibilities without delay. Denial of LUESA personnel access to the Person's premises or portions thereof shall be a violation of this Ordinance. Denial of access may also occur if a Person fails to provide, without unreasonable delay, such facilities, equipment, or devices as are reasonably necessary to permit LUESA personnel to perform their duties in a safe manner. Unreasonable delays may constitute denial of access. Any delay of more than five (5) minutes may be considered unreasonable.

B. Search Warrants.

To the extent permitted by applicable law, LUESA may seek the issuance of a search warrant to determine compliance with this Ordinance.

C. Confidential Information.

- (1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications, permits, monitoring programs, and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of LUESA, that the document containing the information and data is not public record under North Carolina law.
- (2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to government agencies for uses related to this Ordinance provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.
- (3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

D. Obstruction.

No Person shall obstruct, hamper, or interfere with LUESA or its personnel while carrying out official duties. Upon presentation of credentials by LUESA personnel, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access

or removing obstructions shall also be a violation of this Ordinance.

§52A.08 ENFORCEMENT AND PENALTIES

A. Remedies Not Limited.

The remedies provided herein are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.

B. Notice of Violation and Meeting with LUESA.

(1) Content of Notice.

Except in emergencies, as described in Section 8(k), upon LUESA's determination that a violation has occurred, LUESA shall provide to each Person against whom remedial action or penalties may be pursued, a written notice that describes the following: a) the location of the property and the nature of the alleged violation; b) a general description of the remedies and penalties that may be incurred; c) the action(s) needed to correct the alleged violation, which shall include a requirement to restore areas affected by unlawful discharge(s) to the pre-violation condition; d) the time limit, if required, by which corrective actions must occur; e) how to provide explanatory or additional information to LUESA and a contact Person with whom the alleged violation can be discussed; and f) how to request a meeting with LUESA with respect to alleged violations as described in Section 8(b)(3) below. The notice shall also require the Person to whom the notice has been given to provide written notification explaining actions taken to correct the alleged violation and to prevent future violations. Only one such notice shall be required to each Person alleged to be responsible for a violation, regardless of the number of remedies or penalties that are pursued or the timing of their institution. In addition, no time period for compliance need be given for obstructing, hampering or interfering with an authorized LUESA representative while in the process of carrying out duties under this Ordinance.

Said notice shall further advise the Person responsible for the alleged violation that should the Person fail to remediate or restore the affected area(s) within the established deadline, under certain circumstances the restoration work may be done by LUESA or a contractor designated by LUESA pursuant to Section 8(j), and the expense thereof shall be charged to the Person responsible for the alleged violation.

(2) Service.

The notice may be served by mail, hand delivery, or by any means authorized under N.C.G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to accept the notice shall not relieve the violator's obligation to comply with this Ordinance.

(3) Meeting with LUESA.

If the Person responsible for the alleged violation makes a timely request for a meeting with LUESA during the time period set forth in the notice, such meeting shall be scheduled at a time determined in the discretion of LUESA prior to taking an enforcement action authorized by this Ordinance. The Person responsible for the alleged violation shall have the opportunity to present any information relevant to the alleged violation or proposed remedy or penalty at the meeting, in writing or orally.

C. Civil Penalties

- (1) Any Person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this Ordinance is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.
- (2) The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each Day of violation shall constitute a separate violation.
- (3) No penalty shall be assessed until the Person alleged to be in violation has been served notice of the violation as described in Section 8(b). Refusal to accept the notice shall not relieve the violator of the obligation to pay such penalty.
- (4) Penalties may be assessed concurrently with a notice of violation for any of the following:
 - (i) Obstructing, hampering or interfering with an authorized LUESA representative who is in the process of carrying out official duties under this Ordinance;
 - (ii) A repeated violation for which a notice of violation was previously given to the Person responsible for the violation; or
 - (iii) Willful violation of this Ordinance.
- (5) In determining the amount of a civil penalty, LUESA in concert with the Matthews' Environmental Advisory Committee shall consider any relevant mitigating and aggravating factors including, but not limited to the following:
 - (i) Degree and extent of harm caused by the violation;
 - (ii) Cost of rectifying the damage;
 - (iii) Amount of money saved through non-compliance;
 - (iv) Whether the violator took reasonable measures to comply with this Ordinance;
 - (v) Knowledge of the requirements by the violator and/or reasonable opportunity or obligation to obtain such knowledge;
 - (vi) Whether the violator voluntarily took reasonable measures to restore any areas damaged by the violation;
 - (vii) Whether the violation was committed willfully;
 - (viii) Whether the violator reported the violation to an appropriate authority;
 - (ix) Technical and economic reasonableness of reducing or eliminating the discharge; and

- (x) Prior record of the violator in complying or failing to comply with this Ordinance or any other water Pollution control ordinance or regulation.
- (6) LUESA in concert with the Matthews' Environmental Advisory Committee shall determine the amount of the civil penalty to be assessed under this section and shall make written demand for payment upon the Person in violation and shall set forth in detail a description of the violation for which the penalty was imposed. Notice of said assessment shall be by registered or certified mail or other means reasonably calculated to give adequate notice. If a violator does not pay a civil penalty assessed within thirty (30) Days after it is due, or does not request a hearing as provided in Section 9, the Town of Matthews shall institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County General Court of Justice or in any other court of competent jurisdiction. Such civil actions must be filed within three (3) years of the date the notice of assessment was served on the violator.
- (7) An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (8) Civil penalties collected pursuant to this Ordinance shall be credited to the Town of Matthews general fund as a non-tax revenue.
- (9) A violation of this Ordinance shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be subject to the civil penalties fixed by this section.

D. Cost Recovery.

LUESA in concert with the Matthews' Environmental Advisory Committee may also recover from the violator:

- (1) Costs to restore damaged property based on restoration costs, which include, but are not limited to, cleanup costs, devaluation of the property, value of animal and plant life damaged, and County administrative costs.
- (2) Compensation for damage to or destruction of the Storm Water System owned and maintained by the Town of Matthews.

In no case shall the maximum penalty per Day exceed the amount as specified in Section 8(c)(2).

E. Compliance Agreement.

LUESA in concert with the Matthews' Environmental Advisory Committee may enter into compliance agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the Person responsible for the non-compliance. Such agreements will include specific actions to be taken by the Person in violation to correct the non-compliance within a time period specified by the agreement. Compliance agreements shall have the same force and effect as compliance orders issued pursuant to Section 8(f) below.

F. Compliance Order.

When LUESA in concert with the Matthews' Environmental Advisory Committee finds that any Person has violated or continues to violate any section of this Ordinance, an order may be issued to the violator directing that they do one, or a combination, of the following:

- (1) Comply with the sections of this Ordinance in accordance with a time schedule set forth in the order;
- (2) Take appropriate remedial or preventive actions for a continuing or threatened violation of any section of this Ordinance, including installation and proper operation of adequate structures/devices and/or implementation of procedures and management practices;
- (3) Pay a civil penalty for violating any section of this Ordinance.

G. Cease and Desist Order.

Cease and desist orders may be issued as follows:

- (1) If LUESA in concert with the Matthews' Environmental Advisory Committee finds that any Person has violated or continues to violate any section of this Ordinance, an order issued pursuant to this Ordinance, or any other provision of applicable law, an order may be issued requiring such Person to cease and desist all such violations and direct such Person to perform any one or more of the following:
 - (i) Comply immediately with all sections of this Ordinance, an order issued pursuant to this Ordinance, or other applicable law;
 - (ii) Take appropriate remedial or preventive actions for a continuing or threatened violation of any section of this Ordinance, a compliance agreement issued pursuant to this Ordinance, an order issued pursuant to this Ordinance, or any other provision of applicable law.
- (2) LUESA in concert with the Matthews' Environmental Advisory Committee may include in such order the payment of a civil penalty for violating any section of this Ordinance, or for violating a compliance agreement or order issued pursuant to this Ordinance.

H. Withholding of Inspections, Permits, Certificate of Occupancy or Other Approvals.

Permits for development or other improvements; requests for plan approval for zoning, subdivision, other development or construction; and certificates of occupancy for the property on which the violation occurred may be withheld or conditioned upon compliance with this Ordinance until a violator with ownership or management of the property for which permits or approvals are sought has fully complied with this Ordinance and all actions taken pursuant to this Ordinance.

I. Restoration of Areas Affected by Failure to Comply.

LUESA in concert with the Matthews' Environmental Advisory Committee may require a Person responsible for a violation to restore all areas affected by the violation to their pre-violation condition in order to minimize the detrimental effects of the resulting impacts. This authority is in addition to any other enforcement actions authorized under this Ordinance.

J. Abatement by LUESA.

If any violation has not been corrected pursuant to the requirements set forth in the notice of violation or by other allowable remedies, or, in the event of an appeal under Section 9, within ten (10) Days of the decision of the Matthews' Environmental Review Committee to uphold the decision of LUESA, then LUESA or a contractor designated by LUESA may enter upon the subject premises and is authorized to take any and all measures necessary to abate the violation and/or restore impacted areas to their pre-violation condition in order to minimize the detrimental effects of the resulting impacts. It shall be unlawful for any Person in possession or control of any premises to refuse to allow LUESA or its designated contractor to enter upon the premises for the purposes set forth above.

The Person in violation will be notified of the cost of abatement, including administrative costs. If the specified amount is not paid within thirty (30) Days after it is due, the Town of Matthews shall institute a civil action to recover the specified amount. The civil action shall be brought in Mecklenburg County General Court of Justice or in any other court of competent jurisdiction. Such civil actions must be filed within three (3) years of the date said notice was served on the violator.

K. Emergencies.

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, or the environment, including but not limited to Waters of the State, then LUESA in conjunction with the Matthews' Environmental Review Committee may order the immediate cessation of the violation. Any Person ordered to cease such violation or to remedy such violation shall do so immediately. LUESA in conjunction with the Matthews' Environmental Review Committee may seek immediate enforcement through any remedy or penalty authorized in this Ordinance or other applicable law.

L. Injunctive Relief.

- (1) Whenever LUESA in conjunction with the Matthews' Environmental Review Committee has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, the Town of Matthews may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 153A-123 in Mecklenburg County General Court of Justice.
- (2) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil penalty prescribed for violations of

this Ordinance.

§52A.09 APPEALS

A. Appeal Process.

The issuance of a notice of violation, assessment of a civil penalty, compliance agreement, compliance order and/or cease and desist order for violations of this ordinance shall entitle the Person alleged to be responsible for the violation (“Appellant”) to an appeal hearing before the Matthews’ Environmental Advisory Committee (“Committee”) if such Person submits a written Notice of Appeal to the Committee within the number of Days specified below following the receipt of the notice from LUESA:

- (1) Notice of Violation and/or Assessment of a Civil Penalty issued pursuant to Section 8(b) and/or Section 8(c) = thirty (30) Days
- (2) Compliance Agreement and/or Compliance Order issued pursuant to Section 8(e) and/or Section 8(f) = twenty (20) Days
- (3) Cease and Desist Order issued pursuant to Section 8(g) = ten (10) Days

The Committee shall then grant an appeal hearing within thirty (30) Days after receipt of written Notice of Appeal. The Committee shall notify the appellant at least ten (10) Days prior to the date of the hearing as to the time and place.

B. Final Decision.

The decision of the Committee shall constitute a final decision.

C. Compliance with Final Decision.

Thereafter the appellant shall have thirty (30) Days to comply with the final decision of the Committee.

D. Petition for Review in Superior Court.

Any party aggrieved by the decision of the Committee with regard to the notice of violation, assessment of a civil penalty, compliance agreement, compliance order and/or cease and desist order shall have thirty (30) Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Mecklenburg County General Court of Justice.

§52A.10 SEVERABILITY

If any section or sections of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Chapter 52 repealed and replaced with Chapter 52A via ordinance 2287, passed 2/12/2018)