

**RESOLUTION NO. 2006-10**

**A RESOLUTION OF THE MUNCIE SANITARY DISTRICT ESTABLISHING A STORMWATER MANAGEMENT DEPARTMENT OF THE MUNCIE SANITARY DISTRICT, FOR THE PURPOSE OF MANAGING THE STORMWATER COLLECTION AND CONVEYANCE SYSTEMS AND ACTIVITIES IN THE MUNCIE SANITARY DISTRICT ESTABLISHING RATES AND CHARGES FOR THE USERS OF THE STORMWATER SYSTEM OF THE MUNCIE SANITARY DISTRICT, AND OTHER RELATED MATTERS**

**WHEREAS**, the Muncie Sanitary District, of Muncie, Indiana, (the “MSD”) has heretofore established and constructed and currently owns a sewage works, as such term is defined in Indiana Code 36-9-25 as amended (the “Act”), by and through its Board of Sanitary Commissioners (the “Board”), pursuant to the provisions of the Act; and

**WHEREAS**, a portion of the sewage works of the Muncie Sanitary District consists of a stormwater collection and conveyance system, including separate storm sewers, combined sewers, drainage structures, and flood control components; and

**WHEREAS**, the Muncie Sanitary District desires to establish a stormwater management department (the “Department”), under the jurisdiction of the Board for the purpose of providing uniform and centralized management of the stormwater collection and conveyance systems and activities in the Muncie Sanitary District, including, without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers and to the existing combined sewers; and

**WHEREAS**, in accordance with and pursuant to the Act, the Muncie Sanitary District further desires to establish a distinct just and equitable schedule of service charges for the users of the System; and

**WHEREAS**, the creation of a new stormwater management program could help address stormwater management problems; and

**WHEREAS**, the Muncie Sanitary District operating under I.C. 36-9-25 is authorized to consider the costs of collecting and treating stormwater drainage as the definition of sewage works for purposes of such chapter includes the term storm sewers; and

**WHEREAS**, the Muncie Sanitary District has undertaken a financial study for the purpose of setting rates and charges in a fair and reasonable manner; and

**WHEREAS**, new stormwater service charges could help the Muncie Sanitary District design, fund and construct the projects and run the programs necessary to provide the safe conveyance of stormwater, as well as identify additional projects that need to be

funded, and begin an inspection and maintenance program of the District's stormwater infrastructure; and

**WHEREAS**, new requirements for stormwater quality affect Muncie Sanitary District directly resulting from the United States Environmental Protection Agency (EPA) regulation entitled "National Pollutant Discharge Elimination System (NPDES) – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges" (Federal Register, Volume 64, Number 235, pages 68722-68852) on December 8, 1999 as required by section 402(p) of the Clean Water Act (CWA); and

**WHEREAS**, the federal stormwater quality program is administered by the Indiana Department of Environmental Management with the adoption of 327 IAC 15-5 for Storm Water Run-off Associated with Construction Activity, and 327 IAC 15-13 for Storm Water Run-off Associated with Municipal Separate Storm Sewer System (MS4) Conveyances; and

**WHEREAS**, the Muncie Sanitary District will serve as the local agency to administer the federal and state stormwater quality programs within its jurisdiction and authority; and

**WHEREAS**, the Muncie Sanitary District could provide technical and engineering assistance to local agencies when dealing with water quality, drainage, and floodplain issues; and

**WHEREAS**, the Muncie Sanitary District and the Delaware County Commissioners have entered into an interlocal agreement outlining each party's responsibility, available resources, and terms of agreement in an effort to provide the most efficient service to the customers of the District and the citizens of Delaware County; and

**WHEREAS**, the system of service charges shall allocate the cost of providing stormwater management service to each user so that the charges assessed are reasonably related to the costs of providing stormwater management service, insofar as those costs can reasonably be determined.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SANITARY COMMISSIONERS OF THE MUNCIE SANITARY DISTRICT, MUNCIE, INDIANA, AS FOLLOWS:**

**"CHAPTER 1: STORMWATER MANAGEMENT DEPARTMENT**

- 1.1 Stormwater Management Department to operate stormwater system
- 1.2 Purpose and Objective
- 1.3 Definitions
- 1.4 Stormwater service charge
- 1.5 Stormwater rate establishment procedure
- 1.6 Rate structure and calculation
- 1.7 Billings; terms of payment
- 1.8 Appeals of ERU determinations

- 1.9 Stormwater Revenue Fund
- 1.10 Delinquent Fees
- 1.11 Violations and Enforcement
- 1.12 Severability

**SECTION 1.1: STORMWATER MANAGEMENT DEPARTMENT TO OPERATE STORMWATER SYSTEM.**

(A) Establishment: The Stormwater Management Department, a department of the Muncie Sanitary District, is hereby established (the “Department”). The Department shall be headed by the District Administrator of the Muncie Sanitary District. The District Administrator, together with staff, will be responsible for the day to day operations of the Department.

(B) Applicable State Law: The Stormwater Management Department shall be subject to Indiana Code 36-9-25, as amended and in effect from time to time.

(C) Board of Sanitary Commissioners: The Department, through the District Administrator, shall report directly to the Board of Sanitary Commissioners. The Board of Sanitary Commissioners shall perform all necessary administrative policy-making oversight of the operations of the Department.

(D) General Powers of the Department: The Department shall have departmental jurisdiction over stormwater within the Muncie Sanitary District and shall possess the following general powers:

(1) Install, maintain and operate the stormwater system of the Muncie Sanitary District.

(2) Make all necessary or desirable improvements to the stormwater collection and conveyance system of the Muncie Sanitary District (including all appropriate actions taken with respect to sewer separation), and, when determined to be in the best interests of the Muncie Sanitary District, to acquire or otherwise assume jurisdiction over any other improvements or facilities relating to the control of stormwater currently owned or under the jurisdiction of other parties.

(3) Establish and enforce the rules, regulations, policies and procedures promulgated by the Department as the same may be approved by the Board of Sanitary Commissioners.

(4) Hold hearings and make findings and determinations to carry out the policies and procedures of the Department with respect to the use of the stormwater system by the users thereof and the proper rates and charges imposed on such users.

(5) Recommend to the Board of Sanitary Commissioners reasonable and just service charges for services to the users of the stormwater collection and conveyance system of the Muncie Sanitary District.

(6) Track revenues and expenses of the stormwater department separately using departmental policies, operational procedures and cost accounting methods to adequately determine the equitable allocation of funds to serve the District's needs.

(E) Transfer of Stormwater System Jurisdiction: It is the intent of this Resolution to transfer to the Department the full and exclusive departmental jurisdiction over stormwater within the Sanitary District from the City of Muncie to the Board of Sanitary Commissioners, the governing body of the Muncie Sanitary District.

## **SECTION 1.2: PURPOSE AND OBJECTIVE**

The mission of the Muncie Sanitary District stormwater management program is to develop, implement, operate and adequately and equitably fund the acquisition, construction, operation, maintenance and regulation of stormwater collection and drainage systems and activities in the Muncie Sanitary District including without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers and to the existing combined sewers of the Muncie Sanitary District.

The program shall safely and efficiently control stormwater runoff, insure compliance with the National Pollutant Discharge Elimination System Stormwater Discharge permit, enhance public health and safety, protect lives and property, facilitate mobility and enable access to homes and businesses throughout the community during storms, complement and support other Muncie Sanitary District programs and objectives, control the discharge of pollutants in stormwater to receiving waters and enhance the natural resources of the community.

## **SECTION 1.3: DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**CITY:** The City of Muncie, Indiana.

**COMBINED SEWER:** Pipe or conduit primarily used to convey sanitary sewage and secondarily intended to convey stormwater.

**CUSTOMER (OR USER):** Shall mean a property owner benefiting from the stormwater system.

**DEPARTMENT:** The Stormwater Management Department established under Section 1.1.

**DEVELOPED:** The condition of real property altered from its natural state by the addition to or construction on such property of impervious surfaces or physical improvements such that the hydrology of the property or a portion thereof is affected.

**DETENTION:** The temporary storage of storm runoff in a basin, pond or other structural or non-structural device to control the peak discharge rates by holding the stormwater for a lengthened period of time and which provides gravity-settling of pollutants.

**RETENTION:** The holding of stormwater runoff in a constructed basin or pond or in a natural body of water with a controlled release rate.

**DITCH-OPEN:** A relatively deep drainage channel which may have a continuous water flow. Open ditches are outlets for both surface, subsurface, or storm sewer drainage systems.

**DITCH-LEGAL:** Any drainage system under the jurisdiction of the Delaware County Drainage Board as of the date of enactment of this Resolution.

**DRAIN:** Relative to stormwater drainage, any sewer, tile, ditch, stream or other stormwater runoff conveyance channel or conduit.

**DRAINAGE EASEMENT:** The land required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

**DRAINAGE FACILITIES:** All ditches, channels, conduits, retention-detention systems, tiles, drainage swales, sewers, and other natural or artificial means of draining stormwater from land.

**DRAINAGE REQUIREMENTS:** (1) minimum drainage standards as established by Delaware County Ordinance; (2) regulations promulgated by the Board of Sanitary Commissioners; (3) obligations and requirements relating to drainage established under the Subdivision Control Ordinances of the City and Delaware County; (4) requirements contained in the Zoning Ordinances of the City and Delaware County, including floodway zoning requirements; (5) obligations and requirements relating to drainage established under the Drainage Board of Delaware County, Indiana; and (6) conditions relating to drainage attached to a grant of variance by the Board of Zoning Appeals.

**DRAINAGE-SUBSURFACE:** A system of pipes, tile, conduit, or tubing installed beneath the ground used to collect underground water from individual parcels, lots, building footings, or pavements.

**DRAINAGE-SURFACE:** A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that storm runoff is removed without ponding and flows to a drainage swale, open ditch, or a storm sewer.

**DRAINAGE-SWALE:** A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion, or other site feature.

**DRAINAGE-SYSTEM:** Any combination of surface and/or subsurface drainage components fulfilling all applicable drainage requirements.

**EASEMENT:** A grant by the property owner of the use of a strip of land by the public, a corporation or other legal entity for specified purposes.

**ENGINEER:** The City Engineer of the City of Muncie, Indiana.

**ERU:** Equivalent Residential Unit, equal to the average amount of impervious area found on a typical single-family residential parcel which is 2500 square feet. Therefore, one ERU equals 2500 square feet of impervious area.

**IMPERVIOUS AREA:** Area within developed land that prevents or significantly impedes the infiltration of stormwater into the soil. Included in this definition are areas that have been paved and/or covered with buildings and materials which include, but are not limited to, concrete, asphalt, rooftop and blacktop, such that the infiltration of water into the soil is prevented. Excluded from this definition are undisturbed land, lawns and fields.

**INFILTRATION:** A complex process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

**LAND ALTERATION:** Any action taken relative to land which either: (1) changes the contour; or (2) increases the runoff rate; or (3) changes the elevation; or (4) decreases the rate of which water is absorbed; or (5) changes the drainage pattern; or (6) creates or changes a drainage facility; or (7) involves construction, enlargement or location of any building on a permanent foundation; or (8) creates an impoundment. Land alteration includes (by way of example and not of limitation) terracing, grading, excavating, constructing earthwork, draining, installing drainage tile, filling and paving.

**MAINTENANCE:** The removal of obstructions, deposits, or other materials and making minor repairs in a drainage facility so that it will perform the function for which it was designed and constructed.

**NPDES:** The National Pollutant Discharge Elimination System, the EPA program initiated to reduce and eliminate pollutants reaching water bodies of all types.

**NPDES PERMIT:** Stormwater management permit required of municipalities and certain industries by the EPA pursuant to Section 402 of the Clean Water Act.

**PEAK DISCHARGE:** The maximum rate of flow of water passing a given point during or after a rainfall event, sometimes called peak flow.

**PRIVATE STORMWATER FACILITIES:** Various stormwater and drainage works not under the control or ownership of the City, Muncie Sanitary District, Delaware County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

**PROPERTY OWNER:** The individual, partnership, corporation or other legal entity holding the deed or record title to real property.

**PUBLIC DRAINAGE SYSTEM:** Various storm water and drainage works under the control and/or ownership of the City, Muncie Sanitary District, Delaware County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate storm water.

**RESIDENTIAL PROPERTY:** A lot or parcel of real estate encompassing State Land Use Codes 101 and 500 through 599 on which a building or house trailer is situated which building or house trailer contains a group of rooms forming an inhabitable dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating.

**OTHER PROPERTY:** All properties not encompassed within the definition of Residential Property, including but not limited to: commercial, industrial, retail, multi-family, governmental, institutional, schools and churches.

**RIGHT-OF-WAY:** Any highway, street, avenue, boulevard, road, lane or alley and includes the entire right-of-way for public use thereof and all surface and subsurface improvements thereon including, without limitation, sidewalks, curbs, shoulders, utility lines and mains.

**SEWER SEPARATION:** A project intended to reduce the amount or rate of stormwater entering the wastewater treatment plant. Sewer separation projects include, but are not limited to, new sanitary sewer construction with conversion of combined sewer to storm sewer; new storm sewer construction with conversion of combined sewer to sanitary sewer, combined sewage holding tanks; and equalization tanks at the treatment plant.

**STATE LAND USE CODES:** The classification system used by Indiana counties for purposes of classification of the assessment of real property.

**STORM SEWER:** A sewer designed or intended to convey only stormwater, surface runoff, street wash waters and drainage, and not intended for sanitary sewage and industrial wastes. A storm sewer begins at the grating or opening where water enters said sewer, through the sewer and any other conduits to the outlet structure where water enters a channel, natural watercourse or combined sewer.

**STORMWATER SERVICE CHARGE:** A charge imposed on users of the stormwater system.

**STORMWATER SYSTEM:** All constructed facilities, including separate storm sewers and conveyances, combined sewers, structures and natural watercourses owned by or under the jurisdiction of the Muncie Sanitary District used for collecting and conducting stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: inlets, conduits and appurtenant features, creeks, channels, catch basins, ditches, streams, culverts, retention or detention basins and pumping stations.

**STORMWATER CONVEYANCES:** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

**ADMINISTRATOR:** The District Administrator of the Muncie Sanitary District.

#### **SECTION 1.4: STORMWATER SERVICE CHARGE**

A stormwater service charge shall be imposed on each and every lot and parcel of land within the Muncie Sanitary District, excluding lots and parcels of land within the corporate boundaries of the Town of Yorktown, Indiana, which directly or indirectly contributes to the stormwater system of the District, which charge shall be assessed against the property owner thereof, who shall be considered the user for the purposes of this chapter. This charge is deemed reasonable and is necessary to pay for the repair, replacement, extension, planning, improvement, operation, regulation and maintenance of the existing and future stormwater system.

#### **SECTION 1.5: STORMWATER SERVICE CHARGE ESTABLISHMENT PROCEDURES**

(A) Stormwater Service Charge Per ERU: The Stormwater Service Charge shall be \$0.95 per ERU per month. For the purpose of this chapter, a month shall be considered 25 through 35 days. Any billings for stormwater service outside this time shall be on a per diem basis.

(B) Basis for Charge: The stormwater service charge is designed to recover the cost of rendering stormwater service to the users of the stormwater system, and shall be the basis for assessment of the stormwater service charge. This service charge is established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.

#### **SECTION 1.6: SERVICE CHARGE STRUCTURE AND CALCULATION**

(A) Generally: For the purposes stated in Section 1.2 and 1.5, there is hereby assessed a stormwater service charge for each property owner owning land situated within

the limits of the Muncie Sanitary District, excluding property owners within the corporate boundaries of the Town of Yorktown, Indiana, that contributes directly or indirectly to the stormwater system of the Muncie Sanitary District, in an amount as determined below.

(B) Impervious Area: For any such property, lot, parcel of land, building or premises which contribute directly or indirectly to the stormwater system of the Muncie Sanitary District, such charge shall be based upon the quantity of impervious area situated thereon as measured on the records of the Delaware County Assessor. Impervious area of public rights-of-way and railroad lines (which shall not be deemed to include adjacent property, such as a railyard, operated by a railroad), will not be included in the determination of a stormwater service charge. In addition, the Department shall establish policies and procedures to make determinations whether commonly-owned, adjoining properties with separate plat or legal descriptions should be treated as a single parcel of land for purposes of calculating the stormwater service fees to be charged for such properties.

(C) Classification of Property: All properties within the Muncie Sanitary District, excluding those within the corporate boundaries of the Town of Yorktown, Indiana, will be assessed a Stormwater Service Charge based on Equivalent Residential Unit (ERU), or a multiple thereof, with all properties having impervious area assigned at least one ERU (except as otherwise provided in Section (E) herein), as follows:

(1) A monthly flat-rate charge for stormwater service rendered to Residential Properties shall be assessed to each Residential Property's parcel within the Muncie Sanitary District limits, excluding those within the corporate boundaries of the Town of Yorktown, Indiana. All Residential Properties are hereby assigned one ERU and a Stormwater Service Charge as shown on Exhibit A.

(2) Other Properties: A monthly flat-rate charge for stormwater service shall be rendered to properties with impervious area other than Residential Properties based on the total amount of impervious area on the property (measured in square feet) within classes as shown on Exhibit A.

(D) Land Alterations: The issuance of any building permit or other action which results in a land alteration of a property other than Residential Properties or a property that currently only contains Residential Properties but will be no longer used for such purpose shall be cause for an adjustment of the stormwater service charge determined under this section. The property owner shall have the obligation of informing the Department of any such changes.

(E) Exceptions/Exemptions: Agricultural properties with impervious area under State Land Use Codes 100-199, with the exception of those properties that qualify as Residential Property, shall be exempt from the assessment of Stormwater Service Charges. Except for public rights-of-way, railroad lines and agricultural properties as defined herein, there shall be no exceptions or exemptions from the assignment of gross stormwater ERUs for any property with impervious area except that properties other than single-family residential parcels with impervious area of less than five hundred (500) square feet shall be exempted from the assignment of an ERU.

(F) Contractual Billing and Collection: The Muncie Sanitary District may delegate the billings to the County Treasurer to be forwarded to customers semi-annually.

## **SECTION 1.7: BILLINGS; TERMS OF PAYMENT**

(A) Billings: All stormwater service bills shall be rendered on a semi-annual basis unless additional or prorated billing is required to reflect customer changes, initial billings or is otherwise required to adjust billing cycles. Charges for miscellaneous services or work performed on behalf of a stormwater customer by the Department shall be assessed at the time the work is completed and shall be included in the customer's next stormwater service bill. Stormwater billing for a new property shall commence with the date the property is assessed for purposes of property taxes, or date of occupancy, whichever shall first occur. Additional stormwater charges for an established service address necessitated by a change in the amount of impervious area at the property shall commence on the date the new certificate of occupancy or compliance is issued. Billing adjustments required to correct impervious area measurements shall be applied retroactively to the date of the customer's initial protest.

(B) Rights and Responsibilities of Property Owner: Charges for stormwater service shall remain the ultimate responsibility of the property owner, including all penalties, recording fees, attorney's fees, interest and court costs. Other than the property owner, no other person shall be permitted to inspect, examine or otherwise obtain confidential information including the social security number of the property owner obtained by the Muncie Sanitary District for the sole purpose of billing for stormwater system service. Stormwater service charges attach to the property.

(C) Terms of Payment: The stormwater service charges prescribed in Section 1.6 shall be due on the payment date set out on the bill. It shall be a violation of this chapter to fail to pay a stormwater service bill when due. All bills for stormwater services not paid on or before the due date shall be subject to a collection or deferred payment charge of 10% on the outstanding balance. Moving from one location to another in no way absolves the customer from responsibility for any unpaid charges incurred at a previous location.

(D) Bad Check Charge: Checks returned for non-sufficient funds will be subject to reimbursement of the fee the banking institution charges the Muncie Sanitary District and an administrative charge to be established by the Department not in excess of the amount provided in Indiana Code 35-43-5-5(e). A customer submitting a bad check may be prohibited from making future stormwater service charge payments by check.

(E) Collection: Delinquent stormwater service charges may be collected in a civil action along with reasonable attorney fees and court costs.

## **SECTION 1.8: APPEALS OF ERU DETERMINATION**

If, in the opinion of any non-single-family residential property owner, the ERU multiple assigned to the property of such owner is inaccurate in light of the amount of impervious area contained on said property, such property owner shall have the right to contest such ERU determination. The Department shall develop and promulgate policies and procedures to resolve any such contests, including, as determined necessary, the conducting of hearings and the making of determinations with respect to the measurement of impervious area contained on any property.

## **SECTION 1.9: STORMWATER REVENUE FUND**

All revenues earned and fees collected for stormwater service, including but not limited to, drainage service charges, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited in an account entitled “Muncie Sanitary District Stormwater Revenue Fund”, and shall be subject to the provisions of Indiana Code 36-9-25, as amended. Disbursements from this account shall be authorized by the Board of Sanitary Commissioners. Such disbursements shall be used exclusively for the operation, maintenance and improvement of the District’s stormwater system. To the extent that there are outstanding revenue bonds of the Muncie Sanitary District issued pursuant to the provisions of Indiana Code 36-9-25, as amended, revenues deposited in the Stormwater Revenue Fund shall be subject to the covenants contained in the resolution or resolutions authorizing such outstanding bonds.

## **SECTION 1.10: DELINQUENT FEES AND PENALTIES AS LIENS; DUPLICATES; COLLECTION**

Delinquent charges for stormwater services, and applied penalties, recording fees and service charges constitute a lien upon the property and may be collected in accordance with the provisions of I.C. 36-9-25-11.

## **SECTION 1.11: VIOLATIONS AND ENFORCEMENT**

Failure to pay a stormwater service charge when due shall constitute a violation of this chapter, which shall be enforced by the District Administrator and such deputies as the District Administrator may appoint for such purposes.

## **SECTION 1.12: SEVERABILITY**

(A) If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

(B) All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superceded, and this Resolution shall be in full force and effect from and upon compliance with all procedures required by law.

**PASSED AND ADOPTED** by the Board of Sanitary Commissioners of the Muncie Sanitary District this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BOARD OF SANITARY COMMISSIONERS  
OF THE MUNCIE SANITARY DISTRICT,  
MUNCIE, INDIANA

\_\_\_\_\_  
William B. Smith, President

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Mark A. Miller, P.E., Vice President

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Teresa L. Ford, Secretary

Attest:

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William G. Bruns  
Attorney for Muncie Sanitary District