

**STORMWATER ILLICIT DISCHARGE
AND CONNECTION ORDINANCE**

Ordinance No. 134

An ordinance to prohibit the connection of non-stormwater discharges to the stormwater system.

WHEREAS, Delaware County, Indiana (herein after the County) has in operation a stormwater collection system for the purpose of collecting stormwater within its jurisdiction; and

WHEREAS, new requirements for stormwater quality affect the County directly resulting from the Federal Stormwater Phase II NPDES permit program 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, 327 IAC 15-6 for Storm Water Discharges Exposed to Industrial Activity, and 327 IAC 15-13 for Storm Water Run-Off Associated with Municipal Separate Sewer System Conveyances; and

WHEREAS, 327 IAC 15-13-14 requires Delaware County to pass an ordinance or other local regulatory mechanism prohibiting illicit discharges into the stormwater conveyance system and establish appropriate enforcement procedures and actions; and

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

WHEREAS, the County operate its stormwater system under the provisions of I.C. 8-1.5-5.

BE IT THEREFORE ORDAINED BY THE DELAWARE COUNTY COMMISSIONERS, DELAWARE COUNTY, STATE OF INDIANA, as follows:

SECTION 1. PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Delaware County, Indiana through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as

required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal or County separate storm sewer system (MS4) by stormwater discharges by any user; and
2. To prohibit Illicit Connections and Discharges to the municipal or County separate storm sewer system; and
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the Delaware County Commissioners, Muncie, Indiana.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operation procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. sec. 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more, as defined in 327 IAC 15-5. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 7 Paragraphs (1-4) of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:

a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

MS4: The regulatory definition of an MS4 (40 CFR 122.26(b)(8)) is " a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created to or pursuant to state law) including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. Means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either owner or as the owners' agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquids and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and

fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. 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.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

MSD shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Delaware County Commissioners to persons or entities acting in the beneficial interest of or in the employ of the Delaware County Commissioners.

SECTION 5. SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provisions, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure or warrant that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 7. DISCHARGE PROHIBITIONS.

Prohibition of Illegal Discharges.

No person shall discharge, or cause to be discharged, into the municipal storm drain system, or watercourses, any materials, including but not limited to pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), fire fighting activities, irrigation water, street wash water, and any other water source not containing Pollutants.

2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. 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.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying any direct or indirect non-stormwater discharge to the MS4, or allows such a connection to continue except as exempted in Section 7 Paragraphs (1-4) of this Ordinance. Such conveyance may include, but is not limited to, sewage, hazardous materials, pollutants or wastewater.

SECTION 8. SUSPENSION OF MS4 ACCESS.

Suspension due to Illicit Discharges in Emergency Situations.

The County may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take steps as deemed necessary to prevent or minimize damage to the MS4 or Water of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorize enforcement agency for a reconsideration and hearing.

A person commits an violation if the person reinstates MS4 access to a premises terminated pursuant to this Section, without prior approval of the authorized enforcement agency.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to the allowing of discharge to the MS4.

SECTION 10. MONITORING OF DISCHARGES.

1. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

2. Access to Facilities.

1. The County shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Facility operators shall allow authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

3. The County shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

4. The County has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampling shall be promptly removed by the operator at the written or oral request of the County and shall not be replaced. The costs of the clearing such access shall be borne by the operator.

6. Delays in allowing the County reasonable access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits a violation of this ordinance if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

7. If the County has been refused access to any part of the premises from which stormwater is discharged, and the authorized enforcement agency is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance, or any other issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek appropriate relief from any court of competent jurisdiction.

SECTION 11.**REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.**

The County will establish requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into storm drain systems or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provision of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12.**WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13.**NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting, or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone, or facsimile, no later than the next business day. Notification in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency, within three business days of the phone notice. If the discharge or prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION 14.

ENFORCEMENT.

1. Notice of Violation.

Whenever the County finds that a person has violated a prohibition, or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Emergency notifications may be made by an authorized County employee. Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit connections or discharges;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- e. Payment of a fine to cover administrative and remediation costs; and
- f. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by the designated governmental agency or contractor and the expense thereof shall be charged to the violator.

SECTION 15.

APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination to the Delaware County Commissioners or their designee. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or their designee shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the Delaware County Commissioners or their designee shall be final.

SECTION 16.

ENFORCEMENT MEASURES AFTER APPEAL.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency may seek injunctive relief in any court of competent jurisdiction and may request a court order to enter upon the subject private property to take any and all measures necessary to abate the violation and/or restore the property. Costs including attorney fees for injunctive relief may be assessed against the violator.

SECTION 17.

COST OF ABATEMENT OF THE VIOLATION.

The owner of the property will be notified of the cost of enforcement, including administrative costs. If the amount due is not paid within 60 days after the abatement of the violation, the County may pursue any remedies available to it under the law.

SECTION 18. INJUNCTIVE RELIEF.

It shall be a violation for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation as noted in Section 16 and 17. Costs including attorney fees for injunctive relief may be assessed against the violator. Costs may constitute a lien upon the property.

SECTION 19. COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may request the violator perform alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and any other appropriate or remedial remedies.

SECTION 20. VIOLATION DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense. A civil action to abate, enjoin, or otherwise compel the cessation or remediation of such nuisance may be taken in any court of competent jurisdiction all pursuant to Section 18.

SECTION 21. CIVIL PENALTY.

Any person that has violated or continues to violate this ordinance shall be liable for civil penalties to the fullest extent of the law, and shall be subject to a fine of up to \$2,000.00 per violation per day.

The authorized enforcement agency may recover all fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 22. REMEDIES NOT EXCLUSIVE.

Whereas, the County operates its stormwater system under the provisions of IC 8-1.5-5-1; Now therefore be it hereby ordained by the County Commissioners of Delaware County, Indiana, that the municipal code be amended as follows:

Now Therefore be it Ordained by the Commissioners of Delaware County, Indiana that:

SECTION 1. PURPOSE/INTENT.

A. Site Construction Control

The purpose of this ordinance relative to Site Construction Control is to establish requirements for stormwater discharges from construction activities of one acre or more so that the public health, existing water uses, and aquatic biota are protected.. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate construction activities disturbing more than one acre of land as governed by 327 IAC 15-5.
- (2) To require construction site operators to develop and implement a Construction Plan including a Storm Water Pollution Prevention Plan in order to receive a grading permit from the County.

B. Post-Construction Control

The purpose of this ordinance relative to Post-Construction Control is to promote and implement planning procedures that improve water quality. The planning procedures will include, at a minimum, the post-construction requirements of 327 IAC 15-5-6.5(a)(8). The County may require the use of any storage, infiltration, filtering, and/or vegetative practices to reduce the impact of pollutants on stormwater runoff. Where appropriate, and to the extent of the MS4 operator's authority, the planning procedures may also include the following:

- (1) Buffer strip and riparian zone preservation.
- (2) Filter strip creation.
- (3) Minimization of land disturbance and surface imperviousness.
- (4) Minimization of directly connected impervious areas.
- (5) Maximization of open space.
- (6) Directing the community's growth away from sensitive areas and towards areas that can

support growth without compromising water quality.

SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the Delaware County Commissioners of Delaware County, Indiana.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more, as defined in 327 IAC 15-5. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in County Ordinance Number ___ entitled Stormwater Illicit Discharge and Connection Ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an

authorized enforcement agency.

Indiana Stormwater Quality Manual: A reference manual developed by the State of Indiana that provides guidance on planning principals, as well as criteria for specific structural and non-structural stormwater management practices.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6.

MS4: The regulatory definition of an MS4 (40 CFR 122.26(b)(8)) is " a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created to or pursuant to state law) including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any other kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System: 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.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan (SWP3): A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Watercourse. The path taken by flowing surface water.

SECTION 3. APPLICABILITY.

This ordinance covers any new development or re-development construction site resulting in the disturbance of one acre or more of total land area. Persons must meet the general permit rule applicability requirements under 327 IAC 15-2-6. This ordinance also applies to disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land within the corporate limits of the County.

All terms, conditions, definitions, and other measures defined in 327 IAC 15-5 shall apply except for state permitting process references and submittal deadlines of construction plans.

This ordinance does not apply to persons who obtain an individual NPDES permit under 327 IAC 15-2-6.

This ordinance does not apply to the Indiana Department of Transportation when it conducts its business within the County corporate limit under its NPDES permit pursuant to 327 IAC 15.

This ordinance does not apply to the following types of activities:

1. Agricultural land disturbing activities.
2. Forest harvesting activities.

This ordinance does not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

1. Landfills that have been issued a certification of closure under 329 IAC 10.
2. Coal mining activities permitted under IC 14-34.
3. Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the Indiana Department of Environmental Management under 329 IAC 10 that contains equivalent stormwater requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The County shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed, upon the authorized enforcement agency, may be delegated in writing to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5. SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. ULTIMATE RESPONSIBILITY.

The standards set forth herein, and promulgated pursuant to this ordinance, are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will not be violations of NPDES permits.

SECTION 7. RESPONSIBILITY OF CONSTRUCTION SITE OWNER.

The project site owner has the following responsibilities:

1. Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the County.
2. Complete a sufficient notice of intent letter submitted to the County with a copy sent to the Indiana Department of Environmental Management.
3. Make application for a grading permit in accordance with procedures established by the County.
4. Ensure compliance with this ordinance during construction activity and the implementation of the construction plan.
5. Ensure that all persons engaging in construction activities, on a permitted project site, comply with the applicable requirements of this rule and the approved construction plan.
6. Notify the County with a sufficient notice of termination letter and send a copy to the Indiana Department of Environmental Management.

For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

For an individual lot where land disturbance is expected to be one acre or more, and the lot lies within a project site permitted under this rule, the individual lot owner shall:

- A. Ensure that a sufficient construction plan is completed and submitted in accordance with 327 IAC 15-5, as well as procedures established by the County.
- B. Complete his or her own notice of intent letter and submit it to the County.
- C. Apply for a building permit in accordance with the procedures established by the County.

For an individual lot where the land disturbance is less than one acre and the lot lies within a project site permitted under this rule, the individual lot operator shall:

- 1. Comply with the provisions and requirements of the construction plan developed by the project site owner in accordance with the procedures established by the County.
 - 2. Comply with the provisions set forth in Section 11 of this ordinance.
 - 3. Apply for a building permit in accordance with the procedures established by the County.
- (NOTE: There is no need to submit a notice of intent letter under the above subsection)

SECTION 8. GENERAL REQUIREMENTS FOR STORMWATER QUALITY CONTROL.

All storm water quality measures and erosion and sediment controls necessary to comply with this ordinance must be implemented in accordance with the construction plan and sufficient to satisfy the following conditions.

A project site owner shall, at least, meet the following minimum requirements:

- 1. Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation.
- 2. Appropriate measures shall be implemented to minimize or eliminate wastes or unused building materials, including garbage, debris, cleaning wastes, wastewater, concrete truck washout, and other substances from being carried from a project site by run-off or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable statutes and regulations.
- 3. A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.
- 4. Public or private roadways shall be kept cleared of accumulated sediment that is a result of run-off or tracking. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.
- 5. Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.
- 6. The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publicly accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:
 - a. Copy of the completed NOI letter and the NPDES permit number, where applicable.
 - b. Name, company name, telephone number, e-mail address (if available), and address of the project site owner or a local contact person.
 - c. Location of the construction plan if the project site does not have an on-site location

to store the plan.

7. This permit, and posting of the notice under subdivision (6), does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.
8. The storm water pollution prevention plan shall serve as a guideline for storm water quality, but should not be interpreted to be the only basis for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in accordance with 327 IAC 15-5, all measures necessary to adequately prevent polluted storm water run-off.
9. The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots, of the terms and conditions of this rule and the conditions and standards of the storm water pollution prevention plan, and the schedule for proposed implementation.
10. Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.
11. Appropriate measures shall be planned and installed as part of an erosion and sediment control system.
12. All storm water quality measures must be designed and installed under the guidance of a trained individual.
13. Collected run-off, leaving a project site, must be either discharged directly into a well-defined and stable receiving channel or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.
14. Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.
15. Natural features, including wetlands and sinkholes, shall be protected from pollutants associated with storm water run-off.
16. Unvegetated areas that are scheduled, or likely to be left inactive for fifteen (15) days or more, must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization are acceptable if the project site owner, or their representative, can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas, with a density of less than seventy percent (70%), shall be restabilized using appropriate methods to minimize the erosion potential.
17. During the period of construction activities, all storm water quality measures necessary to meet the requirements of 327 IAC 15-5 shall be maintained in working order.
18. A self-monitoring program that includes the following must be implemented:
 - A. A trained individual shall perform a written evaluation of the project site by the end of the next business day following each 0.5 inch of rain; and at a minimum of one time per week.
 - B. The evaluation must address the maintenance of existing storm water quality measures to ensure they are functioning properly and identify additional measures necessary to remain in compliance with all applicable laws and ordinances.

- C. Written evaluation reports must include the name of the individual performing the evaluation, the date of the evaluation, problems identified at the project site, and details of corrective actions recommended and completed.
 - D. All evaluation reports for the project site must be made available to the inspecting authority within forty-eight (48) hours of a request.
19. Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures, shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.
20. Final stabilization of a project site is achieved when:
- A. All land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and
 - B. Construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use or disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to their preconstruction agricultural use, meet the final stabilization requirements in clause (A).

SECTION 9. GENERAL REQUIREMENTS FOR INDIVIDUAL BUILDING LOTS WITHIN A PERMITTED PROJECT.

All storm water quality measures, including erosion and sediment control, necessary to comply with this ordinance must be implemented in accordance with the plan and sufficient to satisfy the following conditions.

Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

1. The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots.
2. Installation and maintenance of a stable construction site access for ingress and egress.
3. Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.
4. Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.
5. Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable laws and ordinances.
6. Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.
7. For individual residential lots, final stabilization meeting the criteria in section 8(20) of this rule will be achieved when the individual lot operator completes final stabilization or has installed appropriate erosion and sediment control measures for an individual lot prior to

occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.

SECTION 10. MONITORING OF DISCHARGES.

The County shall have the authority to monitor discharges from construction sites covered under this ordinance as described in County Ordinance Number __ entitled Stormwater Illicit Discharge and Connection Ordinance.

SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The County will establish requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at the responsible person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12. POST-CONSTRUCTION CONTROLS FOR NEW DEVELOPMENT OR REDEVELOPMENT.

On areas that undergo new development or redevelopment, site construction resulting in disturbance of one acre or more total land area, post-construction control measures in the form of structural and/or non-structural best management practices are required. Specifically, post-construction storm water pollutant loading should not exceed pre-construction pollutant loading. Pre-construction refers to the site immediately before the planned land disturbance and development activities occur. Pre-construction is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred. Post-construction pollutant loadings will be controlled through the six minimum control measures under the County's storm water NPDES permit. Post-construction storm water best management practices (BMPs) shall follow Indiana's Storm Water Quality Manual as a guidance document. The County shall have full technical and administrative approval authority on the application and design of all post-construction BMPs, conditions, definitions, and submittal requirements of construction plans and specifications and other related documents. The minimum measures are implemented to meet the terms defined in 327 IAC 15-5-6.5(a)(8) which are enumerated below.

The Post-construction Storm Water Pollution Prevention Plan (SWP3). The SWP3 must

include the following information:

- (A) A description of potential pollutant sources from the proposed land use that may reasonably be expected to add a significant amount of pollutants to storm water discharges.
- (B) Location, dimensions, detailed specifications, and construction details of all post-construction storm water quality measures.
- (C) A description of measures that will be installed to control pollutants in storm water discharges that will occur after construction activities have been completed. Such practices include infiltration of run-off, flow reduction by use of open vegetated swales and natural depressions, buffer strip and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and storm water retention and detention ponds.
- (D) A sequence describing when each post-construction storm water quality measure will be installed.
- (E) Storm water quality measures that will remove or minimize pollutants from storm water run-off.
- (F) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream and riparian habitat.
- (G) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream or riparian habitat.
- (H) A narrative description of the maintenance guidelines for all post-construction storm water quality measures to facilitate their proper long term function. This narrative BMP description shall be made available to future parties who will assume responsibility for the operation and maintenance of the post-construction storm water quality measures.

SECTION 13. ENFORCEMENT.

Enforcement of this ordinance shall be subject to the severity of the violation and the construction site operator's efforts to comply. The County shall reserve the right to interpret enforcement on a case by case basis. Tiered enforcement will be practiced at the County's discretion. The tiered enforcement may include:

1. Verbal warning to the construction site operator to make corrections.
2. Written warning to the construction site operator to make corrections within a specified period of time. The period of time shall take into account issues such as the severity of the

problem, pending weather, seasonal conditions, and the level of effort necessary to correct the problem.

3. Warning of Non-Compliance with directions to the construction site operator that site conditions require immediate action.
4. Stop Work Order.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof, including court costs and attorney fees, shall be charged to the violator.

SECTION 14. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated, or continues to violate, the provisions of this ordinance, the authorized enforcement agency may petition any court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations. Such enforcement may also include requesting the violator to perform abatement or remediation of the violation. Costs, including attorney fees, for injunctive relief may be assessed against the violator.

SECTION 15. COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, or other actions promoting the goals of the ordinance.

SECTION 16. VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. Costs, including attorney fees, for injunctive relief may be assessed against the violator.

SECTION 17. REMEDIES NOT EXCLUSIVE.

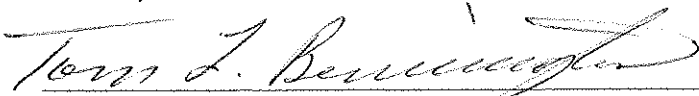
The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.


SECTION 18. ADOPTION OF ORDINANCE.

This ordinance shall be in full force and effect _____ days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

DATED this 20 day of December, 2006.


Larry L. Crouch, Delaware County Commissioner


Tom L. Bennington, Delaware County Commissioner


John H. Brooke, Delaware County Commissioner

ATTEST:


Jane Lasater, Auditor for Delaware County