

ORDINANCE 4327

REQUIREMENTS FOR STORM WATER MANAGEMENT ASSOCIATED WITH ILLICIT DISCHARGES

BE IT ORDAINED by the Common Council of the City of Goshen, Indiana, that:

SECTION 1. PURPOSE AND POLICY

- 1.01 This ordinance provides for the regulation of storm water maintenance through the approval of storm water management plans and 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.
- 1.02 The objectives of this ordinance are as follows:
- (A) Prevent or reduce harm due to periodic flooding, including loss of life and property and threats and inconveniences to public health, safety and welfare; and
 - (B) Protect, conserve, and promote orderly development of water and land resources by implementing beneficial design features and conservation techniques; and
 - (C) Prevent additional disruption of the economy and governmental services due to storm water and flood drainage; and
 - (D) Conserve the natural hydrologic, hydraulic, water quality and other beneficial functions of watercourses, floodplains and wetlands; and
 - (E) Promote orderly economic development and resource use; and
 - (F) Regulate the contribution of pollutants to the MS4 by storm water discharges by any user; and
 - (G) Prohibit illicit connections and discharges to the MS4 and waters of the state; and
 - (H) Establish legal authority to carry out all plan review, inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.
- 1.03 It is the policy of the Board of Public Works and Safety of the City of Goshen, Indiana, that an engineered drainage plan shall be submitted to the office of the City of Goshen Department of Storm Water Management for any new development, redevelopment, new construction, addition to existing construction, or other land disturbing activity located

within the City's jurisdiction which results in the addition of impervious surfaces or the redirection of the surface water runoff in pervious areas.

- 1.04 Except as otherwise provided, the Superintendent of the Department of Storm Water Management shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Superintendent of the Department of Storm Water Management may be delegated by the Superintendent to other City personnel.

SECTION 2. CONDUCT PROHIBITED

- 2.01 No person shall discharge, cause to be discharged, or permit to be discharged into the municipal storm drainage system or any water course, any discharge or 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.

- 2.02 Notwithstanding the prohibitions contained in section 2.01, the following activities or conditions are permitted even if such activities or conditions result in discharge or materials entering the municipal storm drainage system or any water course:

- (A) Water line flushing or other portable water sources;
- (B) Landscape irrigation or lawn watering;
- (C) Diverted stream flows;
- (D) Rising ground water;
- (E) Ground water infiltration to storm drains;
- (F) Uncontaminated pumped ground water;
- (G) Foundation or footing drains (not including active ground water dewatering systems);
- (H) Crawl space pumps;
- (I) Air conditioning condensation;
- (J) Springs;
- (K) Noncommercial washing of vehicles;
- (L) Natural repairing habitat or wetland flows;
- (M) Swimming pools (if dechlorinated);

- (N) Fire fighting activities;
 - (O) Discharge specified by an authorized enforcement agency as being necessary to protect public health or safety;
 - (P) Dye testing (verbal notification to the Department of Storm Water Management is required before test); and
 - (Q) Any discharge permitted under a NPDES permit, waiver or waste discharge order issued to the discharge and administered under the authority of the Federal Environmental Protection Agency or the Indiana Department of Environmental Management.
- 2.03 No person shall connect to any drain or conveyance or allow the continued connection of any drain or conveyance to the storm drainage system which allows any non-storm water discharge including but not necessarily limited to any sewage, process waste water and wash water.
- 2.04 No person may reinstate a MS4 access if that access has been suspended pursuant to this ordinance until such time as the suspension is lifted by the Department of Storm Water Management, the Board of Public Works and Safety, or a court of competent jurisdiction.
- 2.05 No person subject to a NPDES storm water discharge permit shall allow or permit any discharge enter the MS4 without complete compliance with the terms and conditions of the NPDES permit.
- 2.06 No person subject to a NPDES storm water discharge permit shall unreasonably delay the Department of Storm Water Management's access to a permitted facility.
- 2.07 No person owning real estate or in possession of such real estate shall fail to properly maintain the portion of any water course that passes through that real estate. Proper maintenance shall include keeping the water course free of trash, debris, excessive vegetation and other obstacles that might pollute, contaminate or significantly retard the flow of water through the water course. Proper maintenance shall also include maintaining the structure within or adjacent to the water course so that such structures will not become a hazard to the use, function or physical integrity of the water course.
- 2.08 No person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation, or responsible for the emergency response at any facility or operation, shall fail to notify the Department of Storm Water Management as soon as practicable of any improper or unpermitted release of materials, discharges, or pollutants into storm water, the storm water drainage system, or any water course if such person has information that such discharge or release may have occurred.
- 2.09 No person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation or responsible for the emergency response at any facility or

operation shall fail to take all reasonable steps to ensure the discovery, containment and cleanup of any improper or unpermitted release or discharge.

SECTION 3. MONITORING OF DISCHARGES

- 3.01 The City of Goshen shall be permitted to enter and inspect any facility that discharges waters or materials into the MS4 within the corporate limits of the City of Goshen or into any water course within the corporate limits of the City of Goshen even if only occasionally, 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 Department of Storm Water Management.
- 3.02 Facility operators shall allow the City of Goshen ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of the records that must be kept under the conditions of a NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- 3.03 The City of Goshen shall have the right to set up in any facility that has a permit to discharge into the MS4 such devices as are reasonably necessary to conduct monitoring and/or sampling of the facility's storm water discharge.
- 3.04 The City of Goshen has the right to require the discharger to install monitoring equipment at any commercial or industrial facility or any facility containing more than three (3) residential units. 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 storm water flow and quality shall be calibrated to ensure their accuracy.
- 3.05 Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Superintendent of the Department of Storm Water Management and shall not be replaced if so requested. The costs of clearing such access shall be borne by the operator.
- 3.06 If the City of Goshen has been refused access to any part of the premises from which storm water is discharged, and the Department of Storm Water Management 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 or sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, the Department of Storm Water Management may seek issuance of a search warrant from any court of competent jurisdiction within Elkhart County.

SECTION 4. NOTIFICATION OF SPILLS

- 4.01 As soon as any person responsible for a facility or operation or responsible for the emergency response for a facility or operation has information of a known or suspected release of materials which may result in an illegal discharge into the storm water, or storm drain system, such person shall take all necessary steps to contain and clean up the release.
- 4.02 Any person responsible for a facility or operation or responsible for the emergency response for a facility or operation shall immediately inform the City of Goshen that a release of materials within the City of Goshen may result in an illegal discharge into the storm water, or storm drain system, by contacting the Department of Storm Water Management if such a release occurs within normal business hours and if not occurring within normal business hours by informing emergency dispatch services.
- 4.03 If the discharge causes an illegal discharge into the storm water or storm drain system and emanates from a commercial or industrial establishment, the owner or operator of the establishment shall retain written record of the discharge, action taken to contain and clean up the discharge and actions taken to ensure that such discharge does not occur again.

SECTION 5. ENFORCEMENT

5.01 Notice of Violation.

- (A) Whenever the City of Goshen finds that a person has committed a prohibited act or failed to meet the requirements of this ordinance, the Superintendent of the Department of Storm Water Management or the Superintendent's designee may take one (1) or more of the following actions:
- (1) Notify the person who committed the act or failed to meet the requirements of the ordinance by telephone and request compliance or cessation of the prohibited act.
 - (2) Notify the person who committed the act or failed to meet the requirements of this ordinance in writing and order compliance or cessation of the prohibited act.
 - (3) Enter into an agreed order with the approval of the Board of Public Works and Safety which order may include payment of a fine by the violator.
 - (4) File a notice of violation before the Board of Public Works and Safety describing the violation of this ordinance found by the Superintendent of the Department of Storm Water Management.
 - (5) File a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this ordinance has been violated and requesting the imposition of fines and ordering compliance with the violated provisions of this ordinance.

- (B) If the Superintendent of the Department of Storm Water Management takes any authorized action and taking such action does not result in compliance with this ordinance, the Superintendent may take any other authorized action to obtain compliance.
- (C) The Superintendent of the Department of Storm Water Management may file a complaint with a court of competent jurisdiction to enforce the terms of an agreed order or an order of the Board of Public Works and Safety.

5.02 Right to Enter Premises.

- (A) The City of Goshen shall have the right to enter any premises for any of the following reasons:
 - (1) Investigate a suspected spill or discharge into the storm water or City's storm drain system;
 - (2) To carry out routine inspections;
 - (3) To carry out routine sampling; or
 - (4) To verify compliance with any agreed order, order of the Board of Public Works and Safety or order of any court of competent jurisdiction.
- (B) If the City of Goshen has been refused access to any part of the premises from which storm water is discharged and City is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this ordinance or that there is a need to inspect or sample as part of the City's routine inspections and sampling program, the court shall grant an order allowing City access to all relevant parts of a premises.
- (C) Any written notice of violation shall be issued upon the responsible party by regular US mail or delivered personally to the responsible party unless the applicable ordinance or statute requires different written notice.

5.03 Board of Public Works and Safety Hearing.

- (A) Before any Board of Public Works and Safety hearing is held, a party alleged to have violated this ordinance shall receive written notice of the violation including the nature of the violation and a summary of the facts that constitute that violation. In the event of an emergency hearing before the Board of Public Works and Safety, this information may be orally presented to the affected party and the affected party may elect to proceed or the affected party may insist on written notice and delay the hearing. The emergency action taken by the Department of Storm Water Management shall continue until a hearing can be held.
- (B) A party alleged to have violated this ordinance has the right to have an attorney present to cross examine witnesses, and has the right to present evidence and have witnesses testify.

- (C) A party found to have violated this ordinance has a right to appeal the determination of the Board of Public Works and Safety to a court of competent jurisdiction within twenty (20) days of the action of the Board of Public Works and Safety by filing a verified complaint. The court may affirm, modify or reverse the action taken by the Board of Public Works and Safety. Any such appeal shall be heard de novo.
- (D) Filing a notice of violation is not a prerequisite to filing a complaint alleging a violation before a court of competent jurisdiction within Elkhart County.

5.04 Sanctions.

- (A) Any violation of this ordinance is subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00).
- (B) The City may enter upon private property and take any and all measures necessary to abate a violation, if a court of competent jurisdiction has found a violation of this ordinance has occurred and has approved the action to be taken by the City. The costs of such abatement shall be assessed to the owner of the private property.
- (C) The City of Goshen may suspend MS4 discharge access to stop an actual or threatened discharge which presents imminent and substantial danger to the environment, to the health or welfare of any person, to the MS4 or to water of the United States. This suspension may be without notice if an emergency exists but a hearing will be held at the next Board of Public Works and Safety meeting after the owner of the real estate can be notified to determine the existence of an emergency and that there is a substantial and imminent danger.
- (D) The Board of Public Works and Safety or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this ordinance.
- (E) The City may recover reasonable attorney fees, court costs and other expenses associated with the enforcement of this ordinance including sampling and monitoring expenses and the cost of actual damages incurred by the City.
- (F) Each day a violation continues constitutes a new and separate violation.
- (G) If a party has violated this ordinance and continues to do so, the City may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this ordinance.

SECTION 6. DEFINITIONS

Unless the context specifically indicates otherwise, the following terms and phrases as used in this ordinance shall have these meanings:

- 6.01 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 storm water, receiving waters, or storm water 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.
- 6.02 Development. The construction, reconstruction, conversion, structural alteration, location, relocation or enlargement of any structure; or, a land disturbing activity that is, or that may be, associated with the preparation of a site for a new or intensified use.
- 6.03 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.
- 6.04 Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in section 3.03 of this ordinance.
- 6.05 Illicit Connections. 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 waste water, 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.
- 6.06 MS4. Municipal separate storm sewer system.
- 6.07 Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.
- 6.08 Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owners agents.
- 6.09 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, ordinance and accumulations, so that same may cause or contribute to pollution; floatable; 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.

- 6.10 Premise. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 6.11 Site. The entire area included in the legal description of the parcel of land on which development has been proposed or is being conducted; or the controlled area where runoff originates.
- 6.12 Storm Water Drainage System. All methods, natural or man-made, used for conveying storm water to, through or from a drainage area to any of the following: conduits and appurtenant features; canals; channels; ditches; streams; culverts; streets; or pumping stations.
- 6.13 Storm Water Runoff. The water derived from rains falling within a tributary basin, flowing over the surface of the ground or collected in channels or conduits.
- 6.14 National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by the 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.

SECTION 7. MISCELLANEOUS

- 7.01 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. It is within the discretion of the City to choose which remedies to include.
- 7.02 Conflict. All ordinances and parts of other ordinances inconsistent with any part of this ordinance are repealed to the extent of such inconsistency or conflict.
- 7.03 Separability. The provisions of this ordinance are separable. If any part or provision of this ordinance is determined to be invalid by a court of competent jurisdiction, the remaining portion of the ordinance shall be enforced as if the ordinance had passed without the part or provision found to be invalid.
- 7.04 Effective Date. This ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

This Ordinance is passed by the Common Council of the City of Goshen, Indiana on the 20th day of December, 2005.

/s/ Allan Kauffman
Allan Kauffman, Presiding Officer

Attest:

/s/ Tina M. Bontrager
Tina M. Bontrager, Clerk-Treasurer

This Ordinance, having been passed by the Common Council, is presented by me to the Mayor on the 23rd day of December, 2005 at 7:00 p.m.

/s/ Tina M. Bontrager
Tina M. Bontrager, Clerk-Treasurer

This Ordinance, having been passed by the Common Council and presented to me is approved by me and adopted on the 23rd day of December, 2005.

/s/ Allan Kauffman
Allan Kauffman, Mayor