

ORDINANCE 4329

**UNIFORM REQUIREMENTS FOR POST CONSTRUCTION
STORM WATER MANAGEMENT**

WHEREAS, the Indiana Water Pollution Control Board as part of its NPDES General Permit Rule Program imposed certain duties and obligations upon designated MS4 areas; and

WHEREAS, the City of Goshen is part of the Greater Elkhart County MS4 area; and

WHEREAS, 327 IAC 15-5-6.5 requires project site owners among other things to develop a set of construction plans which include a storm water pollution prevention plan (327 IAC 15-5-6.5(a)(7)); and

WHEREAS, 327 IAC 15-13-16(b) requires MS4 areas to have planning procedures which include the post construction requirements of 327 IAC 15-5-6.5(a)(8); and

WHEREAS, each local governmental entity within the Greater Elkhart County MS4 must put in place enforcement mechanisms sufficient to enforce project site owners and/or operators to meet the minimum post construction requirements of 327 IAC 15-5-6.5(a)(8).

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

SECTION 1. GENERAL PROVISIONS

1.01 Applicability. This ordinance shall be applicable to all parcels of real estate within the jurisdiction of the City of Goshen unless exempt under this ordinance.

1.02 Exempt Real Estate. The following activities are exempt from the storm water performance criteria established by this ordinance:

- (A) Forest harvesting activities.
- (B) Agricultural land distributing activities.
- (C) Additions or modifications to existing single family structures.
- (D) Repairs to any storm water treatment practice deemed necessary by Goshen's Department of Storm Water Management.
- (E) Demolition that conforms the real estate to the adjacent terrain at completion.
- (F) Fill. Provided the fill is less than one foot (1') in depth placed on natural terrain with a slope flatter than four percent (4%), does not exceed one thousand (1,000) cubic yards per acre and does not obstruct the existing drainage pattern.
- (G) Any real estate less than one (1) acre which is not part of development or sale which development or sale is one (1) acre or more in the aggregate.

SECTION 2. CONDUCT PROHIBITED

Any entity owning or operating non-exempt real estate shall not do any of the following:

- 2.01 Discharge storm water directly into a wetland or local water body without adequate treatment.
- 2.02 Discharge storm water in a manner that is inconsistent with applicable state or federal law.

SECTION 3. CONDUCT REQUIRED

Any entity owning or operating non-exempt real estate shall comply with each of the following requirements:

- 3.01 Maintain any and all storm water measures and practices identified in the construction plan that were intended to remain in place after construction activities have been completed.
- 3.02 Install and maintain each post construction storm water quality measure approved as part of the construction plan.
- 3.03 Provide the Department of Storm Water Management with a narrative description of the maintenance guidelines for all post construction storm water quality measures to facilitate their proper long-term function and identify the entity or entities responsible for long-term maintenance. It is an obligation of the project owners and their successors in interest to provide these narrative descriptions to future parties who acquire interest in any portion of the real estate or who assume responsibility for the operation and maintenance of the post construction storm water quality measures.
- 3.04 Maintain all drainage systems and storm water storage facilities in good working order.
- 3.05 Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
- 3.06 Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
- 3.07 Maintain all drainage channels and swales installed or identified as part of the construction plan so they do not cause erosion in the receiving channel or at the outlet.
- 3.08 Keep all natural features such as wetlands and sinkholes protected from storm water run off pollutants.

- 3.09 Annually inspect all storm water management facilities to insure compliance with this ordinance and provide for the removal of silt, litter, grass cutting, vegetation and other debris from all catch basins, inlets and storm water retention/detention areas.
- 3.10 Annually inspect all landscaping to insure compliance with provisions of the management plan.

SECTION 4. DEVELOPMENTS

Any development, redevelopment or sale consisting of two (2) or more lots (and totaling in the aggregate one (1) or more acres) shall comply with the following requirements:

- 4.01 Execute an enforceable maintenance agreement that designates the parties responsible for the operation, maintenance and repair of all storm water management facilities, and any other system, structure or measure required by this ordinance. The agreement shall include provisions for funding all required maintenance.
- 4.02 Parties who are responsible for operation and maintenance of storm water management facilities shall make and maintain records for all installation and maintenance and repairs of all systems, structures and measures. These records must be maintained for at least five (5) years and made available to the Department of Storm Water Management at all reasonable times.
- 4.03 All maintenance agreements shall be approved by the Department of Storm Water Management and recorded with the Elkhart County Recorder.

SECTION 5. MAINTENANCE AND REPAIR OF STORM WATER FACILITIES

5.01 Maintenance Covenants.

- (A) Maintenance of all storm water management facilities in a development, redevelopment or sale where parcels of real estate, units or buildings are owned by different entities shall be insured through the creation of a formal maintenance covenant that must be approved by the City of Goshen and recorded with the Elkhart County Recorder prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to insure proper function of the storm water management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.
- (B) All storm water management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and insure compliance with the requirements of this ordinance and accomplishment of its purposes. These needs include removal of silt, litter and other debris from all catch basins, inlets and

drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner.

- (C) All developers must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of the real estate served by on-site storm water management measures.
- (D) The design and planning of all storm water management facilities shall include detailed maintenance and repair procedures to insure their continued function. These plans will identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.
- (E) Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the City of Goshen during inspection of the facility and at other reasonable times upon request.

5.02 Landscaping Plan. The developer of the real estate must establish a landscaping plan which provides for the maintenance of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

5.03 Erosion and Sediment Control Plans for Construction of Storm Water Management Measures. All developers must prepare and carry out an erosion and sediment control plan for all construction activities related to implementing any on-site storm water management practices.

SECTION 6. ENFORCEMENT AND PENALTIES

6.01 Notice of Violation.

- (A) Whenever the Department of Storm Water Management finds that a person has committed a prohibited act or failed to meet the requirements of this ordinance, the Superintendent of 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 this 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.
- (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.

6.02 Right to Enter Premises.

- (A) 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;
 - (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.

6.03 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 City 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.

6.04 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 that 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.
- 6.05 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.
- 6.06 Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Goshen may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- 6.07 Access to Inspections of Storm Water Facilities.
- (A) The City of Goshen shall be granted at all reasonable terms access to the real estate to inspect any storm water facility.
- (B) When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the City of Goshen the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter to correct a violation of this ordinance.

SECTION 7. DEFINITIONS

For purposes of this ordinance, the following definitions shall be applicable:

- 7.01 If any term or provision contained in 327 IAC 15-5-4 is used in this ordinance, then the term or provision shall have the same meaning as set forth in 327 IAC 15-5-4.
- 7.02 If any term or provision contained in 327 IAC 15-13-5 is used in this ordinance, then the term or provision shall have the same meaning as set forth in 327 IAC 15-13-5.
- 7.03 Greater Elkhart County MS4. The area designated by the Indiana Department of Environmental Management as Municipal Separate Storm Sewer System (MS4) entities under 327 IAC 15-13 which is comprised of the City of Elkhart, City of Goshen, Town of Bristol, and certain unincorporated areas within the County of Elkhart, Indiana.
- 7.04 Person. An individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, company, organization, or governmental entity, whether for-profit or not-for-profit.

SECTION 8. INTERPRETATION AND SEPARABILITY

- 8.01 Interpretation. In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.

- 8.02 Provisional Separability. The provisions of this ordinance are separable. If any part or provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The City hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application, so long as the remainder of these regulations promotes the purposes of this ordinance.

- 8.03 Conflict. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

- 8.04 Compatibility with Other Permit and Ordinance Requirements. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provisions of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provisions of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

- 8.05 Severability. If the provisions of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of this ordinance.

- 8.06 Effective Date. This ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

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This ordinance is passed by the Common Council of the City of Goshen, Indiana on the 3rd day of January, 2006.

/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 6th day of January, 2006 at 4:00 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 6th day of January, 2006.

/s/ Allan Kauffman
Allan Kauffman, Mayor