Ordinance No. 2006 - 13

An Ordinance of the Board of Commissioners of Warrick County, Indiana Regulating the Illicit Discharge and Connection into Warrick County's Storm Water System

Whereas, the Warrick County Department of Stormwater Management, Indiana County has constructed and 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 Warrick County Department of Stormwater Management 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 the Warrick County Department of Stormwater Management 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 Warrick County Department of Stormwater Management operates its stormwater system under the provisions of IC 8-1.5-5;

Now therefore be it hereby ordained by the Board of Commissioners of Warrick County 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 Warrick County, Indiana through the regulation of 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 into the county's separate storm sewer system (MS4) by stormwater discharges by any user;

(2) To prohibit Illicit Connections and Discharges to the county's 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:

1. Accidental Discharge: means a discharge prohibited by this ordinance which occurs by chance and without planning or consideration prior to occurrence.

2. Authorized Enforcement Agency: employees or designees of the Warrick County Department of Stormwater management.

3. 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.

4. Board: means the Warrick County Storm Water Management Board.

5. 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.

6. Department refers to the Indiana department of environmental management.

7. EPA means the federal Environmental Protection Agency.

8. 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.

9. Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 6 of this ordinance.

10. 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.

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

12. 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.

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

14. 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.

15. 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, so that 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.

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

17. State Waters or Water of the State: means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State which are not entirely confined or retained completely upon the property of an individual, partnership or corporation.

18. 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.

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

20. 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.

21. 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 Drainage System generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The Warrick County Department of Stormwater Management 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 Board of Commissioners of Warrick County to an Authorized Enforcement 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. DISCHARGE PROHIBITIONS.

A. Prohibition of Illegal Discharges.

1. No person shall discharge or cause to be discharged into the Storm Drainage 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.

2. The commencement, conduct or continuance of any illegal discharge to the Storm Drainage System is prohibited except as described as follows:

a. 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.

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

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

d. 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.

B. Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the Storm Drainage 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 shall be in violation of this ordinance if the person connects a line conveying sewage to the Storm Drainage System, or allows such a connection to continue.

SECTION 7. SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS.

A. Suspension due to Illicit Discharges in Emergency Situations

1. The Warrick County Department of Stormwater Management may, without prior notice, suspend Storm Drainage System 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 Storm Drainage System or Waters of the State or United States.

2. If the violator fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the Storm Drainage System or Waters of the State or United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge

1. Any person discharging to the Storm Drainage System in violation of this ordinance may have their Storm Drainage System access terminated if such termination would abate or reduce an illicit discharge.

2. The Authorized Enforcement Agency will notify a violator of the proposed termination of its Storm Drainage System access.

3. The violator may petition the Authorized Enforcement Agency for a reconsideration and hearing.

4. A person commits an offense if the person reinstates Storm Drainage System access to premises terminated pursuant to this Section, without the prior approval of the Authorized Enforcement Agency.

SECTION 8. 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 Warrick County Department of Stormwater Management Department of Stormwater Management prior to the allowing of discharges to the Storm Drainage System.

SECTION 9. 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.

   a. The Warrick County Department of Stormwater Management and the Authorized Enforcement Agency 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 Warrick County Department of Stormwater Management and the Authorized Enforcement Agency.

   b. Facility operators shall allow the Warrick County Department of Stormwater

Management 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.

c. The Warrick County Department of Stormwater Management 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.

d. The Warrick County Department of Stormwater Management may 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.

e. 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 Warrick County Department of Stormwater Management and shall not be replaced. The costs of clearing such access shall be borne by the operator.

f. Unreasonable delays in allowing the Warrick County Department of Stormwater Management access to a permitted facility is a violation of a storm water discharge permit and of this ordinance.

g. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense 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.

h. If the Warrick County Department of Stormwater Management has been refused access to any part of the premises from which stormwater is discharged, and he/she 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 order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Enforcement Agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 10. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

1. The Warrick County Department of Stormwater Management 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 Drainage System, or waters of the State or United States. These BMPs

shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

2. 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 the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs.

3. 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 said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

4. 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.

SECTION 11. 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 12. NOTIFICATION OF SPILLS.

1. 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 Drainage System, or waters of the State or United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

2. In the event of such a release of hazardous materials said person shall immediately notify all emergency response agencies of the occurrence via emergency dispatch services. As used in this section, "emergency response agencies" shall mean the EPA and the Department.

3. In the event of a release of non-hazardous materials, said person shall notify the Authorized Enforcement Agency in person, by phone or facsimile no later than the next business day.

4. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Warrick County Department of Stormwater Management within three business days of the phone notice.

5. If the discharge of 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 13. ENFORCEMENT.

A. Violation.

It shall be unlawful for any person to violate or fail to comply with any provision of this ordinance. Any person who has violated the or continues to violate any provision of this ordinance may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

B. Notice of Violation.

1. Whenever the Warrick County Department of Stormwater Management finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Department of Stormwater Management may order compliance by written notice of violation to the responsible person.

2. Such notice of violation 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;

(e) Payment of a fine to cover administrative and remediation costs; and

(f) The implementation of source control or treatment BMPs.

3. Such notice of violation shall contain:

a. The names and addresses of the owner and violator;

b. The address when available, or a description of the building, structure of land upon which the violation has occurred;

c. A statement specifying the nature of the violation;

d. A description of the remedial measures necessary to bring the illegal activity into compliance with this ordinance and a time schedule for the completion of such remedial action, which may include designating the violation requires immediate action of less than 24 hours;

e. A statement 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 shall be charged to the violator;

f. A description of the remedial measures, if any, that were necessary to bring the illegal activity into compliance with this ordinance that were already taken by the Warrick County Department of Storm Water Management or the Authorized Enforcement Agency, the cost thereof and a statement that the violator shall be responsible for the remedial action already taken; and

g. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is sent.

C. Emergency.

In the event that an emergency exists and immediate action is required, the Board of Commissioners of Warrick County, the Authorized Enforcement Agency and the Department of Storm Water Management may abate or remedy the violation and said notice may be given after said abatement or remediation has occurred. In the event of such emergency, the Warrick County Department of Storm Water Management may enter onto the subject property and may take any and all measures necessary to abate the violation. It shall be unlawful for any person to refuse to allow access to the government agency or designated contractor to enter upon the property for the purposes set forth above.

SECTION 14. APPEAL OF NOTICE OF VIOLATION.

1. Any person receiving a Notice of Violation may appeal a Notice of Violation by filing a notice of appeal with the Department of Storm Water Management.

    a. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation is issued.

    b. Hearing on the appeal before the Storm Water Department shall take place within thirty (30) days from the date of receipt of the notice of appeal.

2. A decision of the Department of Storm Water Management may be appealed to the Board of Commissioners of Warrick County.

    a. A notice of appeal must be received by the Board of Commissioners with ten (10) days of the decision of the Department of Storm Water Management.

b. Hearing on the appeal before the Board of Commissioners shall take place within thirty (30) days from the date of receipt of the notice of appeal.

3. A decision of the Board of Commissioners may be taken as provided by Indiana law.

SECTION 15. ENFORCEMENT MEASURES AFTER APPEAL.

1. 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 ten (10) days after all appeals have been exhausted, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property.

2. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 16. COST OF ABATEMENT OF THE VIOLATION.

Within thirty (30) days after the abatement of the violation by Authorized Enforcement Agency, the owner of the premises shall be billed for the cost of abatement, including administrative costs. The notification will include copies of all invoices paid by Warrick County, and a log of all hours spent by Warrick County personnel (or its designated contractor). If the amount contained in the notification is not paid within thirty (30) days of the receipt of the bill, Warrick County may certify to the Auditor of Warrick County the amount of the bill, plus any additional administrative costs incurred in the certification, and said amounts shall be collected as delinquent taxes are collected pursuant to IC 36-1-6-2.

SECTION 17. 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 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.

SECTION 18. 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 actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 19. 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.

SECTION 20. CIVIL PENALTY.

Any person that has violated or continues to violate this ordinance shall be liable to civil penalties to the fullest extent of the law, and shall be subject to a fine of up to $2,500 per violation per day. Each day a violation continues after the original notification shall be deemed a separate offense under this Ordinance.

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

SECTION 21. 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 22. EFFECTIVE DATE OF ORDINANCE.

This ordinance shall be in full force and effect upon publication in accordance with Indiana law.

SECTION 23. PRIOR ORDINANCES.

All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this 26th day of JULY, 2006.

BOARD OF COMMISSIONERS OF WARRICK COUNTY, INDIANA

Carl Jay Conner, President

Don Williams, Vice-President

Phillip Baxter, Commissioner

ATTEST:

Richard L. Kistmiller
Auditor for Warrick County

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