

ORDINANCE NO. 5-09-05-A

HAMILTON COUNTY ILLICIT DISCHARGE AND
CONNECTION STORM WATER ORDINANCE

SECTION 1. PURPOSE/INTENT.

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the Hamilton County 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. The objectives of this Ordinance are:

1. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
2. To prohibit illicit connections and discharges to the County's separate storm sewer system.
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:

Best Management Practices (BMPs): Structural or nonstructural practices, or a combination of practices, designed to act as effective, practicable means of minimizing the impacts of development and human activities on water quality. Traditional structural BMPs, including extended detention dry ponds, wet ponds, infiltration trenches, and sand filtration systems, are now common elements of most new development projects. Structural BMPs rely heavily on gravitational settling and/or the infiltration of soluble

nutrients through a porous medium for pollutant removal. Nonstructural BMPs, which may be used independently or in conjunction with structural BMPs, rely on a much wider breadth of mechanisms to prevent or control NPS pollution. Nonstructural BMPs range from programs that increase public awareness to prevent pollution, to the implementation of control-oriented techniques (such as bioretention and storm water wetlands) that utilize vegetation to enhance pollutant removal and restore the infiltrative capacity of the landscape.

Clean Water Act (CWA). The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), any subsequent amendments thereto; and all rules and regulations promulgated pursuant to said Act.

Construction Activity. Activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of 1 acre or more, as defined in the Indiana Annotated Code (IAC) by 327 IAC 15-5-1:12 (Rule 5). Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Facility. "Facility" means any facility, including construction sites, required by the Federal Clean Water Act to have a permit to discharge storm water associated with industrial activity.

Hamilton County Surveyor's Office: employees or designees of the Hamilton County Surveyor's Office designated to enforce and administer this Ordinance.

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.

Illicit Discharge. Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in Section 7 of this Ordinance.

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

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage 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 drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Hamilton County Surveyor's Office; or
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by the Hamilton County Surveyor's Office.

Industrial Activity. Activities subject to NPDES industrial permits as defined by 327 IAC 15-6-1:12 (Rule 6).

Maximum Extent Practicable (MEP). MEP is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES permits for discharges from MS4s "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods." This standard applies to all MS4s regulated under the

Phase I and Phase II (Rule 13) storm water rules. Compliance with the conditions of Rule 13 and the series of steps associated with implementation of the required six minimum control measures will satisfy the MEP standard. Compliance with the six minimum control measures requires the development and implementation of BMPs. Implementation of the BMPs includes not only the actions necessary to initiate and continue the use of specific control measures, but also the enforcement actions, as applicable, to ensure that the implementation of the control measures occurs.

Municipal Separate Storm Sewer System (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), which are owned or operated by a state, town, county, tribe, district, association, or other public body or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the United States (40 CFR 122.26(b)(8)). National Pollutant Discharge Elimination System (NPDES). Storm Water Discharge Permit. means a permit issued by the Indiana Department of Environmental Management (IDEM) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, a group, or on a general area-wide basis.

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

Notice Of Intent. "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as

required under 327 IAC 15-3 and the applicable general permit rule.

Person. Means 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.

Permit Holder Any person, partnership, corporation, or landowner who holds, or has been issued an NPDES storm water discharge permit.

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, solid wastes, 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, gray water, 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.

Receiving Waters. Rivers, streams, lakes, or any body of water into which wastewater is discharged.

Storm Drainage System. Any publicly-owned or regulated drainage system within the jurisdiction of the permit holder 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, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water Conveyance Systems. All storm sewer pipes, ditches, catch basins, and other structures including retention and detention facilities.

Storm Water. "storm water" means water resulting from rain, melting or melted

snow, hail, or sleet.

Storm Water Pollution Prevention Plan (SWPPP). 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 into storm water 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.

Waters of the United States. A term used in federal regulations that defines all water bodies regulated as waters of the U.S. It includes: (1) all waters which may be susceptible to use in interstate or foreign commerce; (2) all interstate waters, including interstate wetlands; (3) all other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters; (4) all impoundments of waters otherwise defined as waters of the United States; (5) tributaries of waters identified in this section; (6) the territorial seas; and (7) wetlands adjacent to waters.

Watercourse. A conduit through which water flows, a natural body of running water flowing on or under the earth or a natural or artificial channel through which water flows.

SECTION 3. APPLICABILITY.

This Ordinance shall apply to all landowners, permit holders, developers, other entities in possession, or other persons acting without the consent of a landowner which effects any real estate located within the Hamilton County which either:

1. Directly discharges into a regulated drain established by the Hamilton County Drainage Board, pursuant to Indiana Code 36-9-27;

2. Directly discharges into a street drain located within the County;
3. Directly discharges into White River, Stony Creek, Cicero Creek, Sand Creek, Morse Reservoir, Hinkle Creek, Cool Creek, Mud Creek, and Eagle Creek;
4. Is included in the MS4 jurisdiction as defined in the Notice of Intent unless covered by another MS4 illicit discharge and elimination ordinance;
5. Directly discharges into a watercourse as established by the Hamilton County Code of Ordinances Sec. 10-4-4 Hazardous Materials Emergencies.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The Hamilton County Surveyor's Office shall administer, implement, and enforce the provisions of this Ordinance within its jurisdiction. Any powers granted or duties imposed upon the Hamilton County Surveyor's Office may be delegated in writing by the Hamilton County Board of Commissioners to persons or entities acting in the beneficial interest of or in the employ of the County.

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 intended to comply with the NPDES permit issued to the County. However, nothing herein shall be construed to ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into the waters of the United States.

SECTION 7. DISCHARGE PROHIBITIONS.

Prohibition of Illicit Discharges.

No person shall discharge or cause to be discharged directly or indirectly into the municipal 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.

The following discharges are exempt from discharge prohibitions established by this Ordinance:

1. 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, sump pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.
2. Discharges specified in a permit approved by the Hamilton County Surveyor's Office as being either:
 - a) necessary to protect public health and safety, or
 - b) non-threatening to the public health or safety or resulting in a discharge that would be contrary to the purpose of this ordinance.
3. Dye testing is an allowable discharge, but requires a verbal notification to the Hamilton County Surveyor's Office prior to the time of the test.
4. 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 drainage system.

SECTION 8. PROHIBITION OF ILLICIT CONNECTIONS.

1. The construction, use, maintenance or continued existence of direct or indirect 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.

SECTION 9. SUSPENSION OF MS4 ACCESS.

1. Suspension due to illicit discharges in emergency situations.

The Hamilton County Surveyor's Office 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 to the health or welfare of persons, to the MS4, or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Hamilton County Surveyor's Office may take such steps as deemed necessary to prevent or minimize damage to the MS4, to the waters of the United States, or to minimize danger to persons.

2. 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 Hamilton County Surveyor's Office will notify a violator of the proposed termination of its MS4 access. In the event of suspension, the violator may petition the Hamilton County Drainage Board for a reconsideration and hearing.

SECTION 10. 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 Hamilton County Surveyor's Office prior to the allowing of discharges to the MS4.

SECTION 11. MONITORING OF DISCHARGES.

Access to facilities

1. The Hamilton County Surveyor's Office shall be permitted to enter and inspect the premises of a permit holder subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a permit holder has security measures in force which require proper identification and clearance before entry into its premises, the permit holder shall make the necessary arrangements to allow access to representatives of the Hamilton County Surveyor's Office.
2. Facility operators shall allow the Hamilton County Surveyor's Office ready access to all parts of the permit holder's 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 Hamilton County Surveyor's Office shall have the right to install and maintain on any permit holder's facility such devices as are necessary in the opinion of the Hamilton County Surveyor's Office to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Hamilton County Surveyor's Office may require the permit holder to install monitoring equipment as necessary. The permit holder's sampling and monitoring equipment shall be maintained at all times in a safe and

proper operating condition by the permit holder at its own expense. All devices used to measure storm water 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 sampled shall be promptly removed by the permit holder at the written or oral request of the Hamilton County Surveyor's Office and shall not be replaced. The costs of clearing such access shall be borne by the permit holder.
6. Unreasonable delays in allowing the Hamilton County Surveyor's Office access to a permit holder's facility is a violation of a storm water discharge permit and of this Ordinance. A permit holder that discharges storm water associated with industrial activity commits an offense if the person denies the Hamilton County Surveyor's Office reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
7. If the Hamilton County Surveyor's Office has been refused access to any part of the premises from which storm water 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 Hamilton County Surveyor's Office may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 12. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

Hamilton County Surveyor's Office will adopt 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 drainage system, or waters of the U.S. 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 drainage 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 illegal 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 compliant with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 13. WATERCOURSE PROTECTION.

Every person owning or occupying property through which a watercourse passes, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other substances that would pollute or contaminate the flow of water. In addition, the owner and/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 14. 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 illicit discharges or pollutants discharging into storm water, the

storm drainage system, or water of the U.S., 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 an illicit discharge, said person shall immediately notify the Hamilton County Surveyor's Office. 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 15. ENFORCEMENT.

Notice of Violation.

Whenever the Hamilton County Surveyor's Office finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Hamilton County Surveyor's Office may order compliance by written notice of violation by either certified mail or in person to the responsible person. Such notice may require the violator to cure or mitigate the violation by requiring the responsible person to perform any or all of the following:

1. The performance of monitoring, analysis, and reporting;
2. The elimination of illicit connections or discharges;
3. The violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of remediation costs; and
6. 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 a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 16. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of violation to the Hamilton County Surveyor's Office.

The notice of appeal must be received within 7 days from the date of the Notice of Violation. A hearing on the appeal before the Hamilton County Surveyor's Office shall take place within 15 days from the date of receipt of the notice of appeal. In the event the landowner disagrees with the determination of the Hamilton County Surveyor, the landowner may appeal a decision of the Hamilton County Surveyor's Office to the Hamilton County Drainage Board and any appeal of a municipality's authorized enforcement officer to the Board of Public Works and Safety of said municipality.

SECTION 17. ENFORCEMENT MEASURES AFTER APPEAL.

If any violation of this Ordinance has not been corrected as set forth in a Notice of Violation, within 15 days of said Notice, or the exhaustion of any appeal, the Hamilton County Surveyor's Office, or any municipality, may, but is not required to, take all measures necessary to abate the violation and/or restore the property. The costs of abatement, or restoration, shall be assessed against the owner of the property and may be filed as a lien against the property in the amount of the assessment, or reduced to a judgment lien.

SECTION 18. COST OF ABATEMENT OF THE VIOLATION.

Within 15 days after the Hamilton County Surveyor's Office taking action to abate a violation, the owner or party in possession of the property will be notified of the cost of abatement, including administrative costs incurred in curing the violation. The property owner may file a written protest objecting to the amount of the assessment within 10

days to the Hamilton County Drainage Board. If the amount due is not paid within 30 days of the decision of the Hamilton County Surveyor's Office or by the expiration of the time in which to file an appeal, the county may file a civil action to collect said costs, plus interest and reasonable attorney's fees.

SECTION 19. INJUNCTIVE RELIEF.

In addition to any remedy set out herein, the Hamilton County Drainage Board and/or the Board of Public Works of a municipality may seek injunctive relief to enjoin violations of this Ordinance.

SECTION 20. ADDITIONAL PENALTIES.

In addition to any of the above remedies, the violation of any terms of this Ordinance shall be deemed a Class B infraction, and a Court of competent jurisdiction, in addition to any other remedies contained herein, may impose a fine upon any person or landowner who violates this Ordinance in the amount of \$1,000 for each violation. Each day of a violation may be considered a separate violation.

SECTION 21. ADOPTION OF ORDINANCE.

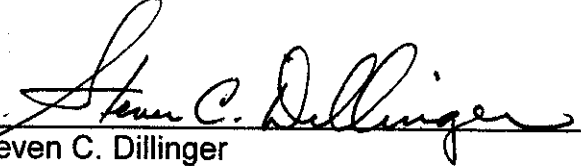
This Ordinance shall be in full force and effective September 1, 2005. All prior Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

Final passage by the Board of Commissioners of Hamilton County this 11th day of July, 2005.

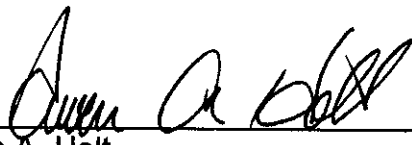
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HAMILTON COUNTY, INDIANA



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Hamilton County Auditor

APPROVED AS TO LEGAL FORM:


Michael Howard, County Attorney