

GENERAL ORDINANCE NO. 1141

AN ORDINANCE AMENDING GENERAL ORDINANCE NO. # 851 AN ORDINANCE TO REGULATE SEWER USES

Section 1. BE IT ORDAINED by the Common Council of the City of Kendallville, Indiana, that the said City now and hereby amends the SEWER USE REGULATIONS to include in ARTICLE III-

DIVISION 15. ILLICIT AND ILLEGAL DISCHARGE

Sec. 16-396. Definitions.

City shall mean the City of Kendallville, Indiana, acting by and through the City Council of Kendallville, Indiana, or any duly authorized officials and Boards acting in its behalf and designated to enforce and administer this Chapter.

Discharge of a Pollutant shall mean any addition of any pollutant, or combination of pollutants, into any waters of the state.

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

Illegal Discharge shall mean any direct or indirect non-storm water discharge to the Municipal Separate Storm Sewer System ("MS4"), except as exempted by this Chapter.

Illicit Connections shall mean either of the following: (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the MS4, and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Kendallville; or (2) Any drain or conveyance from a residential, commercial or industrial land use connected to the MS4 not documented in plans, maps, or equivalent records or previously allowed, permitted, or approved by the City of Kendallville.

Municipal Separate Storm Sewer System (MS4) shall mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, rivers, creeks, lakes, conduits of water on or underneath the ground, man-made channels, or storm drains), which are owned, monitored, or operated by the City of Kendallville and that discharge into the waters of the United States.

MS4 Jurisdiction shall mean the City boundaries of the City of Kendallville.

MS4 Operator shall mean the person responsible for development, implementation, and enforcement of the requirements in 327 IAC 15-13 (“Rule 13”) for the City of Kendallville MS4 jurisdiction, or his designated representative.

National Pollutant Discharge Elimination System Storm Water Discharge Permit (NPDES Permit) shall mean 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.

Notice of Intent (NOI) shall mean a written notification indicating intent to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit.

Notice of Termination (NOT) shall mean a written notification indicating that all land disturbing activities have ceased and that the project closure requirements of the erosion and sediment control permit have been satisfied.

Operator shall mean any individual engaged in construction activity.

Peak Discharge shall mean the maximum rate of flow during a storm, usually in reference to a specific design storm event.

Permitted Facility shall mean any facility subject to a NPDES permit.

Pollutant shall mean anything that causes or contributes to pollution or thermal pollution, including, but not limited to, heat, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, 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.

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

Storm Water Pollution Prevention Plan (SWPPP) shall mean a document which describes the BMPs and activities to be implemented to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

Trained Individual shall mean an individual who is trained and experienced in the principles of storm water quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of course work that enable the individual to make judgments regarding storm water control or treatment and monitoring.

Wastewater shall mean any water or other liquid, other than uncontaminated storm water.

Wet weather event shall mean an occurrence of storm water runoff, snow melt runoff, or ice melt runoff as determined at a particular site.

Wet weather violation shall mean a violation of this Chapter that occurs during a wet weather event or within twenty-four (24) hours following the culmination of a wet weather event.

Sec. 16-397. Discharge Prohibition.

- A. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the MS4 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.
- B. Exempted Discharges. The following discharges are exempt from discharge prohibitions established by this Article:
1. Water line flushing or other potable water sources, landscape or agricultural irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space pumps, air conditioning condensation, springs, non-commercial washing of passenger vehicles, natural riparian habitat or wet-land flows, swimming pools containing less than 0.05 parts per million (PPM) chlorine, fire fighting activities, and any other water source not containing pollutants.
 2. Discharges specified in writing by the City as being necessary to protect public health and safety.
 3. Dye testing is an allowable discharge, but requires a verbal notification to the City prior to the time of the test.
 4. Non-storm water discharges permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States 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 MS4.

- C. Prohibition of Illicit Connections. No person shall construct use, maintain or permit any illicit connection to the MS4, including any illicit connection made prior to the adoption of this Article, regardless of whether the connection was permissible under law or practice prevailing at the time of the connection.
- D. Violations involving the discharge of hazardous or non-hazardous materials. In addition to any other remedies provided under this Chapter, violations may be prosecuted through the Ordinance Violations Bureau. A first offense involving the discharge of non-hazardous materials shall be punishable by a fine of one hundred dollars (\$100) per occurrence. Second and subsequent offenses shall be punishable by a fine of two hundred fifty dollars (\$250) per occurrence. Each day that a violation is found to exist shall constitute a separate violation. Violations involving discharge of hazardous materials shall be punishable by a fine of two hundred fifty dollars (\$250) per occurrence. In addition, the City shall be entitled to enforce offenses involving the discharge of hazardous materials through any combination of fines, injunctive relief, and the use of the administrative hearing process set forth in this Chapter.
- E. Violations involving the illicit connection of hazardous materials. In addition to any other remedies provided under this Chapter, violations may be prosecuted through the Ordinance Violations Bureau. All illicit connections shall immediately be disconnected. In addition, a first offense involving the illicit connection of non-hazardous materials shall be punishable by a fine of one hundred dollars (\$100) per occurrence. Second and subsequent offenses shall be punishable by a fine of two hundred fifty dollars (\$250). Each day that a violation is found to exist shall constitute a separate violation. Violations involving connection of hazardous materials shall be punishable by a fine of two hundred fifty dollars (\$250) per occurrence. The City shall be entitled to enforce offense involving the illicit connection of hazardous materials through any combination of fines, injunctive relief, and the use of the administrative hearing process set forth in this Chapter.

Sec. 16-398. Suspension of MS4 Access.

- A. Illicit Discharges in Emergency Situations. The City may, without prior notice, suspend discharge access to a person when such suspension is necessary to stop an actual or threatened illegal discharge or any discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, to the MS4 or any watercourse, whether or not contained within the MS4. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or any watercourse, whether or not contained within the MS4.
- B. Detection of Illicit Discharge. Any person discharging in violation of this Article may have their access to discharge to the MS4 terminated in order to abate or

reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for reconsideration and a hearing.

- C. Reinstatement of Access. No person whose discharge access has been suspended or terminated may reinstate MS4 access without the prior approval of the City.

Sec. 16-399. Industrial or Construction Activity Discharges.

Any person engaged in industrial and/or construction activity and subject to a NPDES permit shall comply with all provisions of such permit. Prior to allowing any such person to discharge into the MS4, the City may require proof of compliance with said permit in a form acceptable to the City.

Sec. 16-400. Monitoring of Discharges.

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

- A. The City shall be permitted to enter and inspect facilities subject to regulation under this Article as necessary to determine compliance. If a facility has security measures in force, which require proper identification and clearance before entry into its premises, necessary arrangements shall be made to allow access to representatives of the City.
- B. Facility operators shall allow the City 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 a NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- C. The City shall have the right to set up on any permitted or non-permitted facility such devices as the City deems necessary to conduct monitoring and/or sampling of a facility's storm water discharge.
- D. The City may require the owner or operator of a facility 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 facility at its own expense. All devices used to measure storm water flow and quality shall be calibrated at a minimum in accordance with manufacturer's specifications 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 permit holder at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator of the facility.

- F. Unreasonable delays in allowing the City access to a permitted or non-permitted facility is a violation of this Article. 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 City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.
- G. On the proper showing that access to a facility is being denied and that probable cause exists to believe there is a violation of this Article, or the need to inspect and/or sample is necessary to verify compliance with this Article or any Order issued here under, the City may seek the issuance of a search warrant from a court of competent jurisdiction.
- H. The City may require a SWPPP from commercial facilities which, in the opinion of the MS4 Operator, have the potential to pollute receiving waters within the MS4 jurisdiction based on past activities at the site or the nature of the commercial activity.

Sec. 16-401. Requirement to Use Best Management Practices (BMPs).

The City has adopted General Ordinance # 987 identifying BMPs for any activity, operation, or facility, which may cause or contribute to pollution or contamination of the MS4. 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 MS4 through the use of these structural and non-structural BMPs. Further, any person responsible for 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 MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

Sec. 16-402. Notification of Spills.

- A. Notwithstanding any other requirements of law, any person who has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into the MS4 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 nonhazardous materials, said person shall notify the MS4 Operator in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the MS4 Operator within three (3) business days of the phone notice. 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 no less than three (3) years from the date of the discharge.

- B. Violations. In addition to any other remedies provided under this Chapter, violations of this Section may be prosecuted through the Ordinance Violations Bureau. The first offense of any section of this Chapter shall be punishable by a fine of one hundred dollars (\$100). Second and subsequent fines shall be punishable by a fine of two hundred fifty dollars (\$250) per occurrence. Each day that a violation is found to exist shall constitute a separate violation.

Sec. 16-403. Enforcement.

- A. Notice of Violation. In addition to any other remedies provided under this Chapter, whenever the City finds that a person has violated any provision or requirement of this Article, the City may order compliance by written notice of violation to the responsible person. Such notice may require the violator to cure or mitigate the violation by requiring the performance of any or all of the following:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or illegal discharges;
3. That illegal 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 a fine to cover administrative and 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 may be completed by the City with the expense charged to the violator.

- B. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination to the Board of Public Works and Safety. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within thirty (30) days from the date of receipt of the notice of appeal unless the hearing is extended by agreement. The decision of the Board of Public Works and Safety shall be in writing and shall be final.
- C. Abatement. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation within thirty (30) days of the decision of the Board of Public Works and Safety, then representatives of the City are authorized to take any and all measures necessary to abate the violation and/or restore the property. 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.

Sec 16-404. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, the City may petition to a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to abate or remediate the violation. In addition to all other remedies available, the City may recover reasonable attorneys' fees, court costs and all other expenses associated with enforcing the provisions of this Article.

Section 2. EFFECTIVE DATE This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

ORDAINED and PASSED by the Common Council of this City of Kendallville on this _____ day of _____, 2010.

W. Suzanne Handshoe, Mayor

ATTEST:

**Sheryl Hanes
Clerk-Treasurer**

**Presented by me to the Mayor of the City of Kendallville this
_____ day of _____, 2010, at _____ .**

**Sheryl Hanes
Clerk-Treasurer**

**Signed and approved by me the Mayor of this the City of Kendallville
this _____ day of _____, 2010, at _____ .**

W. Suzanne Handshoe, Mayor