

Town of Lowell, Indiana
Ordinance No. 2005 - 02

**ORDINANCE ESTABLISHING
REGULATIONS FOR STORMWATER MANAGEMENT**

BE IT ORDAINED by the Lowell Town Council that the following Chapter 53, § 53.01 through §53.16, are hereby added to the Code of Ordinances for the Town of Lowell, to wit:

Chapter 53 - STORMWATER MANAGEMENT

Section 53.01 Purpose and Intent

The purpose and intent of this article is to ensure the health, safety and general welfare of the inhabitants of the Town of Lowell, Indiana, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the National Pollutant Discharge Elimination System (NPDES) permit process by reducing pollutants in storm water discharges and by prohibiting non-storm water discharges to the storm drain system.

Section 53.02 Incorporation by Reference – IAC

The following documents are incorporated by reference as a part of this Ordinance and shall include any later amendments, repeals, and replacements to those regulations as the same are published in the Indiana Administrative Code with the effective dates as fixed herein.

1. The requirements found in Rule 327 IAC 15-13-1 through 22.
2. The requirements found in Rule 327 IAC 15-5-1 through 12

Section 53.03 Definitions

“Authorized Enforcement Agency” The Lowell Storm Water Management Board (*see § 34.45 Ord. 1997-19*), through its Lowell MS4 Operator or his/her designees.

“Best management practice” or “BMP” means any structural or nonstructural control measure utilized to improve the quality and, as appropriate, reduce the quantity of storm water run-off. The term includes schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities, land use planning, policy techniques, and other management practices.

“Clean Water Act” The Federal Water Pollution Control Act 33 U.S.C. 1251 et seq.

“Contiguity” means an entity’s proximity to a designated MS4 area in such a way that it allows for direct discharges of storm water run-off into the regulated MS4 conveyance.

“Conveyance” means any structural process for transferring storm water between at least two (2) points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.

“Construction Activity” Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are limited to clearing and grubbing, grading, excavating, and demolition.

“Disposal” means the 1) discharge; 2) deposit; 3) injection; 4) spilling; 5) leaking; or 6) placing; of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.

“Garbage” means all animal solid, vegetable solid, and semisolid wastes resulting from the 1) processing; 2) handling; 3) preparation; 4) cooking; 5) serving; or 6) consumption; of food or food materials.

“Hazardous Waste” 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” means any discharge to an MS4 conveyance that is not composed entirely of storm water, except naturally occurring floatables, such as leaves or tree limbs.

“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 allows any non-storm water discharge including sewage, process wastewater, effluent, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains, washing machines, bathtubs, and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by any enforcement agency.
- 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.

"Industrial Activity" Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

"National Pollutant Discharge Elimination System (NPDES) Storm water Discharge Permit" means a permit issued by EPA or the Indiana Department of Environmental Management 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.

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

"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.

"Pollutant" Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, solvents; oil and automotive fluids; non-hazardous liquid and solid wastes; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, effluent, fecal coliform, E. Coli, 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.

"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, detention and other drainage structures.

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

"Storm Water Pollution Prevention Plan" A document which describes the Best Management Practices (BMPs) and activities to be implemented by a person or business to identify source 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.

"Wastewater" Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 53.04 Applicability

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by the authorized enforcement agency.

Section 53.05 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the State caused by said person. This Ordinance shall not create liability on the part of Lowell, or any agent or employee thereof for any damages that result from any discharger's reliance on this Ordinance or any administrative decision lawfully made hereunder.

Section 53.06 Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of 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 53.07 Prohibition of Illegal Discharges

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.

The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- a. Waterline flushing or other potable water sources,
- b. Landscape irrigation or lawn watering,
- c. Diverted steam flows,
- d. Rising ground water or ground water infiltration to storm drains,
- e. Uncontaminated pumped ground water,
- f. Foundation or footing drains (not including active ground water dewatering systems), and crawl space pumps,
- g. Air conditioning condensation,
- h. Springs,
- i. Non-commercial washing of vehicles,
- j. Natural riparian habitat or wetland flows,
- k. Dechlorinated swimming pools to less than five-hundredths (0.05) milligram per liter of chlorinated residual,
- l. Fire fighting activities,
- m. And any other water source not containing pollutants.
- n. Dye testing discharge upon verbal notification to the authorized enforcement agency prior to the time of the test.

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

Section 53.08 Prohibitions of Illicit Connections

The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.

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.

A person is considered to be in violation of this ordinance if the person connects a line conveying sewage, effluent, or biologically contaminated water to the storm drainage system, or allows such a connection to continue.

A person is considered to be in violation of this ordinance if the person reinstates a suspended connection to the storm drainage system without prior approval of the authorized enforcement agency.

Section 53.09 Waste Disposal Prohibitions

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposit, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the State, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

Section 53.10 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 Lowell MS4 Operator prior to allowing discharges to the MS4.

Section 53.11 Monitoring of Discharges

The Lowell MS4 Operator shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as necessary to determine compliance with this ordinance.

Persons shall allow the Lowell MS4 Operator ready access to all parts of the premises for the purpose 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 law.

The Lowell MS4 Operator shall have the right to setup on any permitted facility such devices as necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

The Lowell MS4 Operator has the right to 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 storm water flow and quality shall be calibrated to their accuracy.

Any temporary or permanent obstruction to the facility being inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Lowell MS4 Operator and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delay and/or denial of access to a permitted facility are violations of a storm water discharge permit and this ordinance. The Lowell MS4 Operator is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Section 53.12 Requirements to Prevent, Control, and Reduce Storm Water Pollutants

The Lowell MS4 Operator will adopt 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. The owner or operator shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drainage system or watercourses through the use of these structural and non-structural BMPs. 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 storm drainage 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 compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Section 53.13 Watercourse Protection

Every person owning property within a watershed, 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.

Section 53.14 Notifications 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 illegal discharges or pollutants discharging into storm water, the storm drainage system, or water of the State 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 non-hazardous materials, said person shall notify the authorized enforcement agency in person, by phone, or by facsimile no later than the next business day, and written notice given no later than three business days of initial notification. The owner or operator shall also retain an onsite written record, for three years, of the discharge and the actions taken to prevent its recurrence.

Section 53.15 Program Enforcement

1. Suspension of MS4 access

- a. In the event of an emergency, the Lowell MS4 Operator 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 public health, the environment, the MS4, or the waters of the State. 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 the danger to the public, damage to the MS4 or waters of the State.
- b. 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 authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

2. Notice of violation

- a. Whenever the Lowell MS4 Operator finds that a person has violated any prohibition or failed to meet any requirements of this ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation.
 - i. The performance of monitoring, analyses, and reporting
 - ii. The elimination of illicit connections or discharges

- iii. That violating discharges, practices, or operations shall cease and desist
 - iv. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property
 - v. Payment of a fine to cover all attorney, administrative, sampling, and remediation costs
 - vi. The implementation of source control or treatment BMPs
- b. If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a contractor and all the expense shall be charged to the violator
3. Appeal of notice of violation
- a. Any person receiving a notice of violation may appeal, in writing, the determination of the authorized enforcement agency. The notice of appeal must be received within 15 days from the date of the notice of violation. The Lowell Storm Water Management Board shall hold a hearing within 15 days from the date of receipt of the notice of appeal. The decision from the hearing shall be final.
4. Enforcement measures after appeal
- a. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or deadline set during the appeal hearing, the authorized enforcement agency shall enter upon the subject private property and is 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 authorized enforcement agency or its designated contractor to enter upon the premises for the purposes set forth above.
5. Cost of abatement
- a. Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of the abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days of notification. If the amount due is not paid within 30 days or by the date expressed by the authorized enforcement agency, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Auditor so that the auditor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

6. Injunctive relief

- a. 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 the courts 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.

7. Compensatory action

- a. In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and etc.

8. Violations deemed a public nuisance

- a. 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 deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

9. Remedies not exclusive

- a. 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 53.16 This Ordinance shall be in full force and affect on upon its passage and adoption as required by law.

Adopted the 24 day of JANUARY, 2004⁵ by a vote of 5 ayes and 0 nays.

Voting For:

David Gard
David Gard, President

Philip Kuiper
Philip Kuiper, Vice President

Al Bachman
Al Bachman, Member

Donald Huseman
Donald Huseman, Member

Cynthia "Polly" Roberts
Cynthia "Polly" Roberts, Member

ATTEST:

Judith Walters
Judith Walters, Clerk-Treasurer

Voting Against:

David Gard, President

Philip Kuiper, Vice President

Al Bachman, Member

Donald Huseman, Member

Cynthia "Polly" Roberts, Member