

PROPOSED ORDINANCE NO. 2006 - 69

ORDINANCE NO. 5086

**AN ORDINANCE AMENDING TITLE V, CHAPTER 50, OF
THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA,
INDIANA, AS FROM TIME TO TIME AMENDED,
REFERED TO AS THE “SEWER USE ORDINANCE” OF
THE CITY OF MISHAWAKA**

WHEREAS, the City of Mishawaka, Indiana, has heretofore constructed and has in operation a Municipal Separate Storm Sewer System (MS4) to convey stormwater away from the locations where collected and disposing of the same in a manner to mitigate flooding within the legal drain or receiving stream; and

WHEREAS, the common council believes that it is necessary to establish methods for controlling the introduction of pollutants into the municipal storm sewer system by prohibiting illicit connections and discharges: to ensure use of best management practices on construction sites; and establish legal authority and procedures to ensure compliance; and

WHEREAS, An illicit discharge is defined as any discharge to a Municipal Separate Storm Sewer System (MS4) that is not composed entirely of stormwater runoff, except for discharges allowed under a National Pollution Discharge Elimination System (NPDES) permit or non-polluting flows and,

WHEREAS, non-stormwater discharges occur due to spills, illegal dumping or illegal connections to the stormwater drainage system, and

WHEREAS, this ordinance provides the authority to deal with illicit discharges and establishes enforcement actions for those persons or entities found to be in noncompliance or that refuse to allow access to their facilities, and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, That:

Section 1. TITLE V, CHAPTER 50, OF THE MUNICIPAL CODE, the “Sewer Use Ordinance” is hereby amended to establish “ILLCIT DISCHARGES” as herein attached, to prohibit such non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4).

ILLCIT DISCHARGES

1.1. Purpose and Intent

The purpose of this ordinance is to protect the public health, safety, environment and general welfare of the citizens of Mishawaka through the regulation of non-stormwater discharges to the City of Mishawaka's separate storm sewer system to the maximum extent practicable as required by Federal 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 to:

- (1) Regulate the contribution of pollutants to the Municipal Separate Storm Sewer System by any person;
- (2) Prohibit illicit discharges and illegal connections to the Municipal Separate Storm Sewer System;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the Municipal Separate Storm Sewer System;
- (4) To establish legal authority to carry out all inspection, monitoring and enforcement procedures necessary to ensure compliance with this ordinance; and,
- (5) To ensure the proper installation, operation, and maintenance of construction site Best Management Practices (BMPs) for silt, water quantity, and water quality control.

1.2. Applicability

The provisions of this ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Department of Engineering or the NPDES permitting authority.

1.3. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

1.4. Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

1.5. Responsibility for Administration

The City of Mishawaka's Department of Engineering, the Department of City Planning and MS4 Coordinator shall administer, implement, and enforce the provisions of this ordinance.

Section 2. Definitions

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

" Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water 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.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

"City Planner" means the City Planner or his/her designated representative.

"Construction Activity" means land disturbing activities subject to the City of Mishawaka's Construction Site Erosion Control Ordinance or NPDES General Construction Permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

"Department of Engineering" means the City of Mishawaka Department of Engineering as the designated unit of government given the authority to review the performance specifications of 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" means any direct or indirect non-stormwater discharge to the Municipal Separate Storm Sewer System, except as exempted in Section 3 of this ordinance.

"Illegal Connection" means either of the following:

a) Any pipe, open channel, drain or conveyance, man-made or natural whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

b) Any pipe, open channel, drain or conveyance connected to the Municipal Separate Storm Sewer System which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

“Industrial Activity” means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

“MS4 Coordinator” means the MS4 Coordinator or his/her designated representative.

“Municipal Separate Storm Sewer System (MS4)” means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- a) Owned or maintained by the City of Mishawaka;
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.
- d) Located in an easement on any recorded subdivision/development plat.

“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 on an individual, group, or general area-wide basis.

“Non-Stormwater Discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Person” means, except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous 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; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind that may cause or contribute to pollution.

“Pollution” means the contamination or other alteration of any water’s physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any

liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

“Premises” mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Department of Engineering” means the City of Mishawaka Department responsible for implementing the provisions of this Ordinance.

“Storm Drainage System” means Publicly-owned facilities or those facilities shown as stormwater drainage easements on plats for subdivisions or developments 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.

“Stormwater Runoff” or **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

“Stormwater 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 to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

“Structural Stormwater Control” means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

“Waters 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 of Indiana which are not entirely confined and retained completely upon the property of a single person.

“Wastewater” means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 3. Prohibitions

3.1 Prohibition of Illicit Discharges

No person shall throw, drain, drip, leak, or otherwise discharge, cause, or allow others under its control to throw, drain, drip, leak, or otherwise discharge onto surfaces that will allow them to be

conveyed into the Municipal Separate Storm Sewer System any pollutants or waters containing any pollutants, other than stormwater.

The commencement, conduct or continuance of any illegal discharges of the following, but not limited to, into the storm drain system is prohibited;

(1) Automobile maintenance and operation sources such as: untreated commercial car wash wastewaters, untreated radiator flushing wastewaters, untreated engine degreasing wastes, improper oil, gasoline, transmission fluid, and other automotive fluids disposal, leaking underground storage tanks, and untreated leaking of oils, gasoline and other automotive fluids.

(2) Landscape irrigation sources such as: direct spraying of fertilizers, pesticides or herbicides onto impervious surfaces and the over-spraying of fertilizers, pesticides or herbicides onto landscaping.

The following discharges are exempt from the prohibition provision above:

(1) Water line flushing performed by a government agency, 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 wetland flows, swimming pools (only if dechlorinated – typically less than 1 part per million chlorine), fire fighting activities, and any other water source not containing pollutants;

(2) Discharges or flows specified in writing by Indiana Department of Environmental Management (IDEM) or the United States Environmental Protection Agency (EPA) as being necessary to protect public health and safety;

(3) Dye-testing is an allowable discharge, but requires a notification to the Department of Engineering prior to the event, except as administered by Mishawaka Utilities Sewer Maintenance Department;

(4) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and 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.

3.2 Prohibition of Illegal Connections

The construction, connection, use, maintenance or continued existence of any illegal connection to the storm drain system is prohibited.

(1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or

prevailing at the time of connection.

(2) A person violates this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of Department of Engineering.

(4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Engineering requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Engineering.

Section 4. Industrial or Construction or Land Disturbing Activity Discharges

(1) Any person subject to an industrial or construction activity NPDES (or State) stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to the Department of Engineering prior to allowing discharges to the MS4.

(2) Projects subject to a city building permit, including single-family residential building permits, must develop and adhere to a sediment and erosion control plan. Submittal to and approval of this plan the City of Mishawaka's Department of Planning is required prior to obtaining a building permit. Failure to properly implement the approved plan constitutes a violation of this Ordinance.

(3) As a minimum, the city will require Best Management Practice (BMP) implementation for any land disturbing activity, including land or individual lot clearing, grubbing, landscaping, etc., that may cause or contribute to pollution or contamination of storm water, the MS4, or Waters of the United States,

Section 5. Access and Inspection/Monitoring of Properties and Facilities

The Department of Engineering and/or the MS4 Coordinator shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

(1) City personnel shall be permitted to enter and inspect properties and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a property or facility has security measures in force which require proper

identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the city.

(2) The owner or operator shall allow the City personnel ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) City personnel shall have the right to set up on any property or facility such devices as are necessary in the opinion of the city personnel to conduct monitoring and/or sampling of the facility's stormwater discharges.

(4) City personnel may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City of Mishawaka personnel. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to the property or facility to be inspected and/or sampled shall be allowed by the owner or operator at the written or oral request of city personnel. Failure to provide safe and easy access to the property or facility to be inspected and/or sampled is a violation of this ordinance.

(6) Unreasonable delays in allowing City personnel access to a facility is a violation of this ordinance.

(7) If City personnel have 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, environment and welfare of the community, then the City personnel may seek issuance of a search warrant from any court of competent jurisdiction or refer the case to the NPDES permitting authority.

Section 6. Requirement to Prevent, Control, and Reduce Storm Water Pollutants.

The Board of Public Works of the City of Mishawaka has adopted Construction Standards identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain 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 drain 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 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. 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 stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Every property owner 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 could 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 7. Notification of Accidental Discharges and Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, Waters of the State, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. In the event of such release, and in addition to other notification requirements, the facility shall notify the Department of Engineering in person, by phone, facsimile or by email no later than the day following such discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department of Engineering within three business days of the 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 and made available for inspection for at least three years.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate Local and State agencies shall be immediately notified.

For facilities that operate under existing NPDES permits for storm water discharge, spill reporting shall be made to the permitting authority in accordance with the permit. The Department of Engineering shall be provided with copies of any written notification required by the NPDES permit.

Failure to provide notification of a release as provided above is a violation of this ordinance.

Section 8. Violations, Enforcement and Penalties

8.1. Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who has violated or continues to violate the

provisions 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.

8.2 Enforcement

A. In the event the violation constitutes an immediate danger to public health or public safety, city personnel or their agents are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City shall be entitled to compensation for any expenses involved in abating the violation and/or restoring the property. The City shall have the option of performing the work and placing a lien on the property for recovery of such documented expenses.

B. Whenever City personnel finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, Department of Engineering may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges and illegal connections;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs, attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses;
- (6) Payment of penalty determined in section 8.3; and
- (7) The implementation of pollution prevention practices, i.e. source control or treatment BMPs.

8.3 Penalties

Any person found to be in violation of this ordinance that fails to comply with a compliance directive issued by the City and referenced in Section 50.999 shall be punishable as provided in the City Code of Mishawaka. Each day in violation of the provisions of this section shall constitute a separate and distinct offense.

8.4 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 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and subsequent publication as required by law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this 4th day of December, 2006, at 8:05 o'clock, P .M.

Gregg A. Hixenbaugh /s/
Presiding Officer

ATTEST:

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

PRESENTED by me to the Mayor this 5th day of December, 2006, at 11:33 o'clock, A .M.

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

APPROVED by me this 5th day of December, 2006, at 2:28 o'clock, P .M.

Jeffrey L. Rea /s/
Jeffrey L. Rea, Mayor