

**PASSED 9-11-06 BY A VOTE OF 7-0
ORDINANCE NO. 40, 2006**

**AN ORDINANCE CREATING CHAPTER 54 IN THE
MUNICIPAL CODE OF THE CITY OF VALPARAISO,
ADDRESSING ILLICIT/ILLEGAL DISCHARGES AND/OR
CONNECTIONS TO STORM DRAINAGE SYSTEM**

WHEREAS, the City of Valparaiso has been designated an MS4 community by the United States EPA and State of Indiana; and

WHEREAS, the MS4 program is directed towards improving and protecting the quality of our nation's surface water; and

WHEREAS, one of the program's six basic elements requires that MS4 communities adopt an ordinance dealing with illicit/illegal discharges and/or connections to the community's storm drainage system; and

WHEREAS, the City of Valparaiso Storm Water Board has approved and recommends the adoption of this ordinance to meet the program's requirements;

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Valparaiso, that Chapter 54 is hereby created in the City's Municipal Code to read per the attached "EXHIBIT A". The provisions of this ordinance shall take effect as prescribed by state statute.

PASSED by the Common Council of the City of Valparaiso, Indiana, by a 7-0 vote of all members present and voting this 11th day of September, 2006.

/s/ Jon Costas

Jon Costas, Mayor

Attest:

/s/ Sharon Swihart

Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 11th day of September 2006, at 8:10 o'clock p.m.

/s/ Sharon Swihart

Sharon Swihart, Clerk-Treasurer

This ordinance approved and signed by me this 11th day of September, 2006, at 8:10 o'clock p.m.

/s/ Jon Costas

Jon Costas, Mayor

EXHIBIT A

CHAPTER 54: ILLICIT/ILLEGAL DISCHARGES AND/OR CONNECTIONS TO STORM DRAINAGE SYSTEM

Section

- 54.01 Authority and Purpose
- 54.02 Definitions
- 54.03 General Matters
- 54.04 Discharge and Connection Prohibitions
- 54.05 Industrial/Construction Activity Discharges
- 54.06 Monitoring of Discharges
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- 54.12 Enforcement II

54.01 AUTHORITY AND PURPOSE

(A) Authority This ordinance is adopted under the authority granted by Indiana Code 36-1-4-11, 36-7-4-100 et. seq., and all acts supplemental and amendatory thereto. This authority provides for the administration, enforcement, and amendment of this ordinance for controlling illicit discharges and/or connections to watercourses in the City of Valparaiso.

(B) Purpose The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Valparaiso, Indiana and the surrounding areas 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 process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal 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
- (4) To provide for means of enforcement of the requirements herein, and issuance of penalties for violations thereof.

54.02 DEFINITIONS

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to 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 wastewater disposal, or drainage from raw materials storage. BMPs may be structural or non-structural.

City. The City of Valparaiso, Indiana, or its designees as determined by the Board of Public Works and Safety.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. ' 1251 et seq.), and any subsequent amendments thereto.

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.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:
Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,
Any drain or conveyance connected from any site or facility 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, {122.26 (b)(14)}.

Land Disturbing Activity. Activities subject to City of Valparaiso Building or Erosion Control Permits, these include construction projects resulting in land disturbance of 3,000s.f. or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, filling, and demolition.

Municipal Separate Storm Sewer System (MS4). means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catchbasins, curbs, gutters, ditches, natural or man-made channels, or storm sewers) owned and/or operated by the City and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC ' { 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

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

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.

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, and soil; 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.

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 or operated 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 sewers, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, 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(SWPPP): A document which describes the best management practices(BMPs) and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions required to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

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

54.03 GENERAL MATTERS

(A) **Applicability** This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands within the boundaries and jurisdiction of the City of Valparaiso, Indiana, unless explicitly exempted by the City of Valparaiso.

(B) **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 (unconstitutional or unenforceable) by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this Ordinance.

(C) **Administration** The City of Valparaiso shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Valparaiso may be delegated by the Board of Public Works and Safety of the City of Valparaiso to persons or entities acting in the beneficial interest of or in the employ of the City.

(D) **Standards are Minimums** 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.

54.04 DISCHARGE AND CONNECTION PROHIBITIONS

(A) Illegal Discharges

(1) Discharges Prohibited No person shall discharge or cause to be discharged into the municipal storm drain system, watercourses or water bodies, 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:

(2) Discharges Exempt The following discharges are exempt from discharge prohibitions established by this ordinance:

- (a) diverted stream flows
- (b) rising ground water
- (c) ground water infiltration to storm drains
- (d) springs
- (e) natural riparian habitats or wetland flows
- (f) fire fighting activities

(3) Conditional Exemption of Discharges The following discharges are exempt from discharge prohibitions established by this ordinance as long as the waters contain no deleterious substances and the physical discharge does not cause the erosion of soil or suspension of any deleterious material:

- (a) water main flushing (must not cause erosion)
- (b) landscape irrigation or lawn watering
- (c) pumped ground water
- (d) foundation or footing drains or sump pumps
- (e) air conditioning condensation
- (f) washing of non-commercial vehicles
- (g) swimming pools (less than 1 ppm residual chlorine)
- (h) agricultural runoff from sites employing conservation practices
- (i) cold water (or hot water with prior permission from City) street washing or cosmetic cleansing
- (j) discharges specified in writing by the City as being necessary to protect public health and safety
- (k) dye testing with notification to the City prior to the test
- (l) discharges permitted under written NPDES permit, waiver, or EPA waste discharge order, provided that the discharger is in full compliance with the permit, waiver or order

- (B) Illicit Connections
- (1) Connections Prohibited The construction, use, maintenance or continued existence of illicit connections to the storm drain 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.
- (C) Suspension of MS4 Access
- (1) Emergency Situations The City 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, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or 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 authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the City through the Board of Public Works and Safety for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises for which access has been terminated pursuant to this Section, without the prior approval of the City.

54.05 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit IAC 327 15-6 (Rule 6) shall comply with all provisions of such permit. Proof of compliance with said permit must be acceptable to the City of Valparaiso prior to the allowing of discharges to the MS4. Violations of said permit may be enforced under the provisions of this chapter.

54.06 MONITORING OF DISCHARGES.

- (A) **Applicability** This section applies to all facilities that have storm water discharges.
- (B) **Access to Facilities**
- (1) **Entry** The City shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in place, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
 - (2) **Access and Records** Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling and testing discharges for pollutants.
 - (3) **Access Obstructed** Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall promptly be removed by the operator 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 operator.
 - (4) **Access Delayed** Delays in allowing the City access to a site or facility is a violation of this ordinance. A person who is the operator of a facility with a discharge of storm water commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
 - (5) **Access Denied** Denial of access to any premises or facility that discharges storm water is a violation of this ordinance. If there is reasonable cause to believe that an illicit discharge or illegal connection exists on the premises then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction in addition to other enforcement actions provided in this chapter.
- (C) **Monitoring by City** The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.
- (D) **Monitoring by Discharger** The City 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 ensure their accuracy.

54.07 PREVENTION, CONTROL AND REDUCTION OF POLLUTANTS

The City may identify or approve the use of Best Management Practices (BMPs) 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 any residential, institutional, governmental, commercial or industrial facility 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, may be, or may become 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 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 in compliance 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 or a City Erosion Control Permit.

54.08 WATERCOURSE PROTECTION

Every person owning, leasing, renting 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 obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures or their contents will not become a hazard to the use, function, or physical integrity of the watercourse.

54.09 SPILL OR RELEASE OF POLLUTANTS

(A) Corrective Action Required 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, suspected or potential release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release, and to prevent any additional future release.

(B) Notification and Records Required In the event of a release of hazardous materials, said person shall immediately notify emergency response agencies by calling 911. In the event of a release of non-hazardous materials, said person shall notify the City in person at 166 Lincolnway, or by telephone at 462-1161 as soon as practical, but in no case later than the next business day. 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.

54.10 ENFORCEMENT I

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City may:

- (A) Notice of Violation and Order for Compliance Issue written Notice to the Owner and/or responsible person, or their representatives. Such Notice may require without limitation:
- (1) The elimination of illicit connections or discharges;
 - (2) That violating discharges, practices, or operations shall cease and desist;
 - (3) The performance of monitoring, analyses, and reporting;
 - (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
 - (5) The implementation of source control or treatment BMPs, and/or
 - (6) The cessation of work until the violation is corrected.

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 may further advise that, should the violator fail to remediate or restore the affected property 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.

- (B) Levy Fine(s) Issue fines against said person and/or Owner pursuant to the provisions of the Violations Bureau in the municipal Code.
- (C) Withhold Permits The City may refuse to issue permits such as Erosion Control, Right-of-Way Cut, and/or Site Permits, and may request that the Building Commissioner also withhold Building Permits, from the person responsible for the violation. The permits to be withheld may be for sites other than that where the violations have occurred.

54.11 APPEAL OF ENFORCEMENT I ACTIONS

Any person receiving a Notice of Violation, fine or having permits withheld pursuant to the provisions of A, B, or C above, may appeal the determination of the City. The notice of appeal must be made to the Board of Zoning Appeals (BZA) and must be received by Planning Department staff within 10 days from the date of receipt of the Notice. The appeal shall be according to the procedures set by the BZA. A hearing on the appeal before the Board of Zoning Appeals (BZA) shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the BZA shall be final.

54.12 ENFORCEMENT II

(A) City to Correct/Abate, Cost to Owner/Responsible Person

(1) **Corrective Action** If a violation has not been corrected pursuant to the conditions set forth in the Notice of Violation, then, representatives of the City may enter upon the subject's private property and take any and all measures necessary to abate the violation. 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.

(2) **Notice of Payment Due** Within 30 days after abatement of the violation, the City shall notify the owner of the property or responsible person in writing of the cost of abatement, including administrative and legal costs. The Owner or responsible party shall pay said amount within 30 days of the date of the invoice unless a longer time for payment is stipulated in the invoice. If the City allows a period for payment greater than 30 days, the payments shall then be subject to interest at a rate not greater than allowed by statute.

(3) **Lien on Property** If the amount due is not paid within the 30 days or the time stipulated in the invoice, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment and any interest. The Clerk Treasurer shall file and record said lien with Porter County as provided by statute.

B. Injunctive Relief It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

C. Criminal Prosecution

Any person, as defined in this ordinance, that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of 1,000 dollars per violation per day and/or imprisonment for a period of time as set by the court.

(D) **Violations Deemed a Public Nuisance** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(E) Recover Costs The City may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

(F) 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.