



Code of Ordinances
CITY OF AUBURN





Rules Related to the Illicit Discharge and Connection to Storm water Drains Within the City of Auburn, Indiana.

CHAPTER
160

AUBURN



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160.001 PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Auburn through the regulation of non-storm water discharges to the municipal separate storm sewer (MS4) conveyance 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 MS4 conveyance system in order to comply with requirements of the Indiana Department of Environmental Management's (IDEM) National Pollutant Discharge Elimination System (NPDES) general permit process. The objectives of this ordinance are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any use
- B. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

160.002 DEFINITIONS

For the purposes of this ordinance, the following shall mean:

- Best Management Practices (BMPs)
Means structural or nonstructural practices, or a combination of practices, designed to act as effective, practicable means of minimizing the impacts of development and human activities on water quality. Traditional structural BMPs, including extended detention dry ponds, wet ponds, infiltration trenches, and sand filtration systems are now common elements of most new development projects. Structural BMPs rely heavily on gravitational settling and/or the infiltration of soluble nutrients through a porous medium for pollutant removal. Nonstructural BMPs, which may be used independently or in conjunction with structural BMPs, rely on a much wider breadth of mechanisms to prevent or control non point source pollution (NPS). Nonstructural BMPs range from programs that increase public awareness to prevent pollution, to the implementation of control-oriented techniques (such as bioretention and storm water wetlands) that utilize vegetation to enhance pollutant removal and restore the infiltrative capacity of the landscape.
- City of Auburn
means employees or designees of the City of Auburn designated to enforce and administer this ordinance. This shall also include the Indiana Department of Environmental Management, the DeKalb County Office of the Soil and Water District, the United States Environmental Protection agency and any of their agents and or successors in interest.
- Clean Water Act
Means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), any subsequent amendments thereto, and all rules and regulations promulgated pursuant to said Act.
- Construction Activity
Means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more as defined in the Indiana Annotated Code (IAC) by 327 IAC 15-5-1:12. Construction activities encompassing less than one acre but part of a larger development greater than one acre will also require NPDES permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- Hazardous Materials
Means 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
Means any direct or indirect non-storm water discharge to the MS4, except as exempted in Section 160.007 of this ordinance.
- Illicit Connections
- Means 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 including sewage, process wastewater, and wash water 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 the City of Auburn or, 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 the City of Auburn.
- Industrial Activity
Means activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6-1:12 (Rule 6).
- Maximum Extent Practicable (MEP)
Means the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES permits for discharges from MS4s “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods.” This standard applies to all MS4s regulated under the Phase I and Phase II (Rule 13) storm water rules. Compliance with the conditions of Rule 13 and the series of steps associated with implementation of the required minimum control measures will satisfy the MEP standard. Compliance with the six minimum control measures requires the development and implementation of BMPs. Implementation of the BMPs includes not only the actions necessary to initiate and continue the use of specific control measures, but also the enforcement actions, as applicable, to ensure that the implementation of the control measures occurs.
- Municipal Separate Storm Sewer System (MS4)
Means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), which are owned or operated by a state, city, county, tribe, district, association, or other public body or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the United States (40 CFR 122.26(b)(8)).
- National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit
Means a permit issued by the Indiana Department of Environmental Management (IDEM) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, a group, or on a general area-wide basis.
- Non-Storm Water Discharge
means any discharge to the storm drain system that is not composed entirely of storm water.
- Notice of Intent (NOI)
Means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as required under 327 IAC 15-3 and the applicable general permit rule.



- Person
means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- Permit Holder
means any person, partnership, corporation, or landowner who holds, or has
- Pollutant
Means anything that causes or contributes to pollution discharged into waterways. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the 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. Also, but not limited to dredged spoil; incinerator residue, filter backwash; sewage; garbage; sludge; munitions; chemical wastes; solid wastes; toxic wastes; hazardous substances; biological materials; radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended; 42 U.S.C. 011, et seq., heat, wrecked or discarded equipment; rock; sand; cellar dirt; and other industrial, municipal, and agricultural waste; discharged into water.
- Premises
Means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- Receiving Waters
Means rivers, streams, lakes, or any body of water into which storm water is discharged.
- Storm Drainage System
Means any publicly-owned or regulated drainage system within the jurisdiction of the permit holder by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- Storm Water
Means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- Storm Water Conveyance System
Means all storm sewer pipes, ditches, catch basins, and other structures including retention and detention facilities.
- Storm Water Pollution Prevention Plan
Means 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 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.
- Waters of the United States



Means a term used in federal regulations that defines all water bodies regulated as waters of the U.S. It includes:

1. all waters that may be susceptible to use in interstate or foreign commerce;
 2. all interstate waters, including interstate wetlands;
 3. all other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use degradation, or destruction of which could affect interstate or foreign commerce including any such waters;
 4. all impoundments of waters otherwise defined as waters of the United States;
 5. tributaries of waters identified in this section;
 6. the territorial seas; and
 7. wetlands adjacent to waters.
- Watercourse
means A conduit through which water flows, a natural body of running water flowing on or under the earth or a natural or artificial channel through which water flows.

160.003 APPLICABILITY

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

- A. Directly discharges into a street drain located within the City;
- B. Directly discharges into Cedar Creek, Rueben Lockwood Drain, Cliff Metcalf Ditch, William Carner Drain, Walter Smith Ditch, John Diehl Regulated Drain, William Spangler Drain, Auburn Industrial Park Drain, and Peckhart Ditch; or
- C. Is included in the MS4 jurisdiction as defined in the Notice of Intent.

160.004 RESPONSIBILITY FOR ADMINISTRATION

The City of Auburn shall administer, implement, and enforce the provisions of this ordinance within its jurisdiction. Any powers granted or duties imposed upon the City of Auburn may be delegated in writing by the City of Auburn to persons or entities acting in the beneficial interest of or in the employ of the City of Auburn, such as the Indiana Department of Environmental Management, the United States Environmental agency or any of their agents, assignees and or successors in interest therein.

160.005 SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

160.006 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are intended to comply with the NPDES permit issued to the City of Auburn. However, nothing herein shall be construed to ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the State.

160.007 DISCHARGE PROHIBITIONS

Prohibition of Illegal Discharges



No person shall discharge or cause to be discharged into the municipal storm drain 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. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
- B. Discharges specified in writing by the City of Auburn as being necessary to protect public health and safety, nonthreatening to the public health and safety, or resulting in a discharge that would be contrary to the purpose of this ordinance.
- C. Dye testing is an allowable discharge, but requires a verbal notification to the City of Auburn prior to the time of the test.
- D. The prohibition shall not apply to 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.

Prohibition of Illicit Connections

- A. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- B. 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. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

160.008 SUSPENSION OF MS4 ACCESS

Suspension due to Illicit Discharges in Emergency Situations

The City of Auburn 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 State. If the violator fails to comply with a suspension order issued in an emergency, the City of Auburn may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons.

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 City of Auburn will notify a violator of the



proposed termination of its MS4 access. The violator may petition the City of Auburn for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Auburn.

160.009 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 City of Auburn prior to the allowing of discharges to the MS4.

160.010 MONITORING OF DISCHARGES

A. Applicability

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

B. Access to Facilities

1. The City of Auburn 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 force, 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 City of Auburn.
2. Facility operators shall allow the City of Auburn 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 an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
3. The City of Auburn shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Auburn to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The City of Auburn 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 stormwater flow and quality shall be calibrated at a minimum in accordance with manufacturer's specifications to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the permit holder at the written or oral request of the City of Auburn and shall not be replaced. The costs of clearing such access shall be borne by the permit holder.
6. Unreasonable delays in allowing the City of Auburn access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is 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 of Auburn reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
7. If the City of Auburn has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the



community, then the City of Auburn may seek issuance of a search warrant from any court of competent jurisdiction.

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

The City of Auburn will adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility, which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State. 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 (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 stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

160.012 WATERCOURSE PROTECTION

Every person owning property 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. 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.

160.013 NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the storm drainage system, or waters 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 City of Auburn 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 City of Auburn within three 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 at least three years.

160.014 ENFORCEMENT

A. Notice of Violation

Whenever the City of Auburn finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Auburn or its agency and or assignees 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 responsible person to perform any or all of the following without limitation:



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

160.015 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination to the City of Auburn. The notice of appeal must be received within 7 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 15 days from the date of receipt of the notice of appeal. In the event the landowner disagrees with the determination of the City of Auburn, the landowner may appeal a decision of the City of Auburn to the City of Auburn Common Council. The decision of the municipal authority or their designee shall be final.

160.016 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the municipal authority upholding the decision of the City of Auburn, then representatives of the City of Auburn shall enter upon the subject private property and 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.

160.017 COST OF ABATEMENT OF THE VIOLATION

Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of eight percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

160.018 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 City of Auburn or designee 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.



160.019 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Auburn or designee may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

160.020 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.

160.021 PROSECUTION

Any person that has violated or continues to violate this ordinance shall be liable to the fullest extent of the law, and shall be subject to all available penalty as defined by 327 I.A.C. 15-4 et seq of not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) dollars per violation per day. The City of Auburn may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses. Violators may be subject to additional penalties as set forth and outlined in 327 IAC 15 et al.

160.022 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 City of Auburn to seek cumulative remedies.