

## **Section 11: Illicit Discharge Detection and Elimination**

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### **11.02 DEFINITIONS (TO BE ADDED TO CHAPTER LIST).**

AGRICULTURAL ACTIVITIES. Tillage, planting, cultivation or harvesting operation for the production of agricultural or nursery vegetative crops; and includes the pasturing and confined feeding of livestock, except for livestock operations which are subject to the Indiana Confined Feeding Control Statute (I.C. 13-18-10). The term also includes pasture renovation and establishment of the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For the purposes of this subchapter, the term does not include land-disturbing activities for the construction of agricultural related facilities, such as:

- (a) Barns;
- (b) Buildings to house livestock;
- (c) Roads associated with infra-structure;
- (d) Agricultural waste lagoons and facilities;
- (e) Lakes and ponds;
- (f) Wetlands; and
- (g) Other infrastructure.

## **ILLCIT DISCHARGE DETECTION AND ELIMINATION**

### **11.25 APPLICABILITY AND EXEMPTIONS.**

(A) This chapter shall apply to all discharges, including illegal dumping, entering the storm drain system under the control of the Office of the Morgan County Surveyor (County), regardless of whether the discharge originates from developed or undeveloped lands, and regardless of whether the discharge is generated from an active construction site or a stabilized site. These discharges include flows from direct connections to the storm drain system, illegal dumping and contaminated runoff.

(B) Any non-stormwater discharge permitted under a National Pollutant Discharge Elimination (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 the subject discharge to the storm drain system, is also exempted from this chapter.

(C) Finally, any construction project which has had its drainage plan approved by the County prior to the effective date of this subchapter shall be exempt from all requirements of this subchapter that are in excess of the requirements of ordinances in effect at the time of approval.

### **11.26 PROHIBITED DISCHARGES AND CONNECTIONS.**

(A) No person shall discharge to a waterbody, directly or indirectly, any substance other than stormwater or an exempted discharge. Any person discharging stormwater shall effectively prevent pollutants from also being discharged with the stormwater, through the use of Best Management Practices (BMPs).

(B) The County is authorized to require dischargers to implement pollution prevention measures, utilizing BMPs, necessary to prevent or reduce the discharge of pollutants into the County's stormwater drainage system.

### **11.27 EXEMPTED DISCHARGES AND CONNECTIONS.**

The following categories of non-stormwater discharges or flows are exempted from the requirements of this chapter, except to the extent that pollutants may be present in any of the following exempt discharges:

(A) Water line and hydrant flushing for maintenance;

(B) Irrigation or lawn watering;

- (C) Diverted streams;
- (D) Uncontaminated pumped ground water;
- (E) Excess uncontaminated storm sewer cleaning water not collected by a vacuum truck;
- (F) Uncontaminated condensate from air conditioners, coolers, compressors, and outdoor storage of refrigerated gasses or liquids;
- (G) Non-detergent pavement wash water provided spills or leaks of toxic or hazardous materials have not occurred;
- (H) Uncontaminated groundwater infiltration;
- (I) Uncontaminated pumped ground water;
- (J) Discharges from potable water sources;
- (K) Footing, foundation and crawl space drains that are uncontaminated;
- (L) Springs;
- (M) Non-commercial residential or community organization washing of vehicles;
- (N) Flows from riparian habitats and wetlands;
- (O) Dechlorinated or dibrominated swimming pool discharges (typically less than one part per million chlorine or bromine);
- (P) Street wash water;
- (Q) Discharges from firefighting activities; and
- (R) Naturally introduced detritus (e.g., leaves and twigs).

#### **11.28 STORAGE OF HAZARDOUS OR TOXIC MATERIAL.**

Storage or stockpiling of hazardous or toxic material within any drainage way, or in its associated floodway or floodplain, is strictly prohibited. Storage or stockpiling of hazardous or toxic material on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or drainage way.

#### **11.29 PRIVATE PROPERTY MAINTENANCE DUTIES.**

Every person owning property through which a drainage way passes, or such person's lessee, shall keep and maintain that part of the drainage way located within their property boundaries, 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.

#### **11.30 SPILL REPORTING.**

(A) Any discharger who accidentally discharges into a water body any substance other than stormwater or an exempted discharge shall follow the Indiana Department of Environmental Management (IDEM) environmental emergency reporting requirements and also immediately inform the County Emergency Management Agency concerning the discharge. A written report concerning the discharge shall be filed with the County Surveyor's Office, by the discharger(s), within five days.

(B) The written report shall specify:

- (1) The composition of the discharge and the cause thereof;
- (2) The exact date, time and estimated volume of the discharge;
- (3) All measures taken to clean up the accidental discharge, and all measures proposed to be taken to prevent any recurrence; and
- (4) The name and telephone number of the person making the report, and the name of a person who may be contacted for additional information on the matter.

(C) A properly reported accidental discharge shall be an affirmative defense to a civil infraction proceeding brought under this section against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs or to obtain other relief because of or arising out of the discharge. A discharge shall be considered PROPERLY REPORTED only if the discharger complies with all the requirements of this section.

#### **11.31 INSPECTIONS AND MONITORING.**

(A) Storm drainage system. The County or a designee will periodically inspect the portion of the storm drainage system under the County's control, in an effort to detect and eliminate illicit connections and discharges into the system. This inspection will include a screening of discharges from outfalls connected to the system in order to determine if prohibited flows are being conveyed into the storm drainage system. It could also include spot testing of waters contained in the storm drainage system itself to detect the introduction of pollutants into the system by means other than a defined outfall, such as dumping or contaminated sheet runoff.

(B) Potential polluters. If, as a result of the storm drainage system inspection, a discharger is suspected of an illicit discharge, the County or a designee may inspect and/or obtain stormwater samples from stormwater runoff facilities of the subject discharger, to determine compliance with the requirements of this section. Upon request, the discharger shall allow the County's properly identified representative to enter upon the premises of the discharger at all hours necessary for the purposes of such inspection or sampling. The County shall provide the discharger reasonable advance notice of such inspection and/or sampling. The County or its properly identified representative may place on the

discharger's property the equipment or devices used for such sampling or inspection. Identified illicit connections or discharges shall be subject to enforcement action as described in 11.32 through 11.37 and 11.99.

(C) New development and re-development. Following approval of final stormwater plans by the County, new development and re-development sites shall be inspected by the County Surveyor's Office's properly identified representative. This inspection will be to ensure all on-site stormwater conveyances and connections to the storm drainage system are in compliance with this chapter.

#### **11.32 ENFORCEMENT; COMPLIANCE.**

(A) In addition to the requirements of this section, compliance with the requirements set forth in the local zoning ordinances is also necessary. Compliance with all applicable ordinances of the County as well as with applicable state statutes and regulations shall also be required.

(B) Unless otherwise stated, all other specifications referred to in this section shall be the most recent edition available.

(C) Violations of the requirements of this section are subject to the penalties listed in 11.99.

#### **11.33 STOP-WORK ORDER.**

(A) In addition to the penalties listed in 11.99, if construction activities are conducted contrary to the provisions of this section or approved final stormwater management plans, the County may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such persons shall forthwith stop such work until authorized by the County to proceed with the work.

(B) The County may also undertake or cause to be undertaken any necessary or advisable protective measures to prevent violations of this section or to avoid or reduce the effects of noncompliance herewith.

(C) The cost of any such protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work.

#### **11.34 FAILURE TO COMPLY OR COMPLETE.**

In addition to any other remedies, should any person fail to comply with the provisions of this section, the County may, after the giving of reasonable notice and opportunity for compliance, have the necessary work done, and the owner shall be obligated to promptly reimburse the County for all costs of such work.

### **11.35 SUSPENSION OF ACCESS TO THE STORM DRAIN SYSTEM.**

(A) Suspension due to emergency situations. The County may, without prior notice, suspend storm drain system 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 storm drain system 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 storm drain system or waters of the United States, or to minimize danger to persons.

(B) Suspension due to the detection of illicit discharge. Any person discharging to the storm drain system in violation of this section may have his or her storm drain system access terminated if such termination would abate or reduce an illicit discharge. The County will notify a violator of the proposed termination of its Municipal Separate Storm Sewer System (MS4) access. The violator may petition the County for a reconsideration and hearing.

### **11.36 CORRECTIVE ACTION.**

Nothing herein contained shall prevent the County from taking such other lawful action as may be necessary to prevent or remedy any violation. All costs connected therewith shall accrue to the person or persons responsible. Costs include, but are not limited to, repairs to the storm drain system made necessary by the violation, as well as those penalties levied by the United States Environmental Protection Agency (USEPA) or IDEM for violation of the County's NPDES permit, reasonable attorney fees and other costs and expenses.

### **11.37 APPEALS.**

(A) Any person to whom any provision of this section has been applied may appeal in writing, not later than 30 days after the action or decision being appealed from, to the County Drainage Board the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal.

(B) The County Drainage Board shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed. In considering any such appeal, the County Drainage Board may consider the recommendations of the County Surveyor's Office and the comments of other persons having knowledge of the matter.

(C) In considering any such appeal, the County Drainage Board may grant a variance from the terms of this section to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- (1) The application of the section provisions being appealed will present or cause practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the section; and

(2) The granting of the relief requested will not prevent the goals and purposes of this section, nor result in less effective management of stormwater runoff.

#### **11.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to 11.99.

(B) Any person found in violation of any provision of 11.25 through 11.37 shall be issued a written notice of violation. Such notice may require, without limitation:

- (1) The performance of monitoring, analyses and reporting;
- (2) The elimination of illicit connections and illegal discharges;
- (3) The violating discharge practices and operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Issuance of a fee according to Ordinance 2024-17

(6) The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law.

(C) An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this section.

(D) Any person who aids or abets a person in a violation of 11.25 through 11.37 shall be subject to the penalties provided in this section.

(E) For purposes of this section and 11.25 through 11.37, SUBSEQUENT OFFENSE means a violation of the provisions of 11.25 through 11.37 committed by the same person within 12 months of a previous violation of the same provision of 11.25 through 11.37 for which said person admitted responsibility or was adjudicated to be responsible.

(F) 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.

(G) Any person who neglects or fails to comply with a stop-work order shall be found to be in violation of 11.33, and shall be subject to a fee according to Ordinance 2024-17